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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 REPUBLICAN NATIONAL COMMITTEE,
NEVADA REPUBLICAN PARTY, and SCOTT
16 JOHNSTON,

17 Plaintiffs,

18 v.

19 FRANCISCO AGUILAR, *in his official capacity*
as Nevada Secretary of State; LORENA
20 PORTILLO, *in her official capacity as the*
Registrar of Voters for Clark County; WILLIAM
21 "SCOTT" HOEN, AMY BURGANS, STACI
LINDBERG, and JIM HINDLE, *in their official*
22 *capacities as County Clerks,*

23 Defendants.

No. 2:24-cv-00518-CDS-MDC

**RESPONSE IN
OPPOSITION TO
INTERVENORS' MOTION
TO DISMISS AMENDED
COMPLAINT**

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1 Plaintiffs file this response in opposition to the Intervenor-Defendants' motion
2 to dismiss. *See* Interv. Mot. (Doc. 104). The Intervenor's motion raises most of the
3 same arguments as the Secretary's motion to dismiss (Doc. 101). To aid the Court's
4 review, Plaintiffs incorporate their arguments made in response to the Secretary, to
5 the extent those same arguments are made by the Intervenor. Plaintiffs expand in
6 this response on the unique arguments made by the Intervenor.

7 ARGUMENT

8 **I. The RNC and the NVGOP have plausibly alleged harm to their core** 9 **mission.**

10 Courts generally "have no difficulty concluding" that organizations suffer an
11 injury "attributable to the State" in NVRA cases when the Defendants' violations
12 disrupt the organizations' mission. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d
13 1032, 1041 (9th Cir. 2015). The amended complaint alleges that Defendants' violation
14 of the NVRA inflates the voter rolls, which directly injures the RNC and NVGOP's
15 mission to elect Republican candidates and turn out Republican voters. Amend.
16 Compl. (Doc. 98) ¶¶13-20, 23-26. "[T]here can be no question" that harm to the
17 organizations' core mission is an "injury in fact." *Havens Realty Corp. v. Coleman*, 455
18 U.S. 363, 379 (1982); *see also FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395
19 (2024).

20 The Intervenor claims that Plaintiffs don't "explain" those injuries. Interv. Mot.
21 at 9. But the amended complaint is full of details explaining exactly how bloated rolls
22 injure the RNC and NVGOP's mission. The RNC and NVGOP rely on registration
23 numbers to form their electoral strategies and to advise candidates. Amend. Compl.
24 ¶¶15, 17. Inflated rolls cause the RNC and NVGOP to spend limited funds on those
25 efforts, contacting voters who are not registered or eligible to vote. ¶¶14-15. The RNC
26 and NVGOP must divert funds from voter-registration and get-out-the-vote
27 initiatives, which are essential to the RNC and NVGOP's mission to elect Republican
28 candidates. *Id.* Inflated rolls harm the RNC and NVGOP's ballot-chase efforts by

1 resulting in more ineligible voters receiving mail ballots. ¶16. And all of these injuries
2 harm “the core electoral missions” of the RNC and NVGOP. ¶18, 25.

3 The Intervenors suggest that these injuries don’t suffice because they’re just
4 “ordinary campaign expenses.” Interv. Mot. at 8-9. But a “diversion-of-resources
5 theory does not require a plaintiff to pursue an entirely new mission in order to gain
6 standing.” *Black Voters Matter Fund v. Raffensperger*, 508 F. Supp. 3d 1283, 1292
7 (N.D. Ga. 2020). In fact, showing that the defendants’ violations “affected and
8 interfered” with the plaintiffs’ “core business activities” is the heart of organizational
9 standing. *All. for Hippocratic Med.*, 602 U.S. at 395. And the “core business” of the
10 RNC is “electing Republican candidates and turn out Republican voters in local, state,
11 and federal elections.” Amend. Compl. ¶13. By discounting Plaintiffs’ injuries *because*
12 they affect Plaintiffs’ core activities, the Intervenors get it backwards. So long as the
13 complaint “alleges that Plaintiffs expended additional resources that they would not
14 otherwise have expended, and in ways that they would not have expended them,” the
15 plaintiffs have standing. *Nat’l Council of La Raza*, 800 F.3d at 1039; *see also Tex.*
16 *Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006) (Texas Democratic
17 Party had standing to challenge a Republican candidate’s removal from the ballot
18 because it would have to rework its campaign).

19 Moreover, that the RNC and NVGOP might spend *some money* on ballot-chase
20 efforts and other programs absent Defendants’ violations does not mean that the
21 additional expenses don’t harm their mission. In *La Raza*, the Ninth Circuit held that
22 a voter-registration organization had standing under the NVRA because “[r]esources
23 Plaintiffs put toward registering someone who would likely have been registered by
24 the State, had it complied with the NVRA, are resources they would have spent on
25 some other aspect of their organizational purpose.” *Nat’l Council of La Raza*, 800 F.3d
26 at 1040. Swap out voter-registration for voter-turnout, and *La Raza* describes this
27 case: “Because Nevada automatically sends all active voters a mail ballot” the RNC
28 must “divert resources to ensure it is chasing mail ballots of eligible voters, rather

1 than ballots mailed to voters who are no longer eligible to vote.” Amend. Compl. ¶16.
2 So long as “a portion of the resources” spent on an activity is attributable to
3 counteracting the challenged law, an organization has standing. *ACORN v. Fowler*,
4 178 F.3d 350, 361 (5th Cir. 1999); *see also Havens Realty*, 455 U.S. at 379 (holding
5 that plaintiff organization had standing because it was forced to divert more resources
6 toward investigating the defendant’s “racially discriminatory steering practices”
7 because of the challenged conduct).

8 The Intervenors’ traceability argument suffers from the same problem. They
9 suggest that because the Plaintiffs don’t know whether a marginal voter is on the rolls
10 due to error, they can’t show that their injuries are traceable to Defendants’ violations.
11 Interv. Mot. at 9-10. That misunderstands how the Plaintiffs use voter rolls. The RNC
12 and NVGOP rely “on voter registration lists to determine [their] plans and budgets,”
13 for example. Amend. Compl. ¶14. They don’t make those decisions on a voter-by-voter
14 basis. But when a state or county has hundreds of thousands of ineligible voters on
15 the rolls, and “more registered voters than they have adult citizens who are over the
16 age of 18,” ¶4, it impedes the Plaintiffs’ ability form strategies and run an effective
17 campaign, ¶¶15-17.

18 In any event, when an organization “divert[s] more resources to accomplishing
19 its goals” because of a challenged law, it suffers an “injury in fact,” even if “the added
20 cost has not been estimated and may be slight.” *Fla. State Conf. of NAACP v.*
21 *Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) (emphasis added) (quoting *Crawford*
22 *v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181
23 (2008)). The amended complaint contains detailed allegations of how bloated rolls
24 force the RNC and NVGOP to waste a variety of advocacy, education, and strategic
25 resources. “It is *these* wasted resources, which [Plaintiffs] could have put ... toward
26 any other use ... that provide [Plaintiffs] with standing.” *ACORN*, 178 F.3d at 361
27 (emphasis added).

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1 Just this week, the Southern District of Mississippi ruled that similar facts in
2 affidavits were enough to find standing for the RNC and Mississippi Republican Party
3 on summary judgment. *RNC v. Wetzel*, Doc. 104, No. 1:24-cv-25 (S.D. Miss. July 28,
4 2024). Here, the allegations must be taken as true. Any they allege “[s]uch concrete
5 and demonstrable injury to the organization’s activities” that it would be “improper
6 for the District Court to dismiss for lack of standing.” *Havens Realty*, 455 U.S. at 379.

7 **CONCLUSION**

8 The Court should deny the Intervenor’s motion to dismiss.

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10 Dated: July 30, 2024

Respectfully submitted,

11 /s/ Jeffrey F. Barr

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