# EXHIBIT 1

**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.

No. 1:24-cv-01867

Hon. Sara L. Ellis



**[PROPOSED] INTERVENOR-DEFENDANTS' MOTION TO DISMISS**

ORAL ARGUMENT REQUESTED

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## INTRODUCTION

Plaintiffs Judicial Watch, Inc., Illinois Family Action, Breakthrough Ideas, and Carol J. Davis seek to compel Illinois election officials to systematically remove voters from the rolls just months before the 2024 presidential election. Plaintiffs' primary basis for demanding this extraordinary (and extraordinarily disruptive) relief is their contention that some counties have not reported cancelling the registration of enough voters based on address-confirmation issues. This assertion is based on county-level survey data reporting figures from a single two-year period. Plaintiffs ignore that *the same publicly available dataset* shows that Illinois culled tens of thousands of voters from the rolls because they moved during the same period—*including in the counties Plaintiffs claim are falling short*. From their cherry-picked isolated data points, Plaintiffs then make the extraordinary leap to accusing Defendants of violating Section 8 of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(a)(4), and ask that the Court commandeer Illinois's list-maintenance process to remove more voters (though they never say how many would be enough).



At the threshold, Plaintiffs fail to establish that they have standing. In alleging Count I, Judicial Watch and Ms. Davis contend they are injured because Defendants' failure to remove more voters from the rolls makes them concerned about "the integrity of elections," or afraid that their votes may be "diluted" if unlawful ballots are counted as a result. Federal courts across the country have repeatedly rejected these alleged injuries as insufficient for standing. Nor do the organizational Plaintiffs have standing merely because they have spent resources to combat these same concerns. From the Supreme Court on down, courts have consistently held that taking precautionary measures against speculative fears like those alleged here is insufficient to invoke federal courts' jurisdiction. Plaintiffs also lack standing to assert Count II, which is based on

entirely informational injuries. As the Supreme Court recently made clear, Plaintiffs need also identify a separate, resultant harm for standing. The Complaint should be dismissed for lack of jurisdiction.

But even if the Court were to reach the merits, dismissal would be required because Plaintiffs fail to state a claim. Plaintiffs have no right to micromanage a state's list-maintenance procedures, culling voters until they are satisfied, and certainly not in the name of the NVRA, which was enacted to make it *easier* for qualified voters to register and *remain* registered. Although the NVRA requires states to make a "reasonable effort" to remove voters who have moved, Congress did not establish a specific removal program for states to follow. And Plaintiffs fail to identify *any* flaw in the robust procedures used by Illinois, which resulted in *hundreds of thousands of voters* being removed from the rolls between the last two federal elections, including in the counties that Plaintiffs target as the basis of their Complaint. Plaintiffs' personal desire that Illinois conduct its list-maintenance procedures differently—or that Defendants simply remove more voters—fails to state a claim for a violation of the NVRA.

The Complaint should be dismissed.



## BACKGROUND

### I. The National Voter Registration Act

The NVRA requires states to provide simplified, voter-friendly systems for voter registration. With its enactment, Congress aimed to *increase* access to the franchise by establishing "procedures that will increase the number of eligible citizens who register to vote" and by making it "possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2). Thus, the "NVRA was intended as a shield to protect the right to vote, not as a sword to pierce it." *Am. C.R. Union v. Phila. City Commissioner*s, 872 F.3d 175, 182 (3d Cir.

2017). It meant "to dramatically expand opportunities for voter registration and to ensure that, once registered, voters could not be removed from the registration rolls by a failure to vote or because they had changed addresses." *Welker v. Clarke*, 239 F.3d 596, 598–99 (3d Cir. 2001). As Congress found, "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. § 20501(a)(3).

To further those pro-voter purposes, the NVRA imposes clear restrictions on whether, when, and how a state may remove a voter from its registration rolls. *See id.* § 20507(a)(3)–(4), (b)–(d). A voter may immediately be removed only in rare circumstances, such as by express requests or for disenfranchising felonies. *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may not remove a voter without first complying with prescribed procedural minimums meant to minimize the risk of erroneous deregistration. *See, e.g.*, *id.* § 20507(a)(3)(C), (d). For instance, "the NVRA strictly limited removal of voters based on change of address." *Clarke*, 239 F.3d at 599. States may not remove a voter for change of residence unless the voter confirms the change or fails to both respond to a notice and to vote in two general elections thereafter. 52 U.S.C. § 20507(d)(1).



Thus, by design "the NVRA does not require states to immediately remove every voter who may have become ineligible." *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2024 WL 1128565, at *11 (W.D. Mich. Mar. 1, 2024) ("*PILF*"). And it may take at least four years for a voter to be removed from the registration rolls because of a change of residence. Finally, the NVRA requires only that states make "a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4)(B). "Congress did not establish a specific program for states to follow for removing ineligible voters." *PILF*, 2024 WL 1128565 at *10.

## II. Plaintiffs' Complaint

On March 5, 2024, Plaintiffs sued the Illinois State Board of Elections and its Executive Director ("Defendants"), alleging violations of Section 8 of the NVRA. Compl. ¶¶ 99–108, ECF No. 1. In Count I, Plaintiffs aver that Defendants *must* be violating the NVRA because some Illinois counties reported "absurdly small numbers of removals" of voters who failed to respond to an address-confirmation notice and failed to vote in the next two general elections. *See id.* ¶ 31. In support, Plaintiffs rely exclusively on the Election Assistance Commission's ("EAC") datasets gathered in response to the 2022 biennial Election Administration and Voting Survey ("2022 EAVS") sent to the states. *See id.* ¶¶ 24–26. Notably, they do *not* allege that any of these counties' *total* number of removals—or even removals based on voters moving—were "absurdly small." *See generally id*. Their claims are focused specifically on a singular subset of information from which they extrapolate their claim that Defendants' list-maintenance activities are not reasonable. In Count II, Plaintiffs allege an informational injury based on Defendants' purported failure to produce certain records related to address-confirmation notices. *See id.* ¶¶ 58, 80.

Plaintiffs seek (1) a declaratory judgment that Defendants are in violation of Section 8 of the NVRA, (2) an order instructing Defendants to develop and implement new list-maintenance programs, and (3) a permanent injunction barring Defendants from refusing to allow Plaintiffs to copy and inspect requested records. Compl. at 22.



## LEGAL STANDARD

Rule 12(b)(1) "provides for dismissal of a claim based on lack of subject matter jurisdiction, including lack of standing." *Stubenfield v. Chi. Hous. Auth.*, 6 F. Supp. 3d 779, 782 (N.D. Ill. 2013) (citation omitted). A plaintiff must demonstrate Article III standing for each form of relief sought. *Friends of Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

Dismissal for failure to state a claim under Rule 12(b)(6) is appropriate "'when the

allegations in a complaint . . . could not raise a claim of entitlement to relief.'" *Bland v. Edward D. Jones & Co.*, 375 F. Supp. 3d 962, 971 (N.D. Ill. 2019) (quoting *Bell Atl. Corp. Twombly*, 550 U.S. 544, 558 (2007)). To survive, the complaint "must allege facts which, when taken as true, 'plausibly suggest that" they have "'a right to relief, raising that possibility above a speculative level.'" *Access Living of Metro. Chi., Inc. v. City of Chicago*, 372 F. Supp. 3d 663, 667 (N.D. Ill. 2019) (quoting *Cochran v. Ill. State Toll Highway Auth.*, 828 F.3d 597, 599 (7th Cir. 2016)).

## ARGUMENT

### I. Plaintiffs' list-maintenance challenge (Count I) should be dismissed.

In Count I, Plaintiffs allege—based on their "experience"—that certain counties reported removing "absurdly small numbers" of voters from the rolls under one (of several) removal categories, arguing that "there is no possible way" that Illinois is conducting a reasonable list-maintenance program. *See* Compl. ¶¶ 30–31, 101. But Plaintiffs lack standing because they fail to allege a cognizable injury-in-fact to support their claim, relying on allegations of harm that are either speculative, generalized, or self-inflicted. They fare no better on the merits. Compliance with the list-maintenance requirements in Section 8 of the NVRA requires only that states "make a reasonable effort, not an exhaustive one" to identify and remove ineligible voters. *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th Cir. 2019). Illinois's robust list-maintenance program regularly removes hundreds of thousands of voters when local election officials confirm they have moved. Plaintiffs' exclusive focus on the number of voters who were reported removed in one specific sub-category, and their *ipse dixit* that it is not enough, is insufficient to state a claim.



#### A. Plaintiffs lack standing to bring Count I.

Plaintiffs assert two theories of standing, both of which fail. First, Ms. Davis and Judicial Watch (on behalf of its Illinois-based "members") claim that Defendants' alleged list-maintenance failures harm their confidence in the state's elections, "dilute[]" the strength of their votes, and

discourage their participation in the democratic process. *Id.* ¶ 85. But as federal courts across the country have found, none of these assertions are sufficient to invoke federal jurisdiction under Article III. For the same reason, Judicial Watch cannot pursue this claim on behalf of its ostensible members. Compl. ¶ 83. Second, the organizational Plaintiffs allege that they must divert resources to combat similar alleged harms. *E.g.*, *id.* ¶ 92. But organizations may not manufacture standing by choosing to expend resources on entirely speculative harm, which is all that these Plaintiffs allege here. And they further fail to make specific allegations related to their missions and activities as required by this Circuit's precedent to support a theory of direct organizational harm. Count I must be dismissed for lack of jurisdiction.



**1. Plaintiffs cannot bring this claim based on speculative and generalized concerns about election integrity, vote dilution, or voter fraud.**

Ms. Davis and Judicial Watch, on behalf of its "members," claim that Defendants' list-maintenance procedures cause them harm in several different ways, but none is sufficient to support standing under Article III.

First, merely invoking "the possibility and potential for voter fraud," based on "hypotheticals, rather than actual events," is not sufficient to allege a concrete injury-in-fact. *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 406 (W.D. Pa. 2020). Similarly, Plaintiffs' diminished confidence in "the integrity of the electoral process," Compl. ¶ 85, is an ill-defined, "purely speculative" harm that falls short of establishing the "concrete and particularized" injury required by Article III, *Plotkin v. Ryan*, 239 F.3d 882, 885 (7th Cir. 2001). It is also not cognizable because it relies upon assertions of "harm to [plaintiffs'] and every citizen's interest in proper application of the Constitution and laws" and, thus, is a quintessential "generally available grievance about government" insufficient for standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992).

Second, Plaintiffs' claim that Defendants' list-maintenance procedures create an environment in which "their legitimate votes will be nullified or diluted," Compl. ¶ 85, by allowing ineligible voters to vote "or voters intent on fraud to cast ballots," *id.* ¶ 84, similarly fails to describe an injury that is particularized to Plaintiffs. As federal courts have repeatedly recognized, "the risk of vote dilution[ is] speculative and . . . more akin to a generalized grievance about the government than an injury in fact." *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015). Accordingly, even if Plaintiffs had supported their allegations with plausible facts (and they did not), their vote dilution injury would remain insufficient. A "veritable tsunami" of decisions have rejected this exact theory as simply too generalized to satisfy Article III. *O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff'd*, No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022); *see also Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020) ("Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing." (quotation marks omitted)). This includes courts within this circuit. *See, e.g.*, *Bost v. Ill. State Bd. of Elections*, No. 22-CV-02754, 2023 WL 4817073, at *7 (N.D. Ill. July 26, 2023) ("[C]laims of vote dilution based on the existence of unlawful ballots fail to establish standing."); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596, 608 (E.D. Wis. 2020) (holding these types of vote dilution claims fall into the "generalized grievance" category).[1]



Lastly, Plaintiffs' claim that Defendants' list maintenance impedes their desire to participate in the democratic process also cannot support standing. A plaintiff "cannot manufacture

[1] Vote dilution as alleged by Plaintiffs here is distinct from the concept as it has been recognized in the redistricting context. To be cognizable, vote dilution injuries "require[] a point of comparison. For example, in the racial gerrymandering and malapportionment contexts, vote dilution occurs when voters are harmed compared to 'irrationally favored' voters from other districts." *Wood*, 981 F.3d at 1314 (quoting *Baker v. Carr*, 369 U.S. 186, 207–08 (1962)). No such allegations are made here.

standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending," or if that fear is "fanciful, paranoid, or otherwise unreasonable." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). As discussed above, Plaintiffs' fears of voter fraud and vote dilution are entirely speculative; their resulting feelings and actions triggered by that speculation similarly cannot support standing.

Judicial Watch also cannot assert standing on behalf of its Illinois-based "members." To allege an associational injury, a party must show that "at least one of its members would 'have standing to sue in their own right.'" *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1008 (7th Cir. 2021) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). Because Judicial Watch's members would not themselves have standing to sue based on the above-described speculative, generalized, or self-inflicted injuries, Judicial Watch also lacks standing to attempt to remedy the same harms on their behalf.



**2. Plaintiffs do not allege a cognizable diversion of resources theory of standing.**

Organizational Plaintiffs fare no better with their diversion of resources claims. An organization has standing to challenge a voting law or practice based on direct harm to the organization only if it is "'compell[ed] to devote resources' to combatting the effects of that [practice] that are harmful to the organization's mission," causing a consequent "drain[] on their resources" that "displace[s] other projects they normally undertake." *Common Cause Ind. v. Lawson*, 937 F.3d 944, 950, 950–52 (7th Cir. 2019) (quoting *Crawford v. Marion Cnty. Election Bd.*, 472 F.2d 949, 951 (7th Cir. 2007)); *accord Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Mere allegations that an organization is "spending [] resources" in response to an election practice does not confer standing. *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 982 (6th Cir. 2020) (affirming dismissal of complaint). Here, each of the organizational

plaintiffs fail to allege facts that, if true, would support these necessary elements.

Breakthrough Ideas alleges only that "[i]ts ability to contact Illinois voters is made more difficult because the voter rolls contain many outdated and ineligible registrations." Compl. ¶ 96. At no point does it allege any "concrete and specific adverse consequences," explain how its "mission[] will be thwarted," or claim that any other projects were affected. *Common Cause*, 937 F.3d at 952.

Illinois Family Action's allegations are similarly deficient. It parrots the assertion that it is "more difficult" to "contact Illinois voters," before adding that Defendants' list-maintenance practices cause it "to waste significant time, effort and money trying to contact voters listed on the rolls who no longer live at the registered address." Compl. ¶¶ 95, 97. But these are highly general, not concrete or specific, allegations. And Illinois Family Action similarly fails to explain how its mission is impaired or how other projects it would otherwise normally undertake are impacted.

Judicial Watch's conclusory allegation that "it diverted its resources to counteract Defendants' noncompliance and to protect members' rights," Compl. ¶ 92, is also insufficient. An organizational plaintiff cannot "rely for standing on the costly and burdensome measures . . . they felt compelled to take" if they did not make those expenditures due to an "imminent" threat of harm. *See Common Cause*, 937 F.3d at 950 (citing *Clapper*, 568 U.S. at 416) (quotation marks omitted); *see also Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 865 (6th Cir. 2020) (holding a "plaintiff cannot create an injury" by spending time or money combating speculative concerns about ineligible voters fraudulently voting). Judicial Watch admits that its decision to spend resources to protect its members' "federal and state constitutional rights to vote" is based entirely on its "concerns" that Illinois's list-maintenance process "impairs the integrity of elections," dilutes its members' votes, and dampens their interest in participating in the democratic process.

*See* Compl. ¶¶ 84–85. But, as already explained, these allegations are either too speculative, too generalized, or too far removed from Defendants' actions, to support standing.

Furthermore, "general allegations of activities related to monitoring the implementation of the NVRA that are not paired with an allegation that such costs are fairly traceable to the defendant's conduct, fail to confer organizational standing." *Martinez-Rivera*, 166 F. Supp. 3d at 788. But this is precisely what Judicial Watch does in alleging that its "concerns with Illinois' list maintenance practices led it" to spend resources "investigating" Defendants' compliance with the NVRA. Compl. ¶¶ 89–90. At best, this is a self-inflicted injury and cannot confer standing. *See Parvati Corp. v. City of Oak Forest*, 630 F.3d 512, 518 (7th Cir. 2010).

The foregoing issues alone are fatal to Judicial Watch's standing, but Judicial Watch also fails to sufficiently allege how Illinois's list-maintenance procedures have disrupted the organization's normal proceedings and impaired its mission. *See Common Cause Indiana*, 937 F.3d at 955 (holding an organization cannot assert standing "based solely on the baseline work [it is] already doing," or "convert . . . ordinary program costs into an injury in fact"). As Judicial Watch admits, its Illinois investigation is part and parcel of its "nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations," through which it "utilizes public records laws" to obtain records, "analyzes these records," and "publishes the results of its findings." Compl. ¶ 88. These are the same activities Judicial Watch claims its injuries arise from here. *See id.* ¶¶ 89–90 ("Judicial Watch's concerns with Illinois' list maintenance practices led it to . . . request documents," "analyze the State's responses," and "research[] statements made by Defendants"). There is thus no basis to support its allegation that it diverted resources away from other activities or that Illinois's list-maintenance procedures impair its mission or injure it as an organization.

**B. Count I fails to state a claim upon which relief can be granted.**

In the alternative, Count I must be dismissed under Rule 12(b)(6) because it fails to state a claim. Plaintiffs' meager attempt to cast doubt on the state's reasonable processes for removing voters who are ineligible due to a change of address mischaracterizes Illinois's laws that govern NVRA compliance. And their core allegation—that some Illinois counties reported what Plaintiffs characterize as "absurdly small numbers of removals" on one specific basis, during a single two-year period, Compl. ¶ 31—ignores the fact that *those same counties* reported that they removed tens of thousands of voters over the same time span because they moved.[2] Simply put, Plaintiffs' allegations do not create a plausible inference that Illinois has failed to make "reasonable efforts" to maintain its voter rolls in violation of the NVRA. 52 U.S.C. § 20507(a)(4)(B).

Courts have recognized that compliance with the NVRA's list-maintenance responsibilities requires only that states "make a reasonable effort, not an exhaustive one" to identify and remove ineligible voters. *Bellitto*, 935 F.3d at 1207. Thus, a state's "failure to use duplicative tools or to exhaust every conceivable mechanism does not make [an] effort unreasonable." *Id.* at 1207; *see also PILF*, 2024 WL 1128565, at *10 ("[T]he state is not required to exhaust all available methods for identifying deceased voters; it need only use reasonably reliable information to identify and remove such voters."). Nor must states "immediately remove every voter who may become ineligible." *PILF*, 2024 WL 1128565, at *11.

Plaintiffs include as an exhibit to their Complaint a letter from Defendant Illinois State Board of Elections that lays out the comprehensive steps that the Board and local election



[2] *See* EAVS Datasets Version 1.1, available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys ("EAVS Data"), and 2022 Election Administration and Voting Survey Instrument, available at https://www.eac.gov/sites/default/files/EAVS%202022/2022_EAVS_FINAL_508c.pdf ( "2022 EAVS" (cited by Plaintiffs at Compl. 25-26). The Court may consider the EAVS data because it is "central to the complaint and [] referred to in it." *Doermer v. Callen*, 847 F.3d 522, 526 (7th Cir. 2017).

authorities are required to take under Illinois law to comply with the NVRA. 10 ILCS 5/1A-16.8(a)–(c); *see* Compl. Ex. 2, ECF No. 1-2. Plaintiffs' allegations ignore or mischaracterize these provisions. First, they allege that "[p]articipation as a member of ERIC does not ensure compliance with the NVRA." Compl. ¶ 70. But Illinois does not rely exclusively on ERIC to identify voters who have moved; election officials also cross reference the state's voter registration list against other databases—including the National Change of Address database and USPS data—at least six times per year. 10 ILCS 5/1A-16.8(a)–(b). Plaintiffs offer no basis to infer this process is unreasonable in violation of the NVRA.

Second, Plaintiffs allege that Illinois law is facially insufficient because it "merely" requires the State Board of Elections to "share[]" data about voters who have moved with local election authorities who are then "left to" confirm matches and make updates to voters' records. Compl. ¶ 74. But as the State Board explained in its letter to Plaintiffs, local election authorities "*must* [] confirm any matches and make the required updates to the applicable voter records," Compl. Ex. 2 (emphasis added), "including the cancellation of the voter's previous registration." 10 ILCS 5/1A-16.8(c). Plaintiffs fail to plausibly allege that this process falls short of a "reasonable effort" under the NVRA to remove ineligible voters.[3]



Third, Plaintiffs contend that election officials are improperly implementing the list-maintenance program by "manifestly failing to remove ineligible residents from the voting rolls."

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[3] Indeed, Illinois's list-maintenance system is substantively consistent with the NVRA's "safe harbor" provision by which a state may fulfill their list-maintenance obligations by "establishing a program under which . . . change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed" and a local registrar confirms this change before cancelling a voter's registration. 52 U.S.C. § 20507(c)(1); *see also A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 703 n.2 (6th Cir. 2016) ("Because [NVRA] describes the [National Change of Address ("NCOA")] Process as one way in which states 'may' comply with their obligation under the NVRA to identify and remove voters who are no longer eligible due to a change of residence, the NCOA Process is sometimes referred to in this litigation as the 'Safe-Harbor Process.'" (citation omitted)), *rev'd on other grounds*, 584 U.S. 756 (2018).

*See* Compl. ¶ 76. But, as explained, this claim is based entirely on cherry-picked data points from the 2022 EAVS. *Id.* ¶¶ 28–30. Plaintiffs specifically focus on the number of voters Illinois counties reported having removed under Section 8(d)(1)(B) of the NVRA, which allows—but does not require—a state to remove a voter from the rolls if that voter is sent an address-confirmation notice, fails to respond, and does not vote in the next two federal elections. *See* 52 U.S.C. § 20507(d)(1)(B).

In focusing on the data counties reported under that single provision, Plaintiffs ignore that the counties also reported registration removals made for other reasons, including cross-jurisdiction change of address, death, mental incompetence, disqualifying felony conviction, voter request to be removed, and "other." *See* 2022 EAVS, *supra* n.2. Each of the 23 counties that Plaintiffs claim removed 15 or fewer voters under Section 8(d)(1)(B), *see* Compl. ¶ 30, reported removing *at least* several hundred voters under the separate sub-category that captures "cross-jurisdiction change of address" during the allegedly offending period—reporting a combined total of nearly 52,000 registration removals for that reason, *see* EAVS Data, *supra* n.2. *None* of these counties reported removing zero voters who became ineligible after moving. Plaintiffs' claim that Defendants are not "actually remov[ing]" ineligible residents, *see* Compl. ¶ 75, is not only implausible, but directly belied by the data. Nor do Plaintiffs identify a single presently registered voter whose presence on the rolls violates the NVRA.[4]



Finally, Plaintiffs allege that *some* counties did not report *some* registration removal data in the 2022 EAVS, and in their "experience," these isolated omissions "suggest[] non-compliance

[4] Plaintiffs' reliance on Census Bureau data showing the number and percentage of Illinois residents who moved in different one-year periods is misplaced. *See* Compl. ¶¶ 32–33. As noted, a reasonable removal effort under the NVRA "does not require states to immediately remove every voter who may have become ineligible." *PILF*, 2024 WL 1128565, at *11. And for voters who have moved, the NVRA requires that election officials comply with a multi-step, multi-year waiting period during which a voter must both fail to respond to a notice from the state and fail to vote in two federal elections—spanning a period of four years—before their registration can be cancelled. *See* 52 U.S.C. § 20507(d)(1)(B).

with the NVRA." Compl. ¶ 40. *But see Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005) ("[U]nwarranted deductions of fact are not admitted as true in a motion to dismiss." (quotation marks omitted)). Plaintiffs once again overstate the relevance of select sub-categories of removals and ignore data showing that several of these counties reported removing hundreds, if not thousands, of voters who became ineligible after moving. In fact, the counties Plaintiffs identify as having reported no data on Section 8(d)(1)(B) removals reported removing a combined total of more than 36,000 voters who moved. *See id.* ¶ 38; EAVS Data, *supra* n.2. And while the Court "must make reasonable inferences in Plaintiffs' favor," "bald assertions" like Plaintiffs' allegations here "will not overcome a [motion to dismiss]." *Aldana*, 416 F.3d at 1248 (cleaned up). Where, as here, "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). Count I should accordingly be dismissed.



**II. Count II should be dismissed.**

Count II—in which Plaintiffs complain that Defendants failed to produce certain list-maintenance records, Compl ¶¶ 58, 106—should also be dismissed for lack of standing. Plaintiffs' bare allegation that they suffered an informational injury, *id.* ¶ 98, is not enough to satisfy Article III because they allege no ensuing harm from the alleged lack of information.

As the Supreme Court recently made clear: "An asserted informational injury that causes no adverse effects cannot satisfy Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 441–42 (2021). Plaintiffs must identify what "downstream consequences" they will suffer "from failing to receive the required information." *Id.* at 442. Applying this binding precedent, the Fifth Circuit recently held that organizations lacked standing to assert a claim under NVRA Section 8(i) because

they failed to identify "concrete harm from governmental failures to disclose" information including names and voter identification numbers of registrants identified as potential non-citizens. *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022); *see also id.* at 936–37 ("*TransUnion* rejected the proposition that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." (quotation marks omitted)).

Plaintiffs' Count II suffers from the same fatal flaw. Plaintiffs allege only that they "were denied access to a category of public records concerning Illinois's 'programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters' that [they] were entitled to access under the NVRA." Compl. ¶ 98. But because they fail to allege any "downstream consequences" from this purportedly deficient disclosure, *TransUnion*, 594 U.S. at 442, they have not alleged an injury in fact, and Count II must be dismissed.[5]



## CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants Illinois AFL-CIO and Illinois Federation of Teachers respectfully request that the Court dismiss Plaintiffs' Complaint.

April 2, 2024

Respectfully Submitted,

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[5] Plaintiffs (Compl. ¶ 67) cite *Ill. Conservative Union v. Illinois*, No. 20 C 5542, 2021 WL 2206159 (N.D. Ill. June 1, 2021), but that case was decided before the Supreme Court's decision in *TransUnion*.

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**Pro hac vice application forthcoming*