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

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

Plaintiffs,

v.

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

Defendants,

ILLINOIS AFL-CIO and ILLINOIS FEDERATION OF TEACHERS,

Intervenor-Defendants.

No. 1:24-cv-01867

Hon. Sara L. Ellis

INTERVENOR-DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT

TABLE OF CONTENTS

TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
INTRODUCTION 1
ARGUMENT 2
I. Plaintiffs lack standing to pursue their claims. 2
A. Plaintiffs lack standing to assert Count I and their reliance on *RNC v. Wetzel* is misplaced. 2
B. Plaintiffs lack standing to assert Count II because they have not identified any adverse effects of State Defendants' alleged violation of NVRA Section 8(i)..... 7
II. Count I fails to state a plausible claim upon which relief may be granted. 9
III. Count II fails to state a claim. 15
CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases

Aldana v. Del Monte Fresh Produce, N.A., Inc.,
416 F.3d 1242 (11th Cir. 2005) 12, 13, 15

*Am. C.R. Union v. Phila. City Comm'r*s,
872 F.3d 175 (3d Cir. 2017).....1

Campaign Legal Ctr. v. Scott,
49 F.4th 931 (5th Cir. 2022) 8, 9

Common Cause Ind. v. Lawson,
937 F.3d 944 (7th Cir. 2019) 4, 5, 6, 7

Georgia State Conf. of NAACP v. Kemp,
841 F. Supp. 2d 1320 (N.D. Ga. 2012).....5

Havens Realty Corp. v. Coleman,
455 U.S. 363 (1982).....4

Hebrard v. Nofziger,
90 F.4th 1000 (9th Cir. 2024) 10

Illinois Conservative Union v. Illinois,
No. 20 C 5542, 2021 WL 2206159 (N.D. Ill. June 1, 2021) 7, 8

Jud. Watch, Inc. v. Pennsylvania,
524 F. Supp. 3d 399 (M.D. Pa. 2021).....14

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992).....8

Nat'l Council of La Raza v. Cegavske,
800 F.3d 1032 (9th Cir. 2015) 5

Pub. Int. Legal Found., Inc. v. Nago,
No. CV 23-00389 LEK-WRP, 2024 WL 3233994 (D. Haw. June 28, 2024) 9

Republican National Committee v. Wetzel,
Nos. 1:24cv25-LG-RPM, 1:24cv37-LG-RP, 2024 WL 3559623 (S.D. Miss. July 28, 2024).....3, 4, 5, 6

RNC v. Burgess,
No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254 (D. Nev. July 17, 2024).....7

Cases-continued

Taha v. Int'l Bhd. of Teamsters, Loc. 781,
947 F.3d 464 (7th Cir. 2020) 9

TransUnion LLC v. Ramirez,
594 U.S. 413 (2021).....8, 9

Welker v. Clarke,
239 F.3d 596 (3d Cir. 2001).....1

Statutes and Regulations

52 U.S.C. § 20507(i)(1) 15

52 U.S.C. § 20508(a)(3).....10

11 C.F.R. § 9428.7(b) 10, 13

Other Authorities

U.S. Election Assistance Commission, 2022 Election Administration and Voting Survey, available at https://perma.cc/9HHQ-EMAL.....12

U.S. Election Assistance Commission, *Election Administration and Voting Survey 2022 Comprehensive Report* (June 2023), available at https://perma.cc/D3E9-TGEF 11

Intervenor-Defendants the Illinois AFL-CIO and the Illinois Federation of Teachers join the arguments set forth in the State Defendants' motion to dismiss and adopt that motion in full. *See* ECF No. 41-1. Intervenor-Defendants do not repeat those arguments here. Instead, they write separately to address additional relevant authority and present further reasons that the Court must dismiss Plaintiffs' claims.

INTRODUCTION

The National Voter Registration Act ("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 Comm'r*s, 872 F.3d 175, 182 (3d Cir. 2017). Through its enactment, Congress 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). With this lawsuit, Plaintiffs Judicial Watch, Illinois Family Action, Breakthrough Ideas, and Carol J. Davis seek to compel Illinois election officials to systematically remove voters from the rolls in violation of the spirit and purpose of the NVRA and to obtain further judgment against the state for its purported violation of the NVRA. But their complaint suffers from multiple fatal flaws. At the threshold, Plaintiffs lack standing to pursue either of their claims. And they fare no better on the merits.

In Count I, Plaintiffs allege that certain counties' responses to a survey conducted by the U.S. Election Assistance Commission ("EAC") prove that "there is no possible way" Illinois is conducting a reasonable list-maintenance program. *See* Compl. ¶¶ 30–31, 101. But the survey data on which Plaintiffs rely is meant to give policymakers a *general* sense of the NVRA's impact, not establish a state's compliance or non-compliance with its duties under the NVRA. Indeed, the EAC explicitly reports that the data makes it possible to produce a *generalizable* understanding of core

aspects of the election process and the management challenges in election administration; it nowhere indicates that the data can or should be parsed at a granular level. Furthermore, Plaintiffs' allegations are implausible on their own terms. As the complaint acknowledges, many of the entries that Plaintiffs build their claim upon simply state that data was not available, not that no voters were removed. The fact that some counties responded that they did not have data available to respond to certain questions on a survey administered by the EAC does not give rise to a plausible claim of statewide non-compliance with the NVRA. Nor is Plaintiffs' subjective insistence that too few voters were reported removed after failing to respond to an address confirmation notice and then failing to vote in the next two federal general elections sufficient to state a claim. Indeed, another district court rejected a strikingly similar challenge.

In Count II, Plaintiffs complain that they were denied certain information in violation of the NVRA. But as Plaintiffs' own complaint acknowledges, they were not denied anything. They were told where and how they could access the requested information and declined to do so. Thus, even if Plaintiffs had standing to assert this alleged informational injury—which binding Supreme Court precedent confirms they do not—this claim lacks merit.

In sum, the complaint should be dismissed in its entirety, with prejudice.

ARGUMENT

I. Plaintiffs lack standing to pursue their claims.

A. Plaintiffs lack standing to assert Count I and their reliance on *RNC v. Wetzel* is misplaced.

For the reasons set forth in the State Defendants' motion, Plaintiffs lack standing to pursue Count I of their complaint, because they fail to allege any harm to them that is traceable to the alleged violation of the NVRA. *See* ECF No. 41-1 at 11–20. Plaintiffs argue that State Defendants' purported list maintenance violation leads to less reliable voter registration records that supposedly

impair Illinois Family Action's ("IFA") and Breakthrough Ideas's ("BI") mission to elect candidates that support their preferred policy positions, and Judicial Watch's mission to promote governmental accountability. But these allegations fall short because Plaintiffs fail to allege any concrete injuries that are directly traceable to Defendants' challenged conduct.

IFA and BI attempt to convince the Court otherwise in their recently filed notice of supplemental authority, relying on an out-of-circuit district court decision. *See* ECF No. 55 (submitting as supplemental authority on the issue of standing, the district court's decision in *Republican National Committee v. Wetzel*, Nos. 1:24cv25-LG-RPM, 1:24cv37-LG-RP, 2024 WL 3559623 (S.D. Miss. July 28, 2024)).[1] That reliance is misplaced. In *RNC v. Wetzel*, the district court merely held that, under Fifth Circuit standing precedent, an organization *can* demonstrate standing by showing a diversion of resources or economic losses. The court found that the RNC, the Mississippi Republican Party, and the Libertarian Party proved a cognizable injury in that case because they described in detail how Mississippi's extended ballot receipt deadline required them to spend more resources on ballot-chase, poll watching, and canvassing monitoring programs, which they could only afford to do by diverting resources away from certain traditional get-out-the-vote activities, and that diversion, in turn, directly harmed their mission and ability to represent their constituents' interests. *Wetzel*, 2024 WL 3559623 at *3–6.

But the organizational Plaintiffs here do not allege any such concrete harm. Indeed, it is difficult to overstate how bare Plaintiffs' diversion-of-resources allegations are. In full, IFA and BI allege that:

[1] The third organizational plaintiff, Judicial Watch, does not appear to assert that *RNC v. Wetzel* supports its standing, as the Notice of Authority only discusses IFA's and BI's standing allegations. *See generally* ECF No. 55. But Judicial Watch has likewise failed to identify any economic losses or diversion of resources, as discussed herein and in State Defendants' motion to dismiss. *See* ECF No. 41-1 at 17.

> Illinois Family Action relies on Illinois' voter rolls to identify in-state voters and to contact them and encourage them to assist the candidates it supports by volunteering, organizing, contributing, and voting. Its ability to contact Illinois voters is made more difficult because the voter rolls contain many outdated and ineligible registrations.
>
> . . .
>
> Breakthrough Ideas relies on Illinois' voter rolls to contact Illinois voters to conduct its get-out-the-vote efforts and its advocacy and education missions. Its ability to contact Illinois voters is made more difficult because the voter rolls contain many outdated and ineligible registrations.
>
> Defendants' failure to timely remove ineligible registrants from Illinois' voter rolls causes Illinois Family Action to waste significant time, effort, and money trying to contact voters listed on the rolls who no longer live at the registered address.

Compl. ¶¶ 94, 96–97. Neither IFA nor BI specify any way in which its ability to contact voters is actually diminished by Illinois's list maintenance practices, any tradeoffs State Defendants' actions have compelled it to make, or how its mission has been harmed.

Specific allegations of disruption to plaintiffs' activities and impairment to their missions were not only crucial to the analysis in *Wetzel*, they are also required by Seventh Circuit precedent: 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, 950–52 (7th Cir. 2019) (quoting *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007)); *accord Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).[2] Plaintiffs have not made this required showing. At most, Plaintiffs suggest that if State

[2] IFA's vague allusion to "waste[d] . . . time, effort, and money," Compl. ¶ 97, does not save its standing argument merely because *Wetzel* observed that "economic losses" *can* constitute injury-in-fact, *see Wetzel*, 2024 WL 3559623 at *5. The *Wetzel* court specifically limited this observation,

Defendants conducted additional list maintenance, that would make it easier for them to identify registered voters who they could then encourage to vote for the candidates they support. But Plaintiffs do not allege with any specificity what role Illinois's raw registered voter list plays in their electoral efforts, as distinct from the more targeted data sources routinely used by campaigns. And the wasted efforts Plaintiffs complain about—occasionally knocking on the wrong door or sending a mailer to a bad address, *see* ECF No. 49 at 7—are activities all too familiar to anyone who has ever worked on a political or advocacy campaign, and they remain so even where states are in full compliance with the NVRA. Plaintiffs do not even *attempt* to explain how these negligible inefficiencies "drain" their resources or "displace" any other projects. *Common Cause*, 937 F.3d at 950, 952.

Nor could they. After all, even Plaintiffs do not contend that the NVRA entitles them to perfect voter registration records. This case is thus vastly different from other NVRA challenges where courts have found that advocacy organizations suffered a concrete injury. *See, e.g.*, *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1036 (9th Cir. 2015) (organization suffered injury when Nevada was unlawfully failing to offer voter registration to the plaintiff's targeted groups, compelling the plaintiff to spend money to do so in its stead); *Georgia State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1336 (N.D. Ga. 2012) (organizations had standing when they had to "expend[] additional resources—such as staff and volunteer time—on efforts to assist individuals with voter registration" that should have been carried out by the government).

Judicial Watch's conclusory allegation that "it diverted its resources to counteract

noting that a plaintiff's "[v]ague assertions and speculation that the organization could have spent [its] funds elsewhere are insufficient" to support their standing. *Id.* at *2. And, here, Plaintiffs fail to explain *how* their allegedly "wasted" resources would otherwise be used, thus they cannot establish standing even under *Wetzel*'s non-binding reasoning.

Defendants' noncompliance and to protect members' rights," Compl. ¶ 92, is also insufficient under Seventh Circuit precedent and *Wetzel*'s reasoning. Judicial Watch fails to sufficiently allege how Illinois's list-maintenance procedures have disrupted the organization's normal proceedings and impaired its mission. *See Common Cause*, 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"); *see also Wetzel*, 2024 WL 3559623 at *2 (an organization cannot allege a diversion of resources injury unless it "identif[ies] . . . specific projects that [it] had to put on hold or otherwise curtail in order to respond" to the defendant's actions). As State Defendants note, ECF No. 41-1 at 17 n.7, Judicial Watch admits that 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 establish that the State's alleged NVRA violations imposed any "additional or new burdens" on Judicial Watch. *Common Cause*, 937 F.3d at 955.

In any event, Judicial Watch does not explain how having to engage in research and analysis is in any way connected to its alleged mission to protect its members' voting rights. Rather, Judicial Watch's exclusive focus on investigating and publicizing states' list maintenance practices demonstrates its attempt to transform abstract disagreement with State Defendants' policy choices into an injury. But "[a]n abstract disagreement, of course, is not an Article III injury." *Id.* at 956.

Plaintiffs' reliance on *Wetzel* is further undermined by the fact that, just a few weeks ago,

a different district court found in a nearly identical case the Republican National Committee and state Republican Party committee *lacked* standing to bring effectively the same claims in Nevada. *See RNC v. Burgess*, No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254, at *4 (D. Nev. July 17, 2024). In *Burgess*, the court found the political party plaintiffs lacked a concrete injury that was causally connected to the defendants' conduct. *Id.* at *4–5. Plaintiffs here have the same traceability problem. As State Defendants have explained, IFA and BI fail to adequately allege that any injuries are traceable to the alleged NVRA violation, rather than the unavoidable imperfections in voter registration data. *See* ECF No. 41-1 at 17–19. And Judicial Watch cannot "rely for standing on the costly and burdensome measures . . . they felt compelled to take." *Common Cause*, 937 F.3d 944 at 951 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 415 (2013)) (quotation marks omitted). Once again, because the NVRA does not entitle Plaintiffs to perfect voter rolls, Judicial Watch fails to show that its decision to "conduct analyses of Illinois' registration rates, removal rates, Confirmation Notice statistics, and inactive rates" is traceable to the alleged NVRA violations, rather than to the unavoidable fact that voters sometimes move. Compl. ¶ 89. Because Plaintiffs fail to allege facts showing that their injuries flow from the alleged NVRA violations, they do not have standing.

B. Plaintiffs lack standing to assert Count II because they have not identified any adverse effects of State Defendants' alleged violation of NVRA Section 8(i).

Count II—in which Plaintiffs complain that the State Defendants failed to produce certain list-maintenance records, Compl ¶¶ 58, 106—should also be dismissed for lack of standing for the reasons set forth in the State Defendants' motion to dismiss. ECF No. 41-1 at 19–20. Plaintiffs attempt to avoid this result by relying on *Illinois Conservative Union v. Illinois*, No. 20 C 5542, 2021 WL 2206159 (N.D. Ill. June 1, 2021) ("*ICU*"), but that reliance is misplaced for at least two reasons.

First, after *ICU* was decided, the U.S. Supreme Court made clear that "[a]n asserted informational injury that causes no adverse effects cannot satisfy Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 441–42 (2021). As a result, *ICU*'s holding that a state's alleged failure to provide access to information *on its own* "constitutes a sufficiently particularized injury," 2021 WL 2206159, at *4, is no longer good law. Plaintiffs must identify what "downstream consequences" they will suffer "from failing to receive the required information." *TransUnion*, 594 U.S. at 442. Here, Plaintiffs sorely fail to make that showing.

Indeed, Plaintiffs concede as much by attempting to remediate this and identify the necessary "downstream consequences" in their response brief. But their newly asserted (and unsupported) allegations are insufficient. To wit, Plaintiffs merely assert that without the election data they requested, Judicial Watch will be "unable to determine the extent to which Defendants are complying with the NVRA." ECF No. 49 at 17. But because a generalized interest in whether the law is being followed is just that—too generalized to assert standing, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992)—Plaintiffs cannot possibly satisfy Article III by simply asserting that they have a "downstream" cognizable interest in obtaining that information. Further, this assertion is just another way of stating that they were denied the information they sought under Section 8(i) of the NVRA. And "*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." *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 936 (5th Cir. 2022) (quotation marks omitted).

Second, Plaintiffs rely on *ICU* to argue that whether they were denied access to information is a merits question. ECF No. 49 at 17–18. But that is beside the point. Even assuming Plaintiffs *were* denied access to information (which they were not), they "did not demonstrate, for example,

that the alleged information deficit hindered their ability" to conduct any of their activities. *TransUnion LLC*, 594 U.S. at 442; *see also Campaign Legal Ctr.*, 49 F.4th at 938 (holding 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). Plaintiffs' failure to allege such concrete harm is fatal to their standing.

Even if Plaintiffs adequately alleged the required "downstream consequences," they would still lack standing because their asserted injury is "only speculative." *Pub. Int. Legal Found., Inc. v. Nago*, No. CV 23-00389 LEK-WRP, 2024 WL 3233994, at *5–6 (D. Haw. June 28, 2024). Indeed, a federal district court recently rejected a plaintiff's attempt to shoehorn an informational injury into a complaint that was focused on "the entity through which that information is made available to Plaintiff, specifically, the [chief election officer's] referral of the request to the respective counties." *Id.* at *5. Just like in that case, Plaintiffs here have not yet requested voter data from the counties who maintain it, and thus, their injury is merely "prospective"; they have "not suffered an injury in fact." *Id.* at *5–6.

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

To sufficiently state a claim upon which relief may be granted, a plaintiff must "allege facts 'plausibly suggesting (not merely consistent with)' a valid grievance." *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 471 (7th Cir. 2020) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). On Count I, Plaintiffs have failed to "present a story that holds together," which dooms their claim that Illinois has violated its list maintenance obligations under the NVRA. *Id.* at 470.

As State Defendants have explained, Illinois law contains detailed list maintenance

provisions, which require election officials to regularly monitor change-of-address data for voters who have moved, and ultimately cancel their registrations if mailed notices are returned as undeliverable. *See* ECF No. 41-1 at 21–22. Rather than argue that these legal procedures are facially inadequate, Plaintiffs assert that these procedures are not being followed. But "in the absence of clear evidence to the contrary, courts [are to] presume that [public officials] have properly discharged their official duties." *Hebrard v. Nofziger*, 90 F.4th 1000, 1009 (9th Cir. 2024) (alterations in original). "This presumption of regularity applies equally to a state official's compliance with state law." *Id.* (citing *Nieves v. Bartlett*, 587 U.S. 391, 400 (2019)). Where a claim depends on the conclusion that a state official violated state law, a plaintiff must allege facts supporting that conclusion to avoid dismissal for failure to state a claim. *See id.* Plaintiffs make no such showing.

Tellingly, Plaintiffs do not point to a single erroneous registration on Illinois's voter rolls. Instead, the complaint relies exclusively on a handful of spreadsheet cells from survey data that, in the context of their source, do not support an inference that State Defendants have violated the law or overcome the presumption that they have followed it. *See Hebrard*, 90 F.4th at 1009. In twisting the data to attempt to make it serve their purpose, Plaintiffs misrepresent and grossly overstate the relevance of these isolated survey responses and make the extraordinary leap to claim that Illinois is manifestly failing to remove ineligible voters from its registration list.

The isolated fields on which Plaintiffs rely to support Count I of their complaint appear in a massive spreadsheet of data released in connection with the EAC's biennial report to Congress. The NVRA tasks the EAC with publishing an election report assessing the impact of the NVRA. 52 U.S.C. § 20508(a)(3), and federal regulations require states to provide specific statewide election data to be included in this report. 11 C.F.R. § 9428.7(b). The EAC obtains such data from

the states using the Election Administration and Voting Survey ("EAVS"), and the EAC publishes the EAVS data alongside its final report.

Contrary to Plaintiffs' conclusory suggestion, the EAVS is not a tool to determine states' compliance or non-compliance with the NVRA. As explained in the 2022 EAVS Report, the data reported to the EAC is intended to "help[] election officials, policymakers, and other election stakeholders identify trends, anticipate and respond to changing voter needs, invest resources to improve election administration and the voter experience, and better secure U.S. elections infrastructure." U.S. Election Assistance Commission, *Election Administration and Voting Survey 2022 Comprehensive Report* i (June 2023).[3] ***The Commission itself makes clear that the EAVS data is not meant to be parsed at a granular level*****:** "The EAVS data make it possible to . . . produce a *generalizable* understanding of core aspects of the election process and the management challenges faced by election officials" so that election officials can "manage election oversight, conduct issue analysis and strategic planning, and create training and promotional materials." *Id.* (emphasis added). The county-level data merely helps the EAC present these trends; it is no reflection of statewide compliance with the NVRA.

Moreover, although Plaintiffs repeatedly assert that Illinois "certified" counties' responses to the EAC, *see, e.g.*, Compl. ¶¶ 28–29, there is no formal "certification" process for submitting the EAVS data, nor are the survey responses required to be submitted under oath or by penalty of perjury. Plaintiffs' misleading word choice underscores their attempt to assign arbitrary and entirely misleading meaning to the EAVS data. But understood in proper context, there is no expectation that the data will perfectly capture any state's list maintenance activities at the county level or say anything about the "reasonableness" of a state's list maintenance procedures. Plaintiffs'

[3] Available at https://perma.cc/D3E9-TGEF.

exclusive reliance on the EAVS data is therefore misguided and cannot plausibly support their claim that State Defendants have failed to make a reasonable effort to remove ineligible voters from the registration list.

Nevertheless, Plaintiffs insist that a conclusion that can plausibly be drawn from the survey is that certain counties "failed to report" data in response to specific EAVS questions, which "establishes" a statewide violation of the NVRA. That is incorrect. Plaintiffs specifically allege that 34 jurisdictions "failed to report" any data on Section 8(d)(1)(B) removals, 29 "failed to report" any data regarding the number of confirmation notices sent, and 22 "failed to report" any data on inactive voters. Compl. ¶¶ 38–48. But as the complaint acknowledges in passing, Compl. ¶¶ 38, 43, 46, ***none of these responses was left blank; rather, the counties Plaintiffs identify reported "Data not available" in certain survey fields, which the EAVS explicitly allows them to do***. *See* U.S. Election Assistance Commission, 2022 Election Administration and Voting Survey at 2 ("If the question is applicable to your state but your jurisdiction does not have the data necessary to answer the question, use the code -99 (negative 99, or 'Data not available') as your response.").[4]

Indeed, in opposing State Defendants' motion to dismiss, Plaintiffs themselves emphasize that reporting "Data not available" is "*counted as a survey response* rather than as a non-response." ECF No. 49 at 23 (emphasis in original). Plaintiffs boldly intimate that these responses must be taken as an "admi[ssion]" that nearly half of Illinois counties "ignore[d] . . . their reporting obligations to the EAC" because the data was not "favorable to them," evidencing counties' "non-compliance with the NVRA." Compl. ¶¶ 40–41. *But there is absolutely no basis for this assertion*. Plaintiffs effectively ask this Court to find that state officials are choosing to bury data that would prove Plaintiffs' claims, without any evidence that this is actually happening. The Court can and

[4] Available at https://perma.cc/9HHQ-EMAL.

should reject that astonishing assertion out of hand. *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)). The better interpretation is that counties responded "Data not available" when, for whatever reason, the data necessary to answer the survey question was not available to them at the time they were responding to those questions. In any event, the fact that counties responded "Data not available" plainly does not "establish[] a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence," as Plaintiffs repeatedly insist it does. Compl. ¶¶ 41, 44, 47, 51.

Finally, even if certain counties did "fail[] to report" data that was actually available to them, that would not plausibly state a claim that Illinois has failed to engage in list maintenance procedures. It would simply establish that they failed to report data they had to the EAC. Plaintiffs seem to imply that this could violate 11 C.F.R. § 9428.7(b), *see* Compl. ¶ 48, but this is not a plausible inference either. By their terms, these federal regulations only require states to report *statewide* data; there is no separate duty to report county-level data. And in any event, there is no authority suggesting that Plaintiffs can bring a claim challenging *Illinois's failure to report county-level data to the EAC*, let alone rely on such failure to support a claim under the NVRA. Plaintiffs' attempt to grossly overstate the significance of counties' data retention practices should be rejected.

Once the "failure to report" allegations are properly set aside, all that remains are Plaintiffs' allegations that certain counties reported "absurdly small numbers" of removals pursuant to NVRA Section 8(d)(1)(B). *See* Compl. ¶ 31. They assert these numbers are "too small" because "[a]ccording to the Census Bureau, 11.8% of Illinois residents are not living at the same residence address as they were one year ago" and "about 344,000 Illinois residents moved out of state in

2022." Compl. ¶¶ 32–33. Judicial Watch has tried this argument before, and a federal court rejected it. *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021). There, Judicial Watch implied that "because the Section 8(d)(1)(B) removal rate for each county does not match or approach the estimated change-of-residence rate, the county defendants must be failing to meet their obligations under Section 8(a)(4)," which the court found "implausible for several reasons." *Id.* Two of those reasons apply equally here: "First, and most importantly, 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." *Id.* (citing 52 U.S.C. § 20507(a)(4)). Second, Plaintiffs'

> suggestion that the number of Section 8(d)(1)(B) removals should approach the number of moves estimated by the Census Bureau ignores that a person who moves can have their voter registration removed in any number of ways: Section 8(d)(1)(B) provides one mechanism, but they might also return an address-confirmation card resulting in removal under Section 8(d)(1)(A); self-report a change in address directly to the county; or [otherwise] confirm a move . . . Judicial Watch's reliance on Census Bureau data therefore does not 'nudge[]' its list-maintenance claim 'across the line from conceivable to plausible.'

Id. 407–08 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009)). Indeed, as State Defendants have explained, the EAVS data demonstrates that the 23 counites Plaintiffs target as having removed "too few" voters who have moved in fact reported nearly 52,000 registration removals that occurred due to a cross-jurisdiction change of address. *See* ECF No. 41-1 at 23. And the 34 counties Plaintiffs allege "failed to report" any data on Section 8(d)(1)(B) removals reported that over 36,000 voters were removed due to a cross-jurisdiction change of address. *Id*. More important than the county-level data, the EAVS data demonstrates that, statewide, Illinois sent over 2.7 million confirmation notices and removed nearly 700,000 ineligible voters statewide during the relevant reporting period. *Id.*

Thus, contrary to Plaintiffs' claims, the data they cherry-pick from isolated spreadsheet

cells do not tell a story of non-compliance with the NVRA. Rather, viewed as a whole, the EAVS data show that Illinois regularly identifies and removes tens of thousands of individuals whose addresses have changed. Such trends cannot plausibly support an inference that Illinois has failed to make a reasonable effort to cancel the registrations of Illinois voters who have become ineligible by reason of a change of residence. 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). The Court should accordingly dismiss Count I.

III. Count II fails to state a claim.

Plaintiffs' second claim also fails on the merits because Plaintiffs were not denied access to any requested information. Despite their hyper-focus on county-level data to support their list maintenance claim, Plaintiffs refused to obtain the information they allegedly sought directly from the counties and instead rushed to this Court to seek relief. Without more, Plaintiffs cannot sustain a claim under the NVRA's public disclosure provision. *See* 52 U.S.C. § 20507(i)(1).

As State Defendants have explained, Plaintiffs were not denied access to information; the Board informed Plaintiffs that the requested information is maintained with the local election authorities. ECF No. 41-1 at 24. Plaintiffs' argument that they were denied information simply because the State Board of Elections did not directly provide it to them finds no support in the text of the NVRA. Rather, Section 8(i)(1) of the statute merely requires the state to "*make available* for public inspection and . . . photocopying . . . all records concerning" voter registration lists. 52 U.S.C. § 20507(i)(1) (emphasis added). State Defendants plainly did not fail to "make" the information Plaintiffs sought "available"; they informed Plaintiffs precisely where that data was available for inspection and copying. Plaintiffs' unwillingness to follow through obtaining that information does not establish any failure on the part of State Defendants.

Moreover, Plaintiffs' refusal to seek out the requested information from counties is all the more inexplicable considering their myopic (and inappropriate) focus on county-level data to support their list-maintenance claim. Plaintiffs appear to have been more focused on bringing litigation than on obtaining the information they claim to seek. But because Plaintiffs were not denied access to that information, this avenue for litigation is closed to them.

CONCLUSION

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

August 8, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Sarah F. Weiss, certify that on August 8, 2024, I electronically filed the foregoing **INTERVENOR-DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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

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