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.	)	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO RULES 12(B)(6) AND 12(B)(1)

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Defendants the Illinois State Board of Elections and Bernadette Matthews, Director of the Illinois State Board of Elections (hereinafter, "Defendants"), by their attorney, Kwame Raoul, Attorney General of the State of Illinois, respectfully request that this Honorable Court dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim upon which relief can be granted. In support thereof, Defendants state as follows:

INTRODUCTION

The National Voter Registration Act ("NVRA") seeks to enhance the "participation of eligible citizens as voters" through the establishment of procedures aimed to increase the number of "eligible citizens who register to vote." 52 USCS § 20501(b). While the NVRA also seeks to ensure the maintenance of active voter registration rolls, courts have acknowledged that these "twin objectives – easing barriers to registration and voting, while at the same time protecting electoral integrity and the maintenance of accurate voter rolls – naturally create some tension." *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019). Congress sought to balance these objectives through the NVRA. *Id.*

Now, Plaintiffs seek to eviscerate this balance by requiring the systematic removal of citizens from the Illinois voter registration list in derogation of the spirit and purpose of the NVRA. Plaintiffs' objectives should not be countenanced, and their Complaint should be dismissed for several reasons. *First*, the Eleventh Amendment bars Plaintiffs' claims against the Illinois State Board of Elections. *Second*, Plaintiffs have not stated an injury in fact sufficient to confer Article III standing. Plaintiffs instead rely on fearmongering claims, such as election fraud and vote dilution, that are too speculative to represent concrete and particularized injuries. *Third*, Plaintiffs have not stated a claim. While Plaintiffs rely on cherry-picked data to salvage their claims, the entire dataset instead establishes that Illinois has made more than a reasonable effort

to remove ineligible voters as required by the NVRA. In the period at issue, Illinois removed over 600,000 ineligible voters, representing 7.9% of its voter registration, which more than satisfies the NVRA. *Finally*, Plaintiffs have not stated a claim in Count II because Plaintiffs were not denied access to requested information, and thus, Count II must also be dismissed.

STATEMENT OF FACTS

National Voter Registration Act Requirements

In 1993, Congress passed the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501, *et seq*., establishing that it is the duty of the Federal, State, and local governments to promote a citizen's right to vote. Critically, the NVRA found that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups." 52 USCS § 20501(a)(3). The NVRA thus declares the establishment of procedures "that will increase the number of eligible citizens who register to vote in elections for Federal office" as one of its central tenets. 52 USCS § 20501(b)(1). And while the NVRA also seeks to ensure the maintenance of accurate and current voter registration rolls, to keep this purpose consistent with the NVRA's goal to increase the number of eligible citizens who register to vote, the NVRA emphasizes that its implementation should be "in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 USCS § 20501(b)(2), (4).

Section 20507 details the NVRA's requirements for the administration of voting registration, including the maintenance of voter registration rolls. As part of maintaining their voter registration rolls, each State shall "conduct 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—(A) the death of the registrant; or (B) a change in the residence of the registrant, in accordance with" three subsections. 52 USCS § 20507(a)(4)(A), (B) (emphasis added).

The NVRA gives States broad discretion for establishing these general programs. *See Common Cause/New York v. Brehm*, 432 F.Supp.3d 285, 313 (S.D.N.Y. 2020) ("Like many federal election laws, the NVRA leaves substantial discretion to the states."). Indeed, the NVRA confirms that a State may meet the requirements of subsection (a)(4) by establishing a program that uses "change-of-address information supplied by the Postal Service through its licensees … to identify registrants whose addresses may have changed." 52 USCS § 20501(c)(1)(A). Without dictating the specific program that States must use, the NVRA simply requires States to complete "*any* program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" no later than 90 days prior to a primary or general election. 52 USCS § 20501(c)(2)(A) (emphasis added).

When a State receives change-of-address information from the Postal Service, the NVRA provides certain follow-up procedures. For a registrant who has moved to a new address within the same jurisdiction, the registrar for that jurisdiction will change the registration records to show the new address and then send "the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information." 52 USCS § 20501(c)(1)(B)(i). Conversely, when a registrant moves to an address in a new jurisdiction, the registrar is directed to follow specific notice procedures. 52 USCS § 20501(c)(1)(B)(ii). The NVRA defines notice as "a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address." 52 USCS § 20507(d)(2).

The NVRA provides two ways for registrars to remove names from voting rolls. Under the first option, an individual may only be removed from voting rolls after the registrar has received confirmation in writing from the registrant of the registrant's change in "residence to a

place outside the registrar's jurisdiction in which the registrant is registered." 52 USCS § 20507(d)(1)(A). Under the second option, a registrar can remove a name from a voting roll if the individual has not responded to the notice and the individual has not voted "in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice." 52 USCS § 20507(d)(1)(B).

Finally, the NVRA requires public access to certain election information. Under the NVRA, States "shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 USCS § 20507(i)(1). This information includes "lists of the names and addresses of all persons to whom notices" were sent, as well as "information concerning whether or not each such person has responded to the notice." 52 USCS § 20507(i)(2).

The Requirements of the Illinois Election Code

Illinois complies with the NVRA using a "bottom up" voter registration system. At the top of this system, the Illinois State Board of Elections (the "Board") is responsible for assisting and overseeing the 108 local election authorities. 10 ILCS 5/1A-1. These duties include:

- Disseminating "information to and consult[ing] with election authorities concerning the conduct of elections and registration;"
- Furnishing "to each election authority prior to each primary and general election and any other election it deems necessary, a manual of uniform instructions;"
- Prescribing and requiring "the use of such uniform forms, notices, and other supplies… which shall be used by election authorities in the conduct of elections and registrations;"

- Requiring "such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary;"
- Reviewing and inspecting "procedures and records relating to conduct of elections and registration as may be deemed necessary;" and
- Supervising "the administration of the registration and election laws throughout the State."

10 ILCS 5/1A-8.

As part of its responsibilities, the Board maintains the technical aspects of the centralized statewide voter registration list. 10 ILCS 5/1A-25. This list is a compilation of the voter registration databases of each local election authority. 10 ILCS 5/1A-25(1). The statewide voter registration list is designed to "allow election authorities to utilize the registration data on the statewide voter registration list pertinent to voters registered in their election jurisdiction." 10 ILCS 5/1A-25(3)(i). Moreover, the list further allows "each election authority to perform essential election management functions, including but not limited to production of voter lists, processing of vote by mail voters, production of individual, pre-printed applications to vote, administration of election judges, and polling place administration." 10 ILCS 5/1A-25(3)(ii). While the Board is responsible for maintaining the technical aspects of the statewide voter registration system, the local election authorities are responsible for maintaining and inputting into this system the relevant data for their precincts.

The process by which local election authorities update their voter registration data is dependent upon the type of change being made. Upon receipt of a Voter Registration Application, the Illinois Election Code requires that the local election authority "having jurisdiction over the applicant's voter registration shall promptly search its voter registration database to determine whether the applicant is already registered to vote at the address on the application and whether the new registration would create a duplicate registration." 10 ILCS

5/1A-16.5(i). If the new registration is valid, the local election authority then inputs that voter's information into their system, which is then uploaded to the statewide voter registration list. *Id.*, 26 Ill. Adm. Code § 216.40.

In addition to the foregoing, the Board also monitors changes of address by voters. Twice each year, the Board "cross-reference[s] the statewide voter registration database against the United States Postal Service's National Change of Address database" 10 ILCS 5/1A-16.8(a). And at least six times each year, the Board "utilize[s] data provided as part of its membership in the Electronic Registration Information Center in order to cross-reference the statewide voter registration database against databases of relevant personal information kept by designated automatic voter registration agencies[.]" 10 ILCS 5/1A-16.8(b). This information is provided to the appropriate local election authority, who upon receipt of the information, registers any voter moving into its jurisdiction from another jurisdiction in Illinois or any voter moving within its jurisdiction provided that the following occurs:

> (1) the election authority whose jurisdiction includes the new registration address provides the voter an opportunity to reject the change in registration address through a mailing, sent by non-forwardable mail, to the new registration address, and
>
> (2) when the election authority whose jurisdiction includes the previous registration address is a different election authority, then that election authority provides the same opportunity through a mailing, sent by forwardable mail, to the previous registration address.

10 ILCS 5/1A-16.8(c).

Finally, these procedures are also subject to public disclosure. The Illinois Administrative Code requires local election authorities to keep and make available for public inspection "all records concerning the implementation of programs and activities conducted to maintain the accuracy and currency of voter registration files for at least two years." 26 Ill. Adm. Code

§ 216.40(f). These records must include "a list of all voters to whom a forwardable confirmation of address notice has been sent" and whether the voter responded to the notice. 26 Ill. Adm. Code § 216.40(g).

2022 Election Administration Voting and Survey

The NVRA tasks the United States Election Assistance Commission (the "EAC") with biennially publishing an election report assessing the impact of the NVRA. 52 USCS § 20508(a). Pursuant to Federal regulations, States are required to provide specific *statewide* election data to be included in the report. This information includes the "total number of registered voters statewide, including both "active" and "inactive" voters if such a distinction is made by the state" for the last two Federal elections and the total number of voters removed from the statewide voter registration list, including the "statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period." 11 C.F.R. § 9428.7(b).

In June 2023, the EAC published its report for the 2022 Election Administration and Voting Survey and the Election Administration Policy Survey (the "EAC Report" or the "EAVS").[1] Illinois had a 99.6% response rate for this survey, which was greater than or equal to the response rates for Alabama, Georgia, Guam, Hawaii, Kansas, Minnesota, Mississippi, Missouri, Northern Mariana Islands, Utah, Vermont, Virginia, and West Virginia. *See* Exhibit A, Election Administration and Voting Survey 2022 Comprehensive Report, 118 Cong. at pp. 243-

[1] This Court may take judicial notice of the Election Assistance Commission's Report, as well the supporting datasets, which Plaintiffs use to support the allegations in their Complaint. 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 (2013); *Reger Dev., LLC v. Nat'l City Bank*, 592 F.3d 759, 764 (7th Cir. 2010); *Hecker v. Deere & Co.*, 556 F.3d 575, 582-83 (7th Cir. 2009).

44.[2] For Section A of the survey, which requested data on voter removals including confirmation notices, Illinois had a 99.9% response rate. This response rate equaled the U.S. Total for Section A. *Id.*

The EAC's 2022 Report establishes that Illinois makes robust list maintenance efforts. As of November 8, 2022, Illinois had 7,899,591 active registered voters. Ex. A at p. 28.[3] The local election authorities sent a total of 2,710,102 confirmation notices, meaning that Illinois sent confirmation notices to 34.3% of its registered voters. *Id*. at p. 182. According to the data in the EAC Report, Illinois sent the second highest number of confirmation notices with the second highest percentage of confirmation notices to registered voters. *Id*. at pp. 182-83. The third highest State, Texas, sent almost one million fewer confirmation notices than Illinois, which represented only 11.4% of the active voters in Texas. *Id*. Similarly, Illinois removed 692,003 voters from its registered voter list, representing a removal of 7.9% of Illinois registered voters. *Id*. at p. 188. Illinois *removed* the ninth highest number of registered voters (*id*. at pp. 188-89), and its percentage of removal was greater than or equal to the removal in over half of the responding States and territories.[4]

Procedural History

[2] *Available at* https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf (last visited June 5, 2024).

[3] Illinois also received 1,906,637 registration applications. Of this number, 573,408 registrants submitted applications due to a "change of name, party or address (within jurisdiction)" and 131,944 registrants submitted applications due to a cross-jurisdiction change of address. *See* Ex. A, EAVS 2022 Comprehensive Report at p. 176.

[4] Alaska, California, Connecticut, Delaware, the District of Columbia, Georgia, Hawaii, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, U.S. Virgin Islands, Utah, and Wyoming all removed a smaller percentage of voters than Illinois. Montana removed an equal percentage of voters. And Idaho and North Dakota had no totals or percentages provided. *Id*. at pp. 188-89.

On August 4, 2023, Plaintiff Judicial Watch sent Defendants a letter regarding Illinois's data in the EAC Report. ECF No. 1 ¶ 52, *see also* ECF No. 1-1. The correspondence sought confirmation as to the accuracy of the data. *Id*. The correspondence also sought certain documents relating to removals, confirmation notices, and inactive registrations. *Id*., *see also* ECF No. 1 ¶ 53. This letter was not a pre-suit notice of violation as described in 52 U.S.C. § 20510. *Id*. Defendant Matthews responded through counsel on September 1, 2023. ECF No. 1-2. Dissatisfied with this response, Plaintiffs Judicial Watch, Illinois Family Action, and Carol J. Davis sent Defendants a letter notifying her of alleged NVRA violations and providing pre-suit notice. ECF No. 1 ¶ 77, *see also* ECF No. 1-3. Plaintiff Breakthrough Ideas was not involved in this correspondence. ECF No. 1-3.

On March 5, 2024, Plaintiffs filed a Complaint against Defendants for alleged violations of the NVRA. Specifically, Count I alleges a violation of Section 8(a)(4) of the NVRA for failing to "conduct a general program that makes a reasonable effort to cancel the registrations of Illinois voters." ECF No. 1 ¶ 101. Count II asserts a violation of Section 8(i) of the NVRA for allegedly failing to make records available to Plaintiffs. *Id*. ¶ 106. For the reasons set forth below, Plaintiffs' Complaint must be dismissed.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) provides that a party may move to dismiss a case based on "lack of subject matter jurisdiction." F.R.C.P. 12(b)(1). When a plaintiff lacks requisite standing to bring an action, federal jurisdiction cannot attach and the court lacks subject matter jurisdiction. *Walters v. Edgar*, 163 F.3d 430, 432 (7th Cir. 1998). Pursuant to Rule 12(h)(3), "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." F.R.C.P. 12(h)(3).

To survive a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, a complaint must contain sufficient facts that when assumed true, "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Offering nothing more than "labels and conclusions or a formulaic recitation of the elements of a cause of action" is insufficient. *Ashcroft*, 556 U.S. at 678.

ARGUMENT

I. The Eleventh Amendment bars Plaintiffs' claims against the Board.

The Eleventh Amendment bars Plaintiffs' claims against the Board. It is well-established that the Eleventh Amendment provides immunity to states, state agencies (as "arms of the state"), and state officials sued in their official capacity from suits brought by private litigants in federal court. *Joseph v. Bd. of Regents of Univ. of Wisconsin Sys.*, 432 F.3d 746, 748 (7th Cir. 2005) (citing *Kroll v. Bd. of Trustees of Univ. of Ill.*, 934 F.2d 904, 907 (7th Cir. 1991) and *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989)). The Eleventh Amendment applies with full force against both federal and state law claims. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 120-21 (1984); *see also Stoner v. Wis. Dep't of Agric.*, 50 F.3d 481, 482-83 (7th Cir. 1995) (holding that state's decision to indemnify employees does not abrogate Eleventh Amendment immunity). Based on the foregoing, the Eleventh Amendment bars Plaintiffs' claims against the Board.

II. Plaintiffs do not have standing.

Plaintiffs' Complaint must be dismissed because Plaintiffs lack standing to bring this lawsuit. Standing to sue is rooted in the traditional understanding of a case or controversy, and the "irreducible constitutional minimum" of standing consists of three elements. "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of

the defendant, and (3) is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Raines v. Byrd*, 521 U.S. 811, 802 (1997)); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). This doctrine "limits the category of litigants empowered to maintain a lawsuit in federal court," and in this way "serves to prevent the judicial process from being used to usurp the powers of the political branches and confines the federal courts to a properly judicial role." *Id*. (citations omitted).

Here, Plaintiffs lack standing because they do not (and cannot) plausibly plead an injury in fact that is sufficiently particularized or concrete. Plaintiffs instead have simply cherry-picked election data to assert speculative concerns regarding the voter registration list; these concerns amount to nothing more than a disagreement with the State's performance of its obligations pursuant to the NVRA, which is insufficient to convey standing. Moreover, the organizational plaintiffs similarly fail to demonstrate any organizational standing.

A. Plaintiffs do not have standing because they lack any injury in fact.

Plaintiffs' claims of diminished confidence in the electoral process and theoretical vote dilution are not sufficient injuries in fact to establish standing. Injury in fact is the "first and foremost of standing's three elements." *Spokeo*, 578 U.S. at 338. (citing *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 103 (1998)). To establish injury in fact, a plaintiff must show that he or she "suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id*. at 339 (citations omitted). For an injury to be particularized, "it must affect the plaintiff in a personal and individual way." *Id*. While particularization is necessary to establish injury, it alone is not sufficient. To establish standing, an injury must also be concrete—that is, it must actually exist, rather than simply being an abstract concept. *Id.* at 339–40.

The Supreme Court has consistently held that:

> [A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.

Lujan, 504 U.S. at 573–74; *see also Fairchild v. Hughes*, 258 U.S. 126, 129–30 (1922) ("Plaintiff has asserted only the right, possessed by every citizen, to require that the Government be administered according to law. . . . Obviously this general right does not entitle a private citizen to institute in the federal courts a suit."); *Massachusetts v. Mellon*, 262 U.S. 447 (1923) ("The party who invokes the power of judicial review must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.").

Plaintiffs' claims are not sufficiently particularized to establish standing to sue. While Plaintiffs assert that the State has not followed Section 8 of the NVRA and that their right to vote has somehow been impaired as a result, the Supreme Court has already held that this type of injury is not sufficient to confer Article III standing. *See Lance v. Coffman*, 549 U.S. 437, 442 (2007) ("This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past."). Indeed, these claims amount to nothing more than a general grievance where any relief sought as a result would no more directly and tangibly benefit Plaintiffs than it would the public at large. *Lujan*, 504 U.S. at 573-74. *Ex parte Levitt*, 302 U.S. 633, 634 (1937), *United States v. Richardson*, 418 U.S. 166, 174 (1974); *Bognet v. Sec'y Commonwealth of Pa.*, 980 F. 3d 336, 349 (3d Cir. 2020) ("[P]rivate plaintiffs lack standing to sue for alleged injuries attributable to a state government's violations of the Elections Clause.").

Plaintiffs thus have not claimed a particularized injury that affects them in "a personal and individual way." Nor could they, as an "assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently cannot alone satisfy the requirements of Art. III without draining those requirements of meaning." *Lujan*, 504 U.S. at 575-76, *see also Drake v. Obama*, 664 F. 3d 774, 782 (9th Cir. 2011) (affirming dismissal of claims for lack of standing and finding that "as a voter, [plaintiff] has no greater stake in this lawsuit than any other United States citizen" and his alleged injury was merely a "generalized interest of all citizens in constitutional governance") (citations omitted); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 706-12 (D. Ariz. 2020) (dismissing claims related to the election process for lack of standing because the "allegations are nothing more than generalized grievances that any one of the 3.4 million Arizonans who voted could make if they were so allowed"); *Wood v. Raffensperger*, 981 F. 3d 1307, 1314 (11th Cir. 2020) (affirming dismissal of claim for lack of standing where plaintiff challenged the results of the general election because plaintiff's injury was not particularized and plaintiff could not "explain how his interest in compliance with state election laws is different from that of any other person.").

Plaintiffs' injuries are also not sufficiently concrete to establish standing. Plaintiffs' allegation that they have diminished confidence in the electoral process is nothing more than an abstract idea and is antithetical to the principle that an injury in fact must be concrete and tangible. *See Spokeo*, 578 U.S. at 339-40. If such a claim constituted a cognizable injury, any individual could manufacture standing simply by claiming that their confidence had been altered in some way. As other courts have already held, this is far from the type of concrete and particularized injury necessary to confer Article III standing. *See Thielman v. Griffin-Valade*, 2023 U.S. App. LEXIS 32730, *3 (9th Cir. Dec. 12, 2023) ("[p]laintiffs allege only that they

suffer a 'crisis of confidence' in Oregon's voting systems, which is the same 'speculative' grievance that we found insufficient to confer standing in *Lake*") (*citing Lake v. Fontes*, 83 F. 4th 1199, 1201 (9th Cir 2023)); *Child.'s Health Def. v. FDA*, 650 F. Supp. 3d 547, 556 (W.D. Tex. 2023) ("[b]ecause the individual [p]laintiffs have not alleged that the loss of confidence presents a real and immediate risk of harm, the allegation that [p]laintiffs have suffered a loss of confidence in the FDA does not give [p]laintiffs standing to sue"); *Am. Civ. Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (holding that it was not clearly erroneous for the report to conclude that undermining voter confidence was "speculative and, as such, more akin to a generalized grievance about the government than an injury in fact").[5]

Nor can Plaintiffs create standing by alleging vote dilution. Plaintiffs claim that Defendants' alleged failure "to comply with the NVRA's voter list maintenance obligations impairs the integrity of elections by increasing the opportunity for ineligible voters or voters intent on fraud to cast ballots," thus "instilling in them the fear that their legitimate votes will be nullified or diluted." ECF No. 1, ¶¶ 84, 85. As Plaintiffs admit, these attenuated conjectures are simply "fears," and such unsubstantiated fears cannot be a cognizable injury. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 420 (2013) ("[R]espondents in the present case present no concrete evidence to substantiate their fears, but instead rest on mere conjecture about possible governmental actions."). And a number of courts have already determined that concerns of voter

[5] While *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1104-04 (D. Col. 2021), and *Green v. Bell*, No. 21-CV-493, 2023 U.S. Dist. LEXIS 45989, *9-12 (W.D. N.C. March 19, 2023) found that an individual's allegations of reduced confidence were sufficient to constitute an injury in fact, these cases are neither binding nor persuasive. As discussed, application of the rule adopted in these cases would destroy the concept of standing by allowing any individual or organization to sue without a *concrete* and *particularized* injury. *See Clapper*, 568 U.S. at 416 (Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending."). The Court should therefore decline to follow these cases, which contradict established principles of standing.

fraud and vote dilution are too generalized and speculative to create standing. *See, e.g., Bost v. Ill. St. Bd. of Elec., et al.*, No. 22-CV-02754, 2023 U.S. Dist. LEXIS 129509, at *17-21 (N.D. Ill. July 26, 2023) ("Plaintiffs allege that '[u]ntimely and illegal ballots received and counted after Election Day . . . dilute the value of timely ballots cast,'" but they "do not allege an injury beyond the general grievance that all Illinois voters would share if that were the case."); *Feehan v. Wisconsin Election Commission*. 506 F. Supp. 3d 596, 608 (E.D. Wis. 2020) ("[A]lthough it would over-simplify the standing analysis to conclude that no state-wide election law is subject to challenge simply because it affects all voters, the notion that a *single person's* vote will be less valuable as a result of unlawful or invalid ballots being cast is not a concrete and particularized injury necessary for Article III standing.").[6]

Thus, Plaintiffs have failed to allege any concrete and particularized injury sufficient to confer standing. Similarly, because the members of the organizational Plaintiffs "do not have standing to sue in their own right, the [organizational Plaintiffs do] not have standing to sue on their behalf." *Democratic Party of Wis. v. Vos*, 966 F. 3d 581, 586 (7th Cir. 2020) (*citing Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). This is especially true in this case where the organizational Plaintiffs have not identified any specific members who are registered

[6] *See also Soudelie v. Dep't of State Louisiana*, 2022 U.S. Dist. LEXIS 214216, *9-10 (E.D. La. Nov. 29, 2022) ("[l]ike the many other plaintiffs who claimed their votes were unconstitutionally diluted based on issues with the integrity of the 2020 election, plaintiff's purported injury is neither concrete nor particularized; rather, it amounts to a 'generalized grievance about the conduct of [the] government'") (*citing Lance*, 549 U.S. at 442); *Grey v. Jacobsen*, No. 22-82, 2022 U.S. Dist. LEXIS 189266, *4 (D. Mont. Oct. 17, 2022) ("generalized grievances about…election system software allegedly allowing for 'ballot tampering' prove insufficient to grant standing"); *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 380 (W.D. Pa. 2020) ("[A] claim of vote dilution brought in advance of an election on the theory of the risk of potential fraud fails to establish the requisite concrete injury for purposes of Article III standing."); *Bowyer*, 506 F. Supp. at 711-12 ("Plaintiffs have not alleged a concrete harm that would allow the Court to find Article III Standing for their vote dilution claim," which is "a very specific claim that involves votes being weighed differently and cannot be used generally to allege voter fraud"); *Moore v. Circosta*, 494 F. Supp. 3d 289, 312-13 (M.D.N.C. 2020) (In "vote dilution cases arising out of the possibility of unlawful or invalid ballots being counted," the harm alleged "is unduly speculative and impermissibly generalized because all voters in a state are affected.").

to vote in Illinois. *See Disability Rights Wisconsin, Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796, 801-02 (7th Cir. 2008) ("[A]n organization suing as representative [must] include at least one member with standing to present, in his or her own right, the claims (or type of claim) pleaded by the association.").

B. The Organizational Plaintiffs do not have standing to sue on their own behalf.

Plaintiffs Judicial Watch, Illinois Family Action, and Breakthrough Ideas (the "organizational Plaintiffs") also lack standing to sue on their own behalf. To establish standing, an organization must "show that [it is] under an actual or imminent threat of suffering a concrete and particularized 'injury in fact'; that this injury is fairly traceable to the defendant's conduct; and that it is likely that a favorable judicial decision will prevent or redress the injury." *Common Cause Indiana v. Lawson*, 937 F. 3d 944, 949 (7th Cir. 2019).

As previously discussed, the organizational Plaintiffs cannot show that they have a concrete and particularized injury in fact. Just as Plaintiffs cannot rely on speculative concerns of vote dilution or voter fraud, the organizational Plaintiffs cannot rely on unsupported statements regarding diversion of resources. While *Common Cause Indiana* found that the organizations had standing, the court emphasized that the case did not involve "any effort to rely on something as amorphous as taxpayer standing or speculative injury." *Id*. at 950. Instead, the court found that the organizations' injury—the automatic removal of their members without notice from Indiana's voter registration roll—"is either imminent or has already begun; it is concrete, ongoing, and likely to worsen." *Id*. at 951. These organizations also included concrete claims of injuries resulting from the diversion and depletion of their resources to combat the statutory changes. *Id*.

Unlike the organizations in *Common Cause Indiana*, the organizational Plaintiffs in this case have asserted no concrete claims of depletion of resources to combat concrete injuries. *Compare id*. at 951-52 with ECF No. 1 at ¶¶ 84-98. The organizations in *Common Cause Indiana*

asserted that they would have to divert resources to combat the effects of the bill, which could include the automatic removal of the very voters that they expended resources to register. In contrast, Plaintiff Judicial Watch merely claims that it had to use resources to send some communications and subsequently analyze the State's data and responses, which was already part of its nationwide program to monitor State and local compliance with the NVRA list maintenance obligations.[7] ECF No. 1 ¶¶ 84-92. Plaintiffs Illinois Family Action and Breakthrough Ideas provide even fewer allegations of concrete diversion of resources, merely claiming that their organizational missions are frustrated because their ability to contact Illinois voters is "made more difficult." ECF No. 1 ¶¶ 94, 96. None of these claims are sufficient to establish standing through a diversion of resources theory. *See Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 982 (6th Cir. 2020) (allowing a plaintiff to "bootstrap their way into standing by 'inflicting harm on themselves based on their fears of a hypothetical future harm'[,] … would eviscerate the Article III standing imperative, as it would permit the plaintiff who is willing to pay for unreasonable mitigation measures to prevent an unlikely future harm to manufacture standing") (citing *Clapper*, 568 U.S. at 416 (2013)).

The organizational Plaintiffs also do not have standing because (1) their injuries are not fairly traceable to the State's conduct and (2) they cannot demonstrate that a favorable judicial decision will prevent or redress their alleged injury. Plaintiffs Illinois Family Action and Breakthrough Ideas claim that their "ability to contact Illinois voters is made more difficult because the voter rolls contain many outdated and ineligible registrations." ECF No. 1 ¶¶ 95, 96.

[7] As Plaintiff Judicial Watch admits in its Complaint, the organization had already commenced a "nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations." ECF No. 1 ¶ 88. Considering most of the alleged diversion of resources is squarely within Plaintiff Judicial Watch's already established *nationwide* campaign, it is unclear how the organization has had to expend substantial resources beyond the work that it was already performing.

But as Plaintiffs acknowledge, 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." *Id*. ¶ 12 (emphasis added). Even the EAVS warns that its data should be used with caution as the totals "can include registrants who are no longer eligible to vote in that state but who have not been removed from the registration rolls because the removal process laid out by the NVRA can take up to two elections cycles to be completed." *See* Ex. A, EAVS 2022 Comprehensive Report at p. 140.

Given this statutory waiting period, Plaintiffs cannot establish that their alleged injury—difficulty contacting Illinois voters resulting from the voter registration list including ineligible voters—is traceable to the State's action and not the result of the NVRA requirement that the State keep ineligible voters on the voter registration list for the statutorily-required period.

Similarly, Plaintiffs cannot establish that an order from this Court would redress their alleged injury because ineligible voters will still be required to be on the voter registration list for up to two election cycles. Plaintiffs will thus continue having difficulty contacting individuals because the Illinois statewide voter registration list will continue to contain ineligible registrations due to the statutory waiting period.

Based on the foregoing, the organizational Plaintiffs have failed to allege standing because they have not identified any concrete and particularized injury in fact that is sufficient to confer Article III standing. *See Clapper*, 568 U.S. at 416 ("[A]llowing respondents to bring this action based on costs they incurred in response to a speculative threat would be tantamount to accepting a repackaged version of respondents' first failed theory of standing."). And because of the statutory waiting period of two general election cycles, the organizational Plaintiffs cannot

establish that their injuries are fairly traceable to Defendants' conduct or that any favorable decision would redress their injuries. For these reasons, Plaintiffs have failed to allege any facts that would give them standing and their Complaint must be dismissed.

C. Count II must be dismissed because Plaintiffs do not have standing to allege a violation of Section 8(i) of the NVRA.

Even if Plaintiffs had standing to bring this lawsuit generally, Count II must be dismissed because Plaintiffs do not have standing to assert a violation of Section 8(i) of the NVRA. Plaintiffs claim that Defendants failed to provide information requested pursuant to Section 8(i) of the NVRA. This section states that:

> (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

52 U.S.C. § 20507(i)(1) (2020). The statute goes on to specify that "[t]he records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i)(2) (2020).

As an initial matter, it is unclear whether Plaintiff Breakthrough Ideas is part of Count II. To the extent that Plaintiff Breakthrough Ideas joins Count II, Plaintiff Breakthrough Ideas does not have standing. At no point did Plaintiff Breakthrough participate in the correspondence with Defendants that sought the requested records. ECF Nos. 1-1, 1-3. Because Plaintiff Breakthrough Ideas never requested any records, it cannot claim a violation or injury based on any denial of records. And while Plaintiffs Illinois Family Action and Carol Davis participated in the pre-suit

notification, they similarly did not make the records request in the initial August 4, 2023 correspondence. *Id*. Thus, these Plaintiffs do not have standing to bring Count II.

Beyond this threshold issue, Plaintiffs must also have an informational injury to have standing to assert a claim based on a violation of Section 8(i). To assert an informational injury, a plaintiff must identify any downstream consequences from failing to receive the required information. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 441-42 (2021); *Campaign Legal Center v. Scott*, 49 F.4th 931, 935-937 (5th Cir. 2022). These downstream consequences must be concrete harms resulting from the failure to disclose information. *Campaign Legal Ctr.*, 49 F. 4th at 938.

Plaintiffs have not identified any concrete harms. While Plaintiffs claim that they were denied access, Plaintiffs have not alleged any downstream consequences of this denial. Nor can they, because Plaintiffs were not denied access to this information. Instead, Defendants simply informed Plaintiffs that the information relating to confirmation notices is available from the local election authorities. ECF No. 1-2, p. 2. Plaintiffs thus cannot allege any downstream consequences because they have access to the requested information. Without any concrete harms, Plaintiffs have not alleged an injury in fact, and as a result, Count II must be dismissed.

III. Plaintiffs' Complaint must be dismissed because Plaintiffs have not stated claims for violations of the NVRA.

A. Plaintiffs have not stated a claim in Count I because the data establishes that Illinois' list maintenance procedures satisfy the NVRA.

Even if Plaintiffs had standing to bring this lawsuit, they have failed to state a viable claim. Count I does not state a claim because Plaintiffs' allegations establish that the State complies with the NVRA. Section 8 of the NVRA "unambiguously mandates that the States 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*, 935 F. 3d at 1200 (*citing* 52 U.S.C. § 20507(a)(4)) (emphasis added). "Section 8(a)(4) 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." *Judicial Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Penn. 2021) (citing 52 U.S.C. § 20507(a)(4)).

The NVRA further provides a safe-harbor provision. Under this provision, "a state 'may meet the requirement' of a general program of list maintenance for change of address by following the [National Change of Address ("NCOA")] Process outlined in § 20507(c) to identify and remove ineligible voters." *Bellitto*, 935 F. 3d at 1204. Accordingly, "the NCOA Process, at a minimum, constitutes a reasonable effort at identifying voters who have changed their addresses." *Id*. at 1205.

Plaintiffs' Complaint confirms that the State is making a reasonable effort under Section 8(a)(4) of the NVRA by following the NCOA process. As explained in the September 1, 2023 letter to Plaintiffs, the Board cross-references the "statewide voter registration database against the United States Postal Services National Change of Address database twice each calendar year." ECF No. 1-2 at 2. This information is then shared with election authorities. *Id*. This process, "at a minimum, constitutes a reasonable effort" under the NVRA. *Bellitto*, 935 F. 3d at 1205. Because Plaintiff's Complaint establishes that the State is complying with the safe-harbor provision of the NVRA, Plaintiff has not stated a claim.

Plaintiff's Complaint further shows that the State is doing more than the minimum requirements of the NVRA. The Board's letter also explained that the State utilizes data provided as part of its membership in the Electronic Registration Information Center ("ERIC") "to cross-reference the statewide voter registration database against databases of relevant personal

information kept by designated automatic voter registration agencies." ECF No. 1-2 at 2. While Plaintiffs assert that this membership does not ensure compliance with the NVRA (ECF No. 1 ¶ 70), Plaintiffs ignore that this process is in addition to the NCOA process that has already been determined to satisfy the NVRA. *See Bellitto*, 935 F. 3d at 1205 ("Indeed, under the NVRA and *Husted*, the states are permitted to employ more robust procedures[,]" but "the fact that states may employ other procedures does not mean the clear language creating a safe harbor mechanism by which a state may 'meet the requirement' of subsection (a)(4) is something other than what it plainly says -- a method to satisfy the statute.").

Finally, Plaintiffs' Complaint and the EAVS report also establish that the State is removing ineligible voters from its statewide voter registration list. After the Board shares the NCOA and ERIC findings with the local election authorities, the local election authorities "*must* then confirm any matches and make the required updates to the applicable voter records." ECF No. 1-2 at 2. And the EAVS data confirms that ineligible voters are being removed by the local election authorities through this process. Plaintiffs allege that several Illinois counties either did not report or insufficiently reported their removal data. This claim is immediately disproven by the EAVS data showing that Illinois had a 99.6% survey response rate with a 99.9% response rate for section A, which covers voter registration and notices sent to voters who were thought to have moved and voters who were removed from the voter registration list. *See* Ex. A, EAVS 2022 Comprehensive Report at pp. 243-44. Thus, Plaintiffs' allegation that "[f]ifty-two of 108 Illinois jurisdictions failed to report any data to the EAC in one or more of the crucial data categories identified above, *viz*., relevant statutory removals, Confirmation Notices, or inactive registrations" (ECF No. 1, ¶ 47) is belied by the fact that Illinois had a 99.9% response rate for these exact categories.

Even looking at the granular data, Plaintiffs' claims fail. Plaintiffs 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. 1, ¶¶ 28, 29. However, of these 23 Illinois counties, nearly 74,000 ineligible voters were removed from the statewide voter list and nearly 52,000 of these registration removals occurred due to a cross-jurisdiction change of address.[8] Similarly, Plaintiffs claim that another 34 jurisdictions failed to report any data regarding Section(d)(1)(B) removals. ECF No. 1 ¶ 38. But this same data again shows that these 34 counties removed over 190,000 ineligible voters from the statewide voter list with over 36,000 of those voters being removed due to a cross-jurisdiction change of address. All total, these 57 counties removed 264,000 ineligible voters with over 85,000 of these removals occurring due to a cross-jurisdiction change of address. *Id.*

The statewide data further establishes that Illinois is making more than a reasonable effort to remove ineligible voters from their statewide voter registration list. During the applicable reporting period, Illinois removed 692,083 ineligible voters, representing 7.9% of their registered voters. Comparatively, Illinois removed the ninth highest number of registered voters, and its percentage of removal was greater than or equal to the removal in over half of the responding States and territories. *See* Ex. A, EAVS 2022 Comprehensive Report at p. 188-89. Similarly, Illinois sent 2,710,102 confirmation notices, meaning that Illinois sent confirmation notices to 34.3% of its registered voters. This is the second highest number of confirmation notices with the second highest percentage of confirmation notices to registered voters. *Id.* at pp. 182-83. Overall, this data shows that Illinois is making more than a reasonable effort to remove ineligible voters

[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 June 4, 2024). This dataset includes new information submitted by Delaware, Hawaii, West Virginia, and Wisconsin.

from its statewide voter registration list. *See Judicial Watch, Inc.*, 524 F. Supp. at 407 ("Section 8(a)(4) 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.").

Based on the foregoing, Plaintiffs have not, and cannot, state a claim for violation of the NVRA. As Plaintiffs' Complaint admits, Illinois relies on the NCOA process, which satisfies the general program requirement. Illinois also utilizes its membership in ERIC as an additional tool for identifying and removing ineligible voters. The data upon which Plaintiffs base their claims confirms that Illinois's adherence to these processes is resulting in the reasonable removal of ineligible voters.

B. Count II must be dismissed because Plaintiffs have not stated a claim.

Finally, Count II must be dismissed because Plaintiffs have not stated a claim. In Count II, Plaintiffs argue that they were denied access to information requested pursuant to Section 8(i) of the NVRA. But as previously discussed, Plaintiffs were not denied access to this information. Rather, the Board simply informed Plaintiffs that the requested information is maintained with the local election authorities pursuant to 26 Ill. Adm. Code § 216.40(f) and directed Plaintiff to request this information from the local election authorities. ECF No. 1-2, p. 2. Plaintiffs thus have not stated a claim because they were not denied access to this information.

CONCLUSION

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiffs' Complaint under Rules 12(b)(6) and 12(b)(1), with prejudice.

Respectfully submitted,

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