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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REPUBLICAN NATIONAL)	
COMMITTEE et al.,)	Case No. 2:24-cv-00518-CDS-MDC
)	
Plaintiffs,)	Las Vegas, Nevada
)	Tuesday, June 18, 2024
vs.)	2:14 p.m. - 4:30 p.m.
)	Courtroom 6B
FRANCISCO V. AGUILAR, in)	
his official capacity as)	Motion Hearing
the Nevada Secretary of)	
State, et al.,)	C E R T I F I E D C O P Y
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE CRISTINA D. SILVA,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See next page

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United States District Court
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Las Vegas, Nevada 89101
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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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(Appearances continued on next page.)

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25

* * *

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1 LAS VEGAS, NEVADA; TUESDAY, JUNE 18, 2024; 2:14 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURTROOM ADMINISTRATOR: This is the time set for
5 the motion hearing in case number 2:24-cv-00518-CDS-MDC,
6 Republican National Committee et al versus Francisco Aguilar et
7 al.

8 THE COURT: Good afternoon, everybody. I apologize
9 for the technical difficulties. Even in 2024, Zoom gives us
10 challenges.

11 I believe everyone has checked in with the courtroom
12 deputy. If you have not yet checked in, please do so at the
13 conclusion of this hearing, or if you are on Zoom, do so via
14 chat. That way, we can make sure your presence is documented.

15 We are here this afternoon for defendant's motion to
16 dismiss, which is docketed at ECF number 26.

17 I'm going to start with counsel for plaintiff and ask
18 that they introduce themselves this afternoon.

19 MR. WOODFIN: Good afternoon, your Honor. Conor
20 Woodfin for the plaintiffs.

21 THE COURT: Good afternoon.

22 MR. BARR: Good afternoon, your Honor. Jeff Barr on
23 behalf of plaintiffs.

24 THE COURT: Good afternoon.

25 MS. CHATTAH: Good afternoon. Sigal Chattah on behalf

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1 of plaintiffs NVGOP.

2 THE COURT: Good afternoon to you, as well.

3 And who's present on behalf of defendants?

4 MS. ST. JULES: Good afternoon, your Honor. Laena
5 St. Jules on behalf of the Secretary of State.

6 THE COURT: All right. And --

7 MR. DODGE: Good afternoon, your Honor. Christopher
8 D. Dodge on behalf of the proposed interveners.

9 THE COURT: All right. Good afternoon.

10 I will not be addressing -- just for clarity purposes,
11 and I'm sure the parties are aware -- the motion to intervene
12 as I believe I need to resolve this motion first, but thank you
13 for your presence.

14 All right. Let's go ahead and get started. This
15 matter has now been fully briefed. And I did issue a minute
16 order regarding the subject matter I want to address during
17 this afternoon's hearing and then that changed slightly. I
18 don't know if it changed really, but there was intervening case
19 law issued last Thursday from the Supreme Court in FDA versus
20 Alliance for Hippocratic Medicine. And so, as noted at ECF
21 Number 92, I granted Defendant Aguilar's motion to supplement
22 the authority as that addresses organizational standing.

23 As we proceed through this hearing, I will likely rule
24 from the bench on some of the issues. I want to hear argument
25 on many of the issues, and for that reason, I don't know

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1 whether or not I'll decide the motion in full from the bench.
2 Rather, I want to hear argument and go from there.

3 Depending on how long this goes, we will take a break
4 not only for my staff but primarily for my court reporter whose
5 fingers will inevitably get tired. And I'm working tirelessly
6 to speak slowly which is not my forte as anyone who has
7 appeared in front of me knows.

8 All right. So let's get started. And I want to start
9 with statutory standing.

10 Interesting language used in 52 USC
11 Section 20510(b)(1) regarding pre-suit notice. While it reads
12 as permissive, courts have interpreted it as nonpermissive and
13 dispositive to a civil plaintiff's case if they fail to satisfy
14 this element of statutory standing. As set forth in cases that
15 address the statutory notice requirement, it provides, states
16 an opportunity to attempt to comply with the NVRA before facing
17 litigation.

18 My first question is for Defendant Aguilar. You argue
19 that notice here is deficient. And I want you to address two
20 parts of that:

21 One, is it deficient as they cited the specific
22 section in which they believe there is a violation?

23 And two, how does your argument square with the
24 National Council of La Raza's decision regarding the notice
25 requirement, while mandatory, the Ninth Circuit seems to think

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1 it's kind of a "check the box" as opposed to "must be a full
2 and fulsome notice requirement"?

3 You're welcome to stand there or you're welcome to
4 come to the podium. It's up to you.

5 MS. ST. JULES: Thank you, your Honor. Laena
6 St. Jules.

7 So I think I'll focus on the allegations that are new
8 to the complaint that weren't raised in the notice letter. And
9 as we've set out, the Fifth Circuit has explained that an
10 opportunity to cure is part of the notice requirement.

11 Plaintiffs have raised allegations relating to
12 inactive voters and also to relocation rates. This is nowhere
13 in the notice letter. The notice letter focused solely on
14 active registration rates. And I think that even under
15 plaintiff's cases, their notice letter is deficient.

16 In American Civil Rights Union versus Martinez-Rivera,
17 the Court explained the notice letter should give a defendant
18 enough information to diagnosis the problem. The Judicial
19 Watch, Inc. versus King court explained that the letter should
20 set forth the reasons for plaintiff's conclusion that the
21 defendants have failed to comply with the NVRA.

22 The Public Interest Legal Foundation versus Benson
23 court explained that a notice letter is sufficient when it sets
24 forth the reasons that a defendant purportedly failed to comply
25 with the NVRA.

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1 None of these cases the plaintiffs have relied on
2 address a similar situation to this where entire bases are
3 missing.

4 And I don't think this is a formality in this case
5 because specifically with respect to the 5,000 or so inactive
6 voters that plaintiffs have alleged should have been removed,
7 that's actually something that the Secretary of State could
8 have acted on if it was actually properly noticed. Right now,
9 as the Court is aware, we have 90 day restrictions in place
10 kind of throughout this year. We have three elections that are
11 subject to this 90 day restriction. One was in a February; it
12 was a presidential preference primary. One was just last week,
13 June 11, a primary election. And again, we're going to have
14 the November general.

15 But if plaintiffs had raised these inactive voters
16 back in December, right after the primary in February, the
17 Secretary could have coordinated with the county clerks to make
18 sure that there were no inactive voters that could have been
19 removed at that time.

20 So I think even under plaintiff's cases, like I
21 said --

22 THE COURT: Well, hold on. Wouldn't that have been
23 within the 90 day period before the caucus or the primary?

24 MS. ST. JULES: I don't believe caucuses are actually
25 included within the --

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1 THE COURT: But there is a primary, right? There was
2 a primary here in Nevada?

3 MS. ST. JULES: That's right. So between February 6th
4 and the next 90 day period, which started for the June
5 election, we had -- let's see. The next 90 day period started
6 March 13th. So between those two dates, they could have
7 identified those inactive voters and they could have removed
8 them.

9 They couldn't have done the full program to remove
10 active -- or to inactive active voters. And I'm happy to
11 explain that. But certainly, the inactive voters could have
12 been addressed during that time. And we were denied the
13 opportunity because they filed their complaint on March 18th
14 and that was within the 30 day period for the June primary, as
15 well.

16 Would your Honor like to hear about why the active
17 voters couldn't have been addressed after the February primary?

18 THE COURT: No. What I want you to focus on is how
19 your argument squares with the La Raza case.

20 MS. ST. JULES: Certainly, your Honor.

21 So La Raza had to do with -- it was an ongoing
22 violation that was alleged relating to voter registration
23 services that needed to be provided under the NVRA. There was
24 no 90 day restriction for those kinds of activities and so
25 there could be a violation within the 90 day period that can't

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1 exist here because we are precluded from taking action to
2 implement the general program to remove voters who have changed
3 residence. So it's not the same kind of violation that's being
4 alleged.

5 And the Court ultimately held that no notice was
6 required. And this is under 20510 -- let's see -- subsection
7 3. "If the violation occurred within 30 days before the date
8 of an election, the agreed person need not provide notice to
9 the chief election official of the state."

10 But there was no violation for us in this case because
11 the State was precluded from implementing its program entirely.
12 There -- they couldn't -- the State couldn't use reasonable
13 efforts to conduct its programs during the 90 days before
14 the -- the primary and general elections that are at issue
15 here.

16 So under La Raza, you know, if there is a violation
17 and it took place 90 days beforehand, then you would absolutely
18 need to provide notice. I don't think that's -- that's
19 conflicting with La Raza.

20 THE COURT: All right. Thank you very much.

21 I want to turn and ask defendants a question, and that
22 is really where we left off with -- I'm sorry -- plaintiffs,
23 where I left off asking the defendant the question. And that
24 is how La Raza impacts this case. You rely on it in saying,
25 essentially, you've met the requirement and look at the Ninth

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1 Circuit. They've, essentially, said that requirement is not
2 necessary. I'm very -- I'm arguing that very broadly.

3 But as argued by defendant, that is a Section 7 case,
4 not a Section 8 case. Why should I consider or apply La Raza
5 here?

6 MR. WOODFIN: So the difference between Section 7 and
7 Section 8 doesn't bear on the notice. La Raza still applies
8 just as well to Section 8 cases. I'm not aware really of
9 any -- of any court distinguishing between Section 7 and
10 Section 8 as far as the quality of the notice.

11 THE COURT: I haven't seen any cases that distinguish
12 between that either. However, there is a difference and a
13 distinguishing factor and that is that 90 day requirement. So
14 under Section 7, obviously, it's a voter registration
15 provision, a Court could order relief requiring the enumerated
16 entities to register people to vote as required under the
17 section. And that could happen through an election, you know,
18 at any time.

19 Here, the State would be prohibited from acting on any
20 program whether it already exists or it would need to be
21 modified.

22 Is it your position that there's still no distinction?

23 MR. WOODFIN: So a few points on this.

24 First, the notice letter did not reference the
25 February primary. It did not demand any sort of removal of

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1 ineligible voters from the voter rolls before the February
2 primary. In fact, the only mention of any election in the
3 letter is a request that the Secretary and the defendants
4 provide information and assurances that they would comply with
5 the NVRA before the November general election. So that's a
6 very simple reason why this 90 day blackout window doesn't
7 apply.

8 The second is there's a distinction between -- in all
9 the case law between discrete violations and systemic
10 violations and this is really a more fundamental point. La
11 Raza draws this distinction between discrete violations and
12 systemic violations. And the point is this violation that
13 we're alleging here is systemic. It's not that the Secretary
14 failed to remove ineligible voters immediately before the
15 February primary. It's, rather, that the defendants have been,
16 over the course of, you know, the past few election cycles
17 failing to remove ineligible voters. And the evidence we
18 provide, both in the notice letter and in the complaint,
19 supports those allegations.

20 And so because it's a systemic violation, it couldn't
21 have been cured by a one-off removal of ineligible voters
22 before February. A systemic violation requires systemic
23 changes in order to cure that violation. That's what we
24 alleged in the notice letter and in the complaint.

25 And third, turning more directly to La Raza, there,

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1 the Court held that the timing of the notice letter did not
2 bear on the sufficiency of the notice letter. So, here, the
3 text of the -- of this -- of this (b)(1) subsection is very
4 important. It requires simply notice of the violation.

5 And to the extent timing matters at all, it only bears
6 on when the plaintiff is allowed to file a lawsuit. So if the
7 notice letter comes 120 days before a federal election, then
8 they have to wait the full 90 days. If it comes within -- I --
9 excuse me -- within those 120 days before a federal election,
10 then they have to wait 30 days, and if it comes within 30 days
11 before a federal election, they don't have to send a letter at
12 all.

13 So, here, to the extent that timing of the February
14 primary mattered at all, under La Raza and under the plain text
15 of the statute, the only effect it would have had is we could
16 have actually sued much sooner. We could have sued only
17 waiting 20 days for the Secretary to respond. Instead, we
18 waited the full 90 days. And that's consistent with the
19 statute. And it doesn't -- it doesn't bear on the sufficiency
20 of the notice. It --

21 THE COURT: Right. Let's talk about the sufficiency
22 of the notice. The notice is included at ECF 1-1. You talk
23 about counties having voter registration rates that, according
24 to your letter, exceed 90 percent of adult citizens over the
25 age of 18. And that is apparently drawing from 2021 citizen

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1 voting age population data.

2 And then you go on to talk about three counties having
3 more registered active voters than voting eligible citizens and
4 others that have suspiciously high rates of voter registration.

5 And when I read the notice beginning with the bottom
6 of page 3 and continuing through page 4, specifically the
7 paragraph that begins, "These voter registration rates are
8 abnormally, or in the case of counties with greater than 100
9 percent registration, impossibly high" and then you cite to
10 some information and some tables. When I look at those tables,
11 Nevada's rates are on par with the rest of the country.

12 And so I'm not -- so provide some clarity for me in
13 regards to those tables. And tell me where in the notice it
14 talks about systemic violations that would need to be remedied.

15 So let's start with the tables.

16 MR. WOODFIN: Okay. What -- specifically, what
17 numbers are you referring to?

18 THE COURT: Sure. ECF Number 1-1 at page 4. You're
19 looking -- you cite to *Voting and Registration in the Election*
20 *of November 2020*, Table 4a, and then there's a cite to *Voting*
21 *and Registration in the Election of November 20* -- I'm sorry.
22 The first one is 2022 and the second one is 2020. And I
23 printed that data and Nevada's rates change -- or aren't
24 different from other states in any significant way.

25 So I'm wondering how this put the State on notice as

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1 to what you were challenging.

2 MR. WOODFIN: Right. Yes. So a few points on this.

3 So first, this is a very common, well-tested method
4 of -- of noticing these systemic violations and then also
5 pleading in the complaint. The U.S. Department of Justice
6 pointed out this in United States versus Indiana. They allege
7 that Indiana counties have between 90 and 95 voter registration
8 rates. Looking at the same tables and the census data --

9 THE COURT: Right. But that is for, I believe, all 26
10 counties in Indiana, and here, we're looking at --

11 MR. WOODFIN: Well, yes, so --

12 THE COURT: -- six?

13 MR. WOODFIN: So a couple points.

14 First, we're pointing to, you know, only a handful of
15 counties. And, of course, Nevada has fewer counties than
16 Indiana.

17 THE COURT: You have to say Nevada if you're going
18 to --

19 MR. WOODFIN: Nevada. I apologize. You're going to
20 have to correct me.

21 THE COURT: It's only fair that I give you the
22 heads-up.

23 MR. WOODFIN: I will do my best, but I can't make any
24 promises.

25 So, of course, Nevada has fewer counties.

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1 But what's really more fundamental is that the -- the
2 NVRA designates the Secretary -- it requires a chief election
3 officer.

4 THE COURT: Sure.

5 MR. WOODFIN: And then Nevada law, in turn, designates
6 the Secretary of State as the State's chief election officer.

7 And so to state a violation under the NVRA and to
8 provide accurate notice under the letter, we don't need to show
9 that every county is --

10 THE COURT: Sure.

11 MR. WOODFIN: -- is -- has bad rules.

12 THE COURT: I agree with you on that.

13 MR. WOODFIN: Right? To the extent even one county
14 has bad rules, that is evidence or at least raises the
15 inference that the Secretary is failing in his duty as the
16 chief election officer to maintain a general program that keeps
17 the counties in line and keeps the voter -- the voter rolls
18 accurate.

19 THE COURT: Sure.

20 MR. WOODFIN: And so that's why, you know, we don't
21 include every county as a defendant.

22 THE COURT: Sure.

23 MR. WOODFIN: It's the counties who have, compared to
24 the census data, these excessive voter registration rates.

25 THE COURT: So -- okay. So I understand that that's

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1 the census bureau data that you're pulling from. Like I noted,
2 Nevada is -- isn't different in any stark way.

3 So when I look at this and look at the letter and I
4 look for where you're drawing the data from for the comparative
5 information. So you cite to the most up to date counted --
6 count of registered active voters available from the Nevada
7 Secretary of State. What is that? And what is that source?

8 MR. WOODFIN: So the NVRA also requires states to
9 publish voter registration data, right? So we're pulling that
10 information directly from the Secretary of State --

11 THE COURT: All right.

12 MR. WOODFIN: -- as individual counties.

13 THE COURT: And what's the date of that information?

14 MR. WOODFIN: So we -- if -- for each -- for both the
15 notice letter and the complaint, we pulled the most recent data
16 available from the Secretary.

17 THE COURT: What does that mean, though, right? Is
18 that most recent? Is that --

19 MR. WOODFIN: So I --

20 THE COURT: I like specificity.

21 MR. WOODFIN: Yes. Yes. So it's published monthly.
22 I don't think it's -- there's an exact day of the month or day
23 of the week that it's published, but -- and my friend on the
24 other side can correct me if that's wrong. But it's monthly
25 data, essentially, for these voter registration rates. And

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1 then, in turn, we're comparing that to the most recent census
2 data available.

3 So for here, this is really critical that that five
4 year census data estimate from the community -- from the
5 American Community Survey, that's both the most recent and the
6 most accurate data available, the one and two year estimates,
7 which defendants put forward as saying that would be more
8 recent. But that data is not available for these counties.

9 THE COURT: I'm sorry. You mentioned the American
10 Community Survey?

11 MR. WOODFIN: Yeah. So this is the census data we
12 rely on. These are the tables.

13 THE COURT: Okay.

14 MR. WOODFIN: These are the census tables you were
15 referencing in the letter.

16 THE COURT: All right. And so it's your position that
17 the State would know, when you're writing "the most up to date
18 count of registered voters -- active voters available from the
19 State," that that would be what you're referring to? That's
20 the comparison that you're doing?

21 MR. WOODFIN: That's correct. That's correct. Yes.

22 And -- and I would just add that that process, that
23 method, has been held, even under ACRU, which the defense cited
24 as -- as a case that indicates we need to provide enough
25 information to diagnose the problem. There, this exact same

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1 method was used to show that Zavala County in Texas had
2 104 percent registration rate and that was enough to provide
3 notice. In that case, the Court actually denied the motion to
4 dismiss on that notice ground and held that that was sufficient
5 notice.

6 And I would just like to address one last point on
7 this notice letter since defense brought it up, the 5,000
8 registrants and then the other pieces of evidence that we
9 include in the complaint that were not included in the notice
10 letter. Those are still valid -- it's still valid evidence to
11 support an inference of a violation in the complaint. Courts
12 have not held that you need to exhaust the evidence that
13 supports the violation in the notice letter. In fact, that
14 would be -- I mean, that would create poor incentives.

15 THE COURT: Well, sure. And it would also create some
16 disputes that probably wouldn't be able to be resolved. So I
17 appreciate that.

18 MR. WOODFIN: Yeah.

19 THE COURT: My question is, when I'm looking at the
20 sufficiency of the notice, is it enough to say, "Hey, we looked
21 at this data and this is enough" when you're standing in front
22 of me saying, well, you advised there was a systemic problem,
23 and where is that in the letter itself?

24 MR. WOODFIN: So it is enough. A notice is just a
25 notice of the violation. It's not a complaint. It's not

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1 evidence. It's not an expert report. We don't need to
2 provide, you know, alternatives. It's simply notice of the
3 violation.

4 And throughout the -- I mean, throughout the letter,
5 all of what we're bringing up as evidence is evidence that the
6 Secretary and the defendants are failing to conduct reasonable
7 efforts, that whatever they've been doing so far has not
8 amounted to reasonable efforts.

9 And so looking for, you know, the best language in the
10 letter that would -- that would signify this. But it would
11 probably be the last letter -- excuse me -- the last sentence
12 in the first paragraph. "This evidence shows that your office
13 and officials in these counties are not conducting appropriate
14 maintenance to ensure that the voter registration rule is
15 accurate and current as required by law."

16 We're not -- you know, the -- for example, these 5,000
17 extra voters, we're not saying those 5,000 extra voters need to
18 be removed immediately. What we're saying is that is evidence
19 that the defendants are failing in their list maintenance
20 obligations under the NVRA, failing to make a reasonable
21 effort.

22 I can go on to maybe other portions of -- of Article
23 III standing or the merits --

24 THE COURT: We're going to talk about Article III
25 standing later as I have some additional questions.

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1 But what I think would be helpful is you talked about
2 briefly earlier is that you weren't asking them to remove, for
3 example, those inactive voters, that 5,000 number before the
4 primary. You were just asking for compliance before the
5 November election.

6 When you say you're looking for compliance before the
7 general election in November of this year, what does that look
8 like for you?

9 MR. WOODFIN: So we think that goes more to the
10 remedy. And, again, notice is notice of the violation. It's
11 not notice of the steps we think would amount to reasonable
12 efforts. We just have to allege, point out notice in the
13 violation, and then in the complaint, provide enough facts to
14 indicate that whatever they're doing right now is unreasonable.

15 That said, there are plenty of things that the
16 Secretary could do and that the defendants could do that would,
17 you know, perhaps, amount to reasonable efforts. Removing
18 those 5,000 voters who have been on the rolls for two years,
19 you know, would be a start.

20 But it would be systemic changes. It would be
21 evidence that the Secretary is holding the county defendants
22 accountable to the requirements that are already in place under
23 Nevada law. So that would be a dispute of fact as to whether
24 they're actually enforcing whatever program they have in place
25 right now. And that would turn on, you know, discovery, we

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1 think. What are -- what is the evidence that the Secretary is
2 actually enforcing the law and holding those county defendants
3 accountable?

4 And so, you know, the precise nature of what, you
5 know, any sort of injunction or remedy would look, we think,
6 would depend on what exactly are the shortcomings of the list
7 maintenance program that's in place.

8 But for here, we just have to show that the list --
9 that the list maintenance program that's in place right now
10 does not amount to reasonable efforts. So that would be our
11 burden at this stage.

12 THE COURT: All right. Those are the questions that I
13 have on statutory standing at this time.

14 I want to turn and talk about Article III standing.

15 And counsel, you can return to your table as I'm going
16 to narrow the issue on this subject matter because I'm going
17 to, first, discuss the individual plaintiff, that is, Scott
18 Johnston, and whether or not he has standing.

19 I don't think any party disputes that the Constitution
20 gives federal courts the power to adjudicate only genuine cases
21 and controversies. That power includes the standing
22 requirement. And a plaintiff can only have standing if they
23 allege personal injury that's fairly traceable to the
24 defendant's allegedly unlawful conduct, which is well-known as
25 the injury in fact, and likely to be redressed by the requested

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1 relief.

2 In reviewing the complaint, I find that Johnston fails
3 to meet this standard. His basis for alleging standing are far
4 too generalized and speculative to confer standing. I'm going
5 to address each in turn.

6 First, he claims that there's a loss of confidence in
7 the electoral system. This claim is too general. A plaintiff
8 raising a generally available grievance about a government
9 claiming only harm to him and every other citizen's interest in
10 proper application of the Constitution and laws and seeking
11 relief that no more directly intangibly benefits him than does
12 the public at large does not state an Article III case or
13 controversy -- or does not present a case or controversy under
14 Article III. And that's from the *Lance v. Coffman* case, a 2007
15 decision out of the Supreme Court.

16 Johnston, like other voters, has no greater stake in
17 this lawsuit than any other citizen and, therefore, he can't
18 establish a particularized injury.

19 I also find this claim to be too speculative. Courts
20 have universally concluded that an alleged injury related to a
21 lack of confidence in the voting system is too speculative to
22 establish injury in fact and, therefore, to establish standing
23 where there is no standing for that. And that's courts from
24 Arizona to Pennsylvania to the Second Circuit have all reached
25 similar conclusions.

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1 I find that his claim of dilution of votes fails no
2 better. First, it, too, is too generalized. Plaintiff's
3 injury of vote dilution is impermissibly generalized and
4 speculative. And that is from Trump for President versus
5 Cegavske. That's a decision out of this district from 2020.

6 The Eleventh Circuit made a similar decision in the
7 Wood v. Raffensperger case. And I apologize if I'm
8 mispronouncing that incorrect. For my court reporter, that's
9 R-A-F-F-E-N-S-P-E-R-G-E-R. That's an Eleventh Circuit case
10 from 2020 where they found that vote dilution where no single
11 voter is specifically disadvantaged if a vote is counted
12 improperly is paradigmatic generalized grievance that cannot
13 support standing.

14 It also is too speculative. Here, as pled, the
15 complaint insinuates that voter fraud could happen. It might
16 happen. Not that it will happen, it's certainly impending, or
17 there's a substantial risk of that. And so that makes this
18 speculative at best.

19 And so I do find it appropriate to dismiss Johnston
20 from this action at this time because he lacks standing.

21 My question is whether or not I should grant leave to
22 amend, and if he were to be given leave to amend, what
23 additional allegations would he bring forward?

24 MR. WOODFIN: So one point, your Honor.

25 THE COURT: Sure.

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1 MR. WOODFIN: I'm not sure if we could change your
2 mind on dismissing him, but I'd just like to note we do point
3 this out in our brief. For an Article III case or controversy,
4 it turns on whether there's an injury in fact for each claim.
5 And so even if you find that he doesn't lack standing, we think
6 dismissal would be inappropriate unless you also find that the
7 organizational plaintiffs lack standing. So as long as the
8 organizational plaintiffs have standing, then dismissal, we
9 think, would be inappropriate as to Mr. Johnston because there
10 is still a live case or controversy.

11 THE COURT: I understand that was your argument. I'm
12 not convinced. And I have a number of questions regarding
13 organizational standing, so I have not made a decision on that.

14 MR. WOODFIN: Okay. Yes.

15 THE COURT: Nonetheless, I still would want to know
16 what additional allegations you would bring forward regarding
17 Johnston and his standing.

18 MR. WOODFIN: So I don't think there's anything we
19 could bring -- we could add to his allegations regarding voter
20 confidence.

21 The best case on this is Judicial Watch versus
22 Griswold out of the District of Colorado explaining that under
23 the NVRA in particular, voter confidence has a unique place
24 because Congress has designated these otherwise intangible
25 injuries that would have been insufficient outside of the NVRA,

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1 in Trump versus Cegavske, for example. And because Congress
2 has designated those as now tangible injuries, we don't think
3 there's anything to add to the voter confidence.

4 THE COURT: All right.

5 MR. WOODFIN: I would say on risk of fraud, there's a
6 similar chain of reasoning that -- you know, in TransUnion, the
7 Supreme Court explained that Congress can tie a chain of
8 inference that would normally be speculative and make it
9 nonspeculative. And our argument would be under the NVRA,
10 that's exactly what's happened. Congress has specifically tied
11 violations of the NVRA to a degradation of election integrity.
12 And of course, the Supreme Court has noted that voter fraud is
13 not a real risk. It's not simply a speculative risk.

14 That said, you know, if we were to amend and add
15 allegations, you know, maybe we could -- we could find some
16 specific voter fraud cases that relate to registration. Maybe
17 that would -- that would put them over the edge, but we
18 think --

19 THE COURT: Right. And so I guess that kind of ties
20 to another question that I was going to ask later, but I'll ask
21 it now.

22 When I look at the notice and then your complaint, you
23 seem to be alleging both registration and inactive voters
24 and/or lack of not registering people or getting them off the
25 rolls, right? So you're doing both.

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1 MR. WOODFIN: Yes.

2 THE COURT: Is that your theory of the case that it is
3 both or are you picking one or the other?

4 MR. WOODFIN: Well, it's certainly both as far as they
5 pertain to Mr. Johnston and individual voters.

6 It's especially true because Nevada mails out ballots
7 to all active voters. And so if they're -- if they're not
8 moving voters off the active list to the inactive list, even if
9 those voters shouldn't be removed from the rolls, that
10 certainly undermines confidence in elections. It undermines
11 Mr. Johnston's confidence.

12 THE COURT: All right. I'm going to take that under
13 advisement. I'm not sure exactly what I'm going to do with
14 that. So let me think about that.

15 MR. WOODFIN: Okay.

16 THE COURT: Let me turn to defendant. Anything you
17 would like to add regarding whether he should be dismissed with
18 or without prejudice?

19 MS. ST. JULES: Thank you, your Honor.

20 I think, as you noted, I don't know that the
21 distinction between receiving a mail ballot versus not
22 receiving a mail ballot is enough to push him over the edge.
23 There are still safeguards that prevent somebody from
24 fraudulently voting and he would be subject to criminal
25 penalties. But I think the Ninth Circuit case law on

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1 speculativeness is pretty conclusive that undermined confidence
2 isn't enough, that risk of vote dilution that is alleged as may
3 occur is not enough.

4 And I would also note with respect to the allegations
5 that Congress has made, you know, vote dilution concrete, I
6 think this is Spokeo, in essence. And in Spokeo, they talked
7 about concreteness which is separate from speculativeness.
8 It's a separate component. You can't just allege a bare
9 procedural violation. You still need some degree of risk that
10 vote dilution based on inaccurate vote rolls will occur. And
11 they -- they haven't alleged any risk that ties inaccurate
12 voter rolls to vote dilution.

13 THE COURT: Okay. All right. Okay. I'm going to
14 move on -- thank you -- to the next line of questioning, or,
15 rather, subject matter I want to address and that is the
16 organizational standing. It was like you knew where I was
17 going.

18 Like an organization -- rather, like an individual, an
19 organization can bring suit on its own behalf if it meets the
20 standing requirements. And standing must be established
21 independent of a lawsuit filed by a plaintiff.

22 There's a lot of case law on organizational standing,
23 and, of course, I'll say it was, perhaps, sharpened last week
24 by the FDA decision. It's been long established that
25 organizations cannot manufacture an injury by incurring

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1 litigation costs. And Kavanaugh, in writing for the Supreme
2 Court last week, wrote that a plaintiff attempting to show
3 causation generally cannot rely on speculation about unfettered
4 traces made by independent actors not before the Court.

5 There's a lot of case law talking about the needle
6 that needs to be thread in order for an organization to have
7 standing, and that, of course, is all tied to causation. There
8 has to be causation between the alleged illegal conduct and the
9 injury. And just like individual standing, it cannot be too
10 speculative or too attenuated.

11 Causation also requires, as stated last week -- I
12 think it was quoting the Allen decision -- virtually continuing
13 monitors of the wisdom and soundness of a government action.

14 And in sum, the FDA, as I said, sharpened what is
15 required for a plaintiff to show organizational standing.

16 Here, plaintiff alleges a couple of different things.
17 In paragraph 22 and 23, you talk about expending funds
18 to bring this action. How is that not in direct violation of
19 Ninth Circuit precedent that you can't manufacture an injury by
20 incurring litigation costs?

21 MR. WOODFIN: Thank you, your Honor.

22 I think I'll start with Alliance. I'll tell you where
23 I'm going first, perhaps. I'm going to look at paragraphs 12
24 and 14 of the complaint --

25 THE COURT: Okay.

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1 MR. WOODFIN: -- rather than 22 and 23. But I'll --

2 THE COURT: I still want you to address 22 and 23.

3 MR. WOODFIN: I will also address those, yes.

4 THE COURT: Okay.

5 MR. WOODFIN: But I'll start with the allegations that
6 I think give us standing --

7 THE COURT: All right.

8 MR. WOODFIN: -- and then explain why 22 and 23 don't
9 defeat that standing. So --

10 THE COURT: Okay. Well, I know you're going to talk
11 about the -- the funds that you will have to expend. I'm going
12 to come to that.

13 MR. WOODFIN: Okay.

14 THE COURT: So focus on 22 and 23 for me.

15 MR. WOODFIN: Okay. So -- so those are not
16 necessary -- those are not litigation costs. Those were
17 investigation costs to solve the problem of -- of these unclean
18 voter rolls. It costs money to investigate these problems and
19 to work with, you know, the defendants to solve these problems.
20 Those are not litigation costs.

21 There is -- I believe it was the -- I'll find the
22 case, but that -- a case that discussed these -- this is,
23 essentially, not an issue at the motion to dismiss stage, that,
24 perhaps, later on the Secretary can present evidence that all
25 of those investigation costs were actually litigation costs,

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1 but they're not litigation costs. We don't say they're
2 litigation costs in the complaint. These are costs to
3 investigate the problem and to prevent the problem from harming
4 the RNC and the Nevada Republican Party's mission.

5 And so that takes us back to paragraphs 12 and 14,
6 which is the -- the allegations in the complaint that lay out
7 the missions of those organizations. And so the mission is to
8 elect Republican candidates and to turn out Republican voters.
9 In doing that, in paragraph 14, they rely on accurate voter
10 registration lists. And when lists are inaccurate, that
11 results in these organizations not only misallocating resources
12 but it harms their campaign efforts. They're now trying to
13 turn out voters who are ineligible. And so they're wasting
14 their time, they're wasting their resources, and are less
15 effective at accomplishing their mission of turning out
16 Republican voters and electing Republican candidates because
17 they rely on what are inaccurate voter registration lists.

18 And in that respect, it's no different than the harm
19 that was in Havens. There, in Havens, the organization was --
20 is nonprofit housing advocacy group. They requested
21 information from a third party. That third party realtor
22 turned over false or inaccurate information to them. That
23 harmed their mission.

24 THE COURT: I don't think it was inaccurate. It
25 was --

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1 MR. WOODFIN: It was false.

2 THE COURT: It was false, yeah.

3 MR. WOODFIN: It violated the Fair Housing Act for
4 that reason. And -- and so that harmed the mission of that
5 organization to, you know, provide housing resources to their
6 constituents and, in turn, they expended resources to address
7 that problem.

8 That's exactly what's going on here. The -- the RNC
9 and the NVGOP have a mission that is independent of pursuing,
10 you know, clean voter rolls. Their mission is to elect
11 Republican candidates and to turn out Republican voters. That
12 mission is tangibly harmed -- as paragraphs 12 and 14 say, it's
13 tangibly harmed because they rely on these voter registration
14 lists and the inaccurate lists result in them not being able to
15 accomplish their mission as effectively as they would and, in
16 turn, they divert resources to investigate, to solve this
17 problem from other mission critical areas.

18 And in that respect, it's -- we don't read Alliance
19 for Hippocratic Medicine as changing any of this.

20 THE COURT: That's why I called it sharpened, right?

21 MR. WOODFIN: I think that's about right. We don't --
22 it -- it applied to Havens. It didn't abrogate Havens. And so
23 in that respect, the standards are the same.

24 And really, this is how the Ninth Circuit has applied
25 Havens for years. It's this two-prong test, independent

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1 mission impairment plus diversion of resources.

2 THE COURT: So understanding that you talk about the
3 mission and, you know, that is -- I think aligns with Havens
4 and the conversation about core mission activities.

5 However, if I'm looking specifically at paragraph 14,
6 the way it's pled is that the RNC may spend more resources on
7 mailers, knocking on doors, or otherwise trying to contact
8 voters or it may misallocate its scarce resources amongst
9 different jurisdictions. And that kind of, "may," "might,"
10 "should" is pervasive. How does that give you standing --

11 MR. WOODFIN: So the --

12 THE COURT: -- as you stand here today? Go ahead.

13 MR. WOODFIN: So the "may" is -- it's conditional
14 language. It's not speculative language, if that makes sense.
15 So it's conditional on us obtaining relief. If we obtain
16 relief, then we won't have to -- we will no longer have to
17 spend these resources.

18 THE COURT: But have you spent those resources?

19 MR. WOODFIN: Yes. So --

20 THE COURT: But where is that in the complaint?

21 MR. WOODFIN: Well, first, it's in paragraphs 22 and
22 23. We're having to investigate. And second, it would be -- I
23 think paragraphs 92 or 93 claim that the defendants' ongoing
24 violations are continuing to cause injury.

25 And so, you know, if -- if amending the change "may"

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1 to "will" is necessary, we can certainly do that.

2 But here, we think fairly reading those allegations,
3 the organizations are spending money. They're actively
4 campaigning right now in the midst of an election through
5 primaries and up coming to the general election. They are
6 determining their plans and budgets. That's an ongoing effort.
7 They are determining their strategy and their plans both in
8 Nevada and outside.

9 THE COURT: Well, that leads me to another question
10 and that is: Knowing that, it's not like it was any mystery
11 that the 2024 election was coming, why was this action brought
12 in March of this year as opposed to earlier?

13 MR. WOODFIN: So it -- you know, maybe there's
14 evidence out there that would have supported a notice letter
15 earlier. The Ninth Circuit rejected, you know, that
16 proposition that that would, like, defeat a notice letter or
17 defeat a complaint. The fact that, there, even the -- the
18 plaintiffs discovered the violation in December and then waited
19 until May to even send the notice letter.

20 THE COURT: Right.

21 MR. WOODFIN: Here, you know, that's not what
22 happened. You know, we've put in the research and discovered
23 the violation and sent the notice letter as soon as possible.
24 And now, the complaint was filed, you know, just waiting after
25 that 90 days.

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1 THE COURT: Right. And then after it was filed, this
2 wasn't -- you didn't seek expedited emergency relief. And so
3 I'm wondering why.

4 MR. WOODFIN: So -- well, two reasons. First, the
5 fact that we don't, you know, pursue expedited relief doesn't
6 defeat, you know, whether this complaint states a claim or not.

7 But besides that point, again, what we're returning
8 to --

9 THE COURT: But I want to be clear, I'm not addressing
10 these on the merits. I'm inquiring just because I think it
11 could potentially be related to standing. Though, I'm not
12 ready to ask additional questions on that yet because it's
13 still processing in my mind.

14 MR. WOODFIN: Yeah.

15 THE COURT: But why?

16 MR. WOODFIN: So it's because our fundamental claim is
17 a systemic violation.

18 So, again -- and this is kind of a common theme
19 throughout the briefs, throughout the arguments, that we're not
20 demanding -- and the way to comply with the NVRA is not a
21 sudden removal of ineligible voters all at once. The way to
22 comply is to run -- set up and -- and adequately run a general
23 program that makes a reasonable effort to remove ineligible
24 voters. And so the systemic violation, really, couldn't be
25 cured, you know, through a -- a preliminary injunction motion.

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1 And, you know, to that point, we think a lot of this
2 does turn on discovery. What exactly are the failures of the
3 defendants? Here, the complaint and the notice letter provide
4 enough notice of the violation and enough evidence to infer
5 that the -- the current efforts are unreasonable. But, you
6 know, the precise details as to what would be a reasonable
7 program, we think, requires more development and discovery
8 and -- and -- and then -- and then in crafting a remedy.

9 So that would be why we didn't move forward for
10 expedited relief.

11 THE COURT: So is it the RNC's position that you're
12 not seeking relief or remedy before the November election?

13 MR. WOODFIN: I mean, we're not -- we haven't pressed
14 the Court for that, obviously.

15 THE COURT: Right.

16 MR. WOODFIN: We think -- normally, the -- you know,
17 in a lot of these cases, as soon as it gets to discovery, you
18 know, the parties tend to work something out and -- and
19 negotiate a settlement. That's what happened in Daunt. And
20 Green right now, I think, is the only -- only case on voter
21 list maintenance that's currently in discovery.

22 But that said, you know, we could have -- we don't
23 expect this to go -- how should I say this? The -- we're not
24 trying to speed up the case for the sake of obtaining discovery
25 before the November election.

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1 THE COURT: All right.

2 MR. WOODFIN: But of course, you know, the point of
3 sending the letter was to encourage list maintenance practices
4 before that election.

5 So -- and, you know, these -- because these are
6 systemic violations, they don't turn on one election or
7 another. These -- the reasonable efforts have to continue
8 before an election and after an election. So we think if
9 there's a violation, it -- whether it surrounds an election or
10 -- or not is really irrelevant.

11 THE COURT: All right. Let me go back to the costs,
12 the litigation costs which you are arguing that it's
13 investigative costs and so that's separate and apart from
14 litigation costs. When I dive a little deeper into the FDA
15 case, it says directly that you can't manufacture standing
16 based on incurring costs to oppose government actions.

17 So even if it's investigative, how is that not at odds
18 with the FDA decision?

19 MR. WOODFIN: So -- so a couple things.

20 First, we have multiple different diversions of
21 resources. The investigation is certainly one part of that.
22 But -- but many other parts -- I mean, in order to address the
23 harm to the mission of turning out voters and electing
24 Republican candidates that are caused by the inaccurate voter
25 rolls in paragraphs 12 and 14, the RNC has had to divert

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1 resources to counteract this.

2 And so regardless of whether --

3 THE COURT: That's not in the complaint.

4 MR. WOODFIN: That's -- it's in paragraphs 12 and 14.

5 12 lays out the mission and then 14 lays out exactly how the
6 mission is harmed.

7 THE COURT: That -- that paragraph says, "The RNC
8 relies on voter registration lists to determine its plan and
9 budgets. It relies on registration lists to estimate voter
10 turnout which informs the number of staff the RNC needs in a
11 given jurisdiction, the number of volunteers needed to contact
12 the voters, and how much the RNC will spend on paid voter
13 contacts.

14 "If voter registration lists include names of voters
15 who no longer -- should no longer be on the list, the RNC may
16 spend more resources on mailers, knocking on doors, or
17 otherwise trying to contact voters or it may misallocate its
18 scarce resources amongst different jurisdictions."

19 So that actually isn't set forth in the complaint.
20 That's a "may."

21 MR. WOODFIN: Well -- so, again, I fall back to my
22 argument on "may." That's not -- it's conditional language.
23 It's not speculative language. But even if you -- if you don't
24 think that -- and you know, we could amend a change, "may" to
25 "will."

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1 THE COURT: I don't disagree with you on that. That's
2 why I'm asking these questions.

3 MR. WOODFIN: That would be why.

4 THE COURT: So as you stand here today, it's your
5 position that the RNC has expended resources?

6 MR. WOODFIN: Yes. Oh, yes. Certainly.

7 THE COURT: Okay. And can you give me some specific
8 examples?

9 MR. WOODFIN: Yeah. Well, it would be -- it's -- I
10 can't give you more specific examples than what's alleged in
11 the complaint. Of course, you know, later on, if we're moving
12 for summary judgment, we can provide declarations about how
13 exactly --

14 THE COURT: Yeah, that would be a different standard.
15 Yeah.

16 MR. WOODFIN: -- how exactly they rely on the voter
17 registration lists to determine their plans and budgets. You
18 know, is it proportional to the population of active voters who
19 are on lists or -- and you know, in determining, you know, how
20 much money to put into Nevada for upcoming elections and
21 campaigns, how much to allocate over various jurisdictions,
22 and, you know, who to send to campaign, turning out voters and
23 volunteers and -- based on how many voters are listed as
24 active. All that would go into the campaign and the campaign
25 strategy for -- for determining its plans to achieve its

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1 mission. And all of that is -- is harmed by inaccurate voter
2 lists.

3 THE COURT: All right. Thank you very much.

4 I want to hear from defendants on organizational
5 standing. I've asked a number of questions regarding FDA and
6 how the facts of this case square with that decision. And I
7 want to hear what your position is.

8 MS. ST. JULES: Certainly, your Honor.

9 We think the FDA case precludes organizational
10 standing here. As the Court noted, they're alleging,
11 essentially, speculative harms. I understand my partner on the
12 other side of the aisle is saying that the harm is their
13 inability to reach out to voters, but that's not one of their
14 core missions. It's certainly not alleged as a core mission to
15 contact their voters. It's to elect Republican candidates.
16 It's not --

17 THE COURT: Wouldn't that be part and parcel of the
18 same thing?

19 MS. ST. JULES: I don't think so. I think we have, in
20 Havens, the case that the FDA examined -- the FDA case
21 examined, the core mission was to inform home-seekers about
22 housing opportunities. And so what information they gathered
23 from Havens they were passing directly on. It was -- it was a
24 much more direct line.

25 Here, we're talking about an incidental use of voter

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1 registration rules. The purpose of the NVRA is so that the
2 states can efficiently run elections. It's not to provide
3 major political parties with contact information for voters.
4 It's an incidental use.

5 And you know, I -- I come back to the harm that
6 they're talking about is really just this risk of vote
7 dilution, that their candidates aren't going to get elected.
8 And your Honor has already said that that is speculative.

9 I'd also point out with respect to the litigation
10 costs argument, the Ninth Circuit has said that if you have
11 costs that are business as usual, then that doesn't count as a
12 diversion of resources. This is Friends of the Earth versus
13 Sanderson Farms, Inc., 992 F.3d 939, Ninth Circuit, 2021.

14 And in their complaint, the plaintiffs allege that the
15 RNC does monitors state and local election officials'
16 compliance with their NVRA list maintenance obligations through
17 publicly available records and jurisdictions across the nation.
18 This is part and parcel of their business as usual to conduct
19 these investigations. There is no diversion of resources.

20 I suppose there's, at some point, some diversion of
21 resources once you start talking with the State as required
22 under the NVRA to have a pre-litigation notice letter go out.
23 And -- but then that becomes litigation costs. It's all part
24 of a spectrum. It's either business as usual or it becomes
25 litigation costs. There isn't a distinction to be made there.

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1 They're both not cognizable.

2 THE COURT: All right. So if you were to sum up your
3 position regarding how the RNC organizational standing is
4 precluded by the FDA decision, what would you say?

5 MS. ST. JULES: Well, I think your Honor pointed out,
6 they only allege that this may harm them. They don't allege
7 that it will. I understand they can possibly amend it and
8 we'll raise arguments at that point if needed.

9 But I would also point out that the allegation is that
10 they're talking about expending resources based on voter roll
11 information from across the U.S. It's not specific to Nevada.
12 They talk about different jurisdictions, and whatever other
13 states are doing, it's not relevant to our state. And it's
14 certainly not traceable to the Secretary of State.

15 THE COURT: All right. Thank you very much.

16 MS. ST. JULES: Thank you.

17 THE COURT: I would like counsel for plaintiffs to
18 address the last argument in that what the RNC is doing across
19 the country isn't tied to Nevada, much less directed or tied to
20 the Secretary of State here.

21 MR. WOODFIN: So as far as organizational standing
22 goes, you know, the RNC, obviously, is a national organization.

23 THE COURT: Sure.

24 MR. WOODFIN: The Nevada Republican Party is a state
25 organization. So the -- the NVGOP does have state specific

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1 interests.

2 And then as far as the RNC goes, if 1/50th part of the
3 mission is harmed from the RNC's standpoint from one state not
4 having -- not complying with the NVRA, that's still a harm.

5 THE COURT: Sure. But that would still have to be
6 tied to Nevada, correct?

7 MR. WOODFIN: And it is, because they rely on Nevada's
8 voter rules --

9 THE COURT: Okay.

10 MR. WOODFIN: -- in the same way -- and would just add
11 to respond to argument on that point --

12 THE COURT: Yeah.

13 MR. WOODFIN: -- that's still a direct -- it's the
14 same informational communication that was in Havens and in
15 TransUnion and these other cases that it's -- the NVRA doesn't
16 just require states to accurately maintain their voter rolls.
17 It's also requires them to make them public. And there's also
18 a public records request in there. It requires them to
19 publicize them. There's a reason for that.

20 The reason is that political parties and
21 organizations, one, rely on these to determine their plans and
22 budgets and run their campaigns, and two, to hold the states
23 accountable. That's the very purpose of publishing this
24 information. And that's why Congress created a cause of action
25 both for individual plaintiffs and for organizations.

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1 THE COURT: Actually, I want to go back.

2 As I've sat here and thought more about some of your
3 arguments regarding Johnston, is it your -- I want to make sure
4 I didn't miss this argument.

5 Is it your position that as a member of the RNC, he
6 would have standing?

7 MR. WOODFIN: So I think it kind of works the other
8 way --

9 THE COURT: All right.

10 MR. WOODFIN: -- in that to the extent he has standing
11 and voters in general have standing, the RNC also has
12 associational standing on behalf of those voters.

13 THE COURT: All right.

14 MR. WOODFIN: Yeah.

15 THE COURT: I wanted to make sure I was understanding
16 the line you were drawing and I wasn't drawing it backwards.
17 That's why I asked that question.

18 MR. WOODFIN: Yeah.

19 THE COURT: All right. Thank you.

20 All right. I want to turn now and talk about
21 redressability. And I've asked a couple of questions and it's
22 come up a few times throughout this hearing this afternoon.

23 You seek five forms of relief in the complaint:
24 Declaratory judgment that the defendants are in violation of
25 Section 8, a permanent injunction barring violations of

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1 Section 8 of the NVRA, an order instructing defendants to
2 develop and implement reasonable and effective registration
3 list maintenance programs to cure their failure to comply with
4 Section 8 and to ensure that ineligible registrants are not on
5 the voter rolls, reasonable costs and expenses including
6 attorneys fees, and then any other relief that you could be
7 entitled to.

8 I'm going to ask this question again. And I asked it
9 earlier and you gave me an answer, but I'm still lacking some
10 clarity. What is it you're seeking?

11 MR. WOODFIN: So that paragraph C is, essentially,
12 what we're seeking.

13 And the precise nature of the remedy, the injunction,
14 you know, to maintain and make a reasonable effort to conduct a
15 general program that removes ineligible voters, the nature of
16 that injunction is going to depend in large part of the precise
17 nature of the violations. How -- you know, what -- what are
18 the -- what are their precise failings within the system, what
19 controls do they lack, what controls are not being implemented.

20 THE COURT: Well, those are good questions. And then
21 that kind of ties me to this in that aren't those questions,
22 the injuries that need to be alleged in the complaint?

23 MR. WOODFIN: So, no, because the only injury is the
24 failure to conduct a reasonable program.

25 So there's -- there's a thousand ways to conduct a

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1 reasonable program. We're not saying our injunction requires,
2 you know, a single -- a single one of those right now. Once we
3 get to that point, you know, then we can -- we can craft
4 what -- what we think would be a reasonable program based on
5 those violations.

6 But right now, the -- the pleadings standard is -- is
7 simply have -- have the defendants violated the NVRA. Really,
8 have we provided sufficient allegations to infer that they
9 violated the NVRA.

10 So the violation is the failure to conduct a
11 reasonable list maintenance program. So although there might
12 be a thousand ways to conduct a reasonable maintenance list
13 program, it's not our burden to allege the violation that we
14 have to provide a single reasonable way.

15 THE COURT: Well, you do have to allege an actual
16 injury.

17 MR. WOODFIN: And the injury is the -- well, the
18 violation is the failure to conduct reasonable list
19 maintenance. The injury is, as far as the organizations go,
20 injury to their mission because they rely on the voter rolls.

21 THE COURT: Well, I'm confident you know this, but
22 throughout every stage of litigation, an individual -- or an
23 individual -- in this case, it would be an organization -- must
24 have suffered or be threatened with an actual injury traceable
25 to the defendant that is likely to be redressed by favorable

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1 judicial decision.

2 What you have said and what you have argued this
3 afternoon is a systemic violation -- I think the word was a
4 fundamental claim is a systemic violation. So that would
5 require the development, and as set forth in your requested
6 relief, implementation of a maintenance program to cure that
7 systemic violation.

8 But at the time that you brought this action, the
9 State could not have developed or implemented a program that
10 would give you the relief that you've sought here today because
11 they can't do anything with the voter rolls for those 90 day
12 chunks of time that have been talked about here today. So it
13 appears to me we have a redressability issue.

14 MR. WOODFIN: So, no. So I'll start with the remedy
15 and how -- how it would -- how a remedy would redress the
16 injury.

17 Because these organizations rely on voter -- on voter
18 rolls to determine their plans and budgets and to determine
19 their campaign strategy, all of that, to the extent that is
20 harmed, and as we allege it is in the complaint, it is remedied
21 by the -- the defendants then conducting a reasonable program
22 in compliance with the NVRA.

23 In short, accurate rolls don't injure the plaintiffs.
24 Inaccurate rolls injure the plaintiffs. And so if the rolls
25 become accurate through the implementation of a reasonable

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1 program, then that either reduces or eliminates the injury to
2 these organizations' mission.

3 THE COURT: All right. So let's pause right there.
4 "Accurate rolls don't injure the plaintiffs. Inaccurate rolls
5 do."

6 The inaccurate rolls, as allege, existed in December
7 of 2023 when you sent the notice letter. The State couldn't do
8 anything to change the rolls at that time. As alleged, the
9 inaccurate rolls existed at the time you brought this action
10 and the State couldn't do anything to touch the rolls at that
11 time. And we're now on the clock before the next 90 day period
12 clicks in, right, because the primary just concluded last week.

13 And so you're asking for the rolls -- you're saying
14 you're okay with the rolls not being changed before the
15 November election, but then you're also saying that's what the
16 injury is. And if there's nothing the Court can do to change
17 the injury you have alleged, I ask the question again: Don't
18 we have a redressability issue?

19 MR. WOODFIN: So I think the difficulty here is we can
20 all -- we can't -- we can't ask for more than the NVRA
21 requires. The NVRA requires the defendants to conduct a
22 reasonable program. It does not require them to immediately
23 remove ineligible voters when we ask them to. So we couldn't
24 have obtained that kind of relief before the February election
25 or now which is why we haven't demanded the immediate removal

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1 of ineligible voters from the rolls. That's not what the NVRA
2 requires.

3 Instead, what the NVRA requires is that the Secretary
4 conduct a reasonable program to remove ineligible voters. So
5 that's the most we can request under the NVRA because the NVRA
6 doesn't require anything more. So that's the violation is the
7 failure to conduct a reasonable program --

8 THE COURT: All right.

9 MR. WOODFIN: -- and the only remedy we can obtain
10 is --

11 THE COURT: Implementation of one?

12 MR. WOODFIN: Is implementation of a reasonable
13 program.

14 THE COURT: All right. So let's say I agree with you,
15 right? For argument's sake, I agree with you and I say you
16 have to implement a reasonable program. At every stage of the
17 litigation, there has to be redressability, and even if I order
18 them to implement a reasonable program, that program couldn't
19 have been implemented at the time you gave the notice or at the
20 time this action was brought because the State couldn't do
21 anything with the program, right, because they're prevented
22 from doing anything based on the plain language of the statute.

23 So I'm going to ask -- I feel -- I apologize, but do
24 we not have a redressability issue?

25 MR. WOODFIN: Again, still, that goes to the timing of

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1 relief, not to whether it is redressable.

2 And so here, again, because we're alleging a systemic
3 violation -- and, you know, the Ninth Circuit has discussed the
4 difference between a discrete and a systemic violation.

5 Vincent, all of these cases discuss that difference. And
6 because the violation we're alleging is systemic, it's not that
7 the -- the Secretary and -- and the defendants had to gear up
8 and run a reasonable program immediately before the next
9 election. The NVRA doesn't require that. It doesn't require
10 them to immediately conduct a program before a February primary
11 or before the next general --

12 THE COURT: Right. Because there's all the other
13 deadlines that come in, right?

14 MR. WOODFIN: Absolutely.

15 THE COURT: The two years and the mail and the notice.
16 I mean, we can all agree on that.

17 So then my question is: If you are -- you seem to
18 accept that there is really nothing that can be done between
19 now and November and there's no urgency in resolving the issue
20 or the injury you have identified, why shouldn't this action be
21 dismissed to be brought after the November election so the
22 program, if that is the remedy that is required, be designed,
23 created, implemented, etc., when there's no 90 day period that
24 prevents that from happening?

25 MR. WOODFIN: So I think the timing of that would come

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1 down to when the remedy is ordered, not whether to dismiss a
2 complaint at the outset.

3 So it could be that after we get through discovery and
4 motions practice and, perhaps, a bench trial, that the timing
5 of that remedy and now you order the defendants to implement a
6 reasonable program and this is what it looks like, it could be
7 that when that order comes, at the time the Court is poised to
8 issue a remedy, that that is, perhaps, too close to the
9 election -- to the next election, whenever that is.

10 THE COURT: Well, you're well-versed in federal
11 practice. You know that there's not going to be a conclusion
12 to this if I were to let it go forward and we were going to --
13 you know, we get to discovery. You know as well as I do that
14 that would be a long time down the road.

15 Is it the RNC's position that they're okay with not
16 resolving this issue? It seems like the answer is "yes,"
17 because at the time -- based on the timing in which this action
18 was brought and the lack of urgency in resolving the
19 allegations set forth in the complaint, the RNC knows and
20 accepts that it's highly likely they'll be no answer or
21 conclusion to this action before the November election. Is
22 that correct?

23 MR. WOODFIN: A couple points.

24 So yes, we understand that these cases can take a long
25 time especially in discovery. Green versus Bell is in

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1 discovery right now. It's a lot of documents. It's a lot of
2 data that -- and it's a lot of depositions that go into these
3 cases. So we understood, of course, when we filed the lawsuit
4 that a lot of this, especially in discovery, could take some
5 time and, perhaps, run past a November election.

6 Our -- our request for relief is -- again, does not
7 depend on that election.

8 THE COURT: Sure.

9 MR. WOODFIN: So we would be fine --

10 THE COURT: And I would agree with you on that.

11 MR. WOODFIN: So we would be fine to continue
12 litigating this case after election. That's not a problem.
13 And of course, there are other avenues to resolve a lawsuit
14 other than reaching an ultimate judgment. And so, perhaps,
15 there would be a way to resolve this before the November
16 election regardless.

17 But for our position, we're -- yes, we're prepared to
18 litigate this case through the November election and after.

19 THE COURT: Thank you. I want to hear from defendants
20 regarding my redressability question.

21 MS. ST. JULES: Thank you, your Honor.

22 I think the redressability question can also be framed
23 as a prudential ripeness issue. And, of course, there's two
24 parts to ripeness. There's constitutional ripeness and
25 prudential ripeness. And prudential ripeness asks is it

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1 prudent for a court to entertain this action at this time.

2 There's two -- we didn't brief this and we can provide
3 briefing if that would be helpful to the Court, but at a high
4 level, there's two factors that courts analyze to determine
5 whether a case is prudentially ripe. First, there's the
6 fitness of the issues for judicial decision and, second, the
7 hardship to the parties of withholding court consideration.
8 And I would submit that neither prong is met mere.

9 With respect to the fitness of the issues for judicial
10 decision, Nevada has been unable to remove active voters since
11 November 8, 2023. The complaint uses numbers that are four
12 years -- four months into that where, you know, new voters are
13 being added to the lists and ineligible voters who have moved
14 and would be subject to removal based on the general program
15 are not being removed from the list. And it results in
16 inflated numbers. We set this out in our response to the
17 plaintiff's pre-litigation notice letter.

18 Right now, Nevada is in the process of sending out a
19 round of confirmation notices. It's on a blazingly fast
20 timeline, but this is important to the Secretary of State so
21 we're making it happen. And all 17 counties are going to send
22 out the notices. Voters will be inactivated before the
23 November 24th general election. The Secretary of State is
24 coordinating with the counties to identify inactive voters who
25 need to be cancelled. And delaying adjudication would better

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1 define the issues because we would have more up to date
2 numbers.

3 There's also no hardship to the plaintiffs. As they,
4 more or less, conceded, there's not going to be really relief
5 before the November general election if this election -- if
6 this case proceeds.

7 THE COURT: All right. And so it's your -- to sum up
8 your position, it would be that, essentially, there's a
9 ripeness issue?

10 MS. ST. JULES: A prudential ripeness issue, that's
11 correct.

12 THE COURT: Well, what about their argument that the
13 specific relief that they're seeking is the design,
14 implementation of the program? Putting aside the ability to do
15 anything before the November election, how does that change
16 your argument?

17 MS. ST. JULES: I don't think it does because I think
18 the factual issues still need to be better defined. They're
19 using numbers that just aren't reflective of reality because
20 they're fixed in place.

21 THE COURT: I know, but that kind of goes to a merits
22 question, right? Here at the motion to dismiss phase --

23 MS. ST. JULES: Well, it does and it doesn't because
24 right now we're at the motion to dismiss phase and we're going
25 based on what the allegations are in the complaint and we're

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1 tied to them. And if we're alleging that there's a failure to
2 state a claim, we need to go based on what's in the complaint.
3 And what's in the complaint is bloated numbers.

4 THE COURT: Right. But that would still be a factual
5 determination, right? Because I'm supposed to accept the
6 allegations -- assuming them, you know, as true as plausible.

7 MS. ST. JULES: Right. But the Court would have
8 better up to date information so the factual issues would be
9 better defined if we waited until the numbers were reduced
10 through the general program, which they haven't been able to be
11 reduced since November.

12 THE COURT: All right. Thank you. I don't have
13 anymore questions on that in that regard.

14 We've been here for a little -- just shy of an hour
15 and a half. I'm going to give my staff a break and the
16 parties, as well. We're going to be in a 15 minute recess.
17 And I may or may not have some additional questions for the
18 parties. So we'll be in recess until about 3:45.

19 (Recess taken from 3:33 p.m. to 3:48 p.m.)

20 THE COURT: We are back on the record continuing
21 argument on defendant's motion to dismiss docketed at ECF
22 Number 26.

23 I did want to revisit a couple of issues. And I want
24 to talk about the Havens case which is, obviously, discussed or
25 refined in the FDA case.

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1 Counsel, you mentioned that the money you've spent
2 furthering the RNC's mission, it relates to voters, etc. That
3 case, however, makes it clear that to have organizational
4 standing, it must impact or affect your core business
5 activities. So that's different than mission. And that was
6 discussed to some degree in the FDA decision, right? So
7 there's the mission and there's the core business activities.

8 Tell me how your core business activities have been
9 impacted.

10 And I'll give you the part that I'm focused on. Home,
11 which was the decision, as you know, was not only an issue
12 advocacy organization but also operated a housing counseling
13 service. When Havens gave Home's employees false information
14 about apartment availability, Home sued Havens, rather -- or is
15 it Havens? -- whichever it is, because perceptively impaired
16 Home's ability to provide counseling and referral services for
17 low and moderate income home-seekers.

18 In other words, Havens' actions directly affected and
19 interfered with Home's core business activities, which is not
20 dissimilar to a retailer who sues a manufacturer for defective
21 goods to a retailer.

22 MR. WOODFIN: Yes. So we read that difference between
23 core business activities and mission, it's not -- it's not like
24 a difference between, like, private and nonprofit or anything
25 like that. Really, what the Court is getting at is a

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1 difference between activities that are essential to the core
2 operations of the organization, whether it's a nonprofit or a
3 business, and then what would be -- like, an insufficient
4 mission would be an organization that is set up solely for the
5 purpose of pursuing that activity.

6 So in Havens, it would be an organization that is set
7 up solely for the purpose of requesting information from
8 realtors and then suing them to hold them accountable for Fair
9 Housing Act violations. That would not be the kind of mission
10 that is -- that would -- that would support organizational
11 standing.

12 Or in this context, it would be, perhaps, an
13 organization that is set up solely for the purpose of
14 investigating and holding states accountable for NVRA
15 violations. That would be an organization -- there's, like, a
16 one to one match between the core business activities and the
17 mission, in other words, where the violation is simply an
18 impairment of the mission.

19 Here, as an Havens, the core business activities or
20 the mission, as you want to call it, of the Republican party is
21 to elect Republican candidates. The fact -- and to turn out
22 Republican voters. The fact that it's a nonprofit doesn't mean
23 that's not -- that's not a business activity.

24 THE COURT: Sure. And I don't disagree with that.

25 MR. WOODFIN: But that's the purpose of the

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1 organization.

2 THE COURT: But the RNC's mission, as you stated, is
3 to elect Republican candidates and turn out Republican voters.
4 That is different and separate and apart from ensuring accurate
5 voter rolls as alleged are relevant here for a Section 8
6 violation.

7 MR. WOODFIN: So it's -- the mission, as you noted, as
8 our complaint says, is turning out Republican candidates,
9 electing -- or sorry -- turning out voters, electing
10 candidates. Those are the missions. Investigating and
11 maintaining accurate list maintenance, relying on accurate
12 voter rolls is conducive to achieving that mission.

13 If -- if the RNC and the NVGOP are relying on voter
14 rolls that are inaccurate that violate the NVRA, that harms
15 their business activities or their mission to elect Republican
16 candidates. That harm is independent of whether they choose to
17 investigate or spend money on the voter roll maintenance
18 activities.

19 And so -- and so this is what's critical about
20 resource diversion cases is that the organization must divert
21 resources to solve the problem of that mission injury or -- or
22 the injury to the -- to the core business activities.

23 Here, the injury to the core business activities
24 derives from the NVRA violation and the organizations spend
25 money, they divert resources from other mission critical

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1 activities to solve that problem.

2 THE COURT: All right. So a few times -- I understand
3 how easy it is, because I think I did it myself earlier in this
4 hearing, to conflate core business and mission.

5 And so here, you're talking about diverting mission
6 resources as opposed to core business activities. I want to
7 give you the opportunity to explain to the Court how those are
8 different in your mind.

9 MR. WOODFIN: So we think the -- it -- I think it
10 comes -- becomes difficult in the nonprofit world. And Havens
11 was a nonprofit as --

12 THE COURT: I think that case also talked about that
13 it can be confusing when the --

14 MR. WOODFIN: Yeah. Yeah.

15 THE COURT: -- can cross. I understand that.

16 So is it your position that, essentially, it's the
17 same here, that when you're talking about core business and
18 you're talking about mission, in terms of what the RNC's role
19 is, is the same?

20 MR. WOODFIN: I think that's correct. That would
21 be -- that's our reading of it.

22 And really, I think what that sentence is getting at
23 in both Havens and -- and Alliance, the distinction between
24 mission and core business activities isn't really, like, how
25 the organization chooses to frame its goals. Really, what it's

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1 getting at is an organization can't simply exist for the
2 purpose of filing these lawsuits.

3 And that's not what is happening here. That's not
4 what was happening in Havens. And so that's why it's a one to
5 one is that they exist for a -- for a mission independent of
6 pursuing these violations. That mission is harmed by these
7 violations. And then they have to divert resources to solve
8 that harm. We think that's -- that's, essentially, what --
9 what the Court is getting at with that distinction.

10 THE COURT: All right. I would like to hear from the
11 defendants on where -- you can see where I'm focused.

12 MS. ST. JULES: Yes, your Honor.

13 So I think there's a degree of causation issue that's
14 different here than it was in Havens. So in Havens, Home
15 was -- its business activity was providing information directly
16 to home-seekers. And so when Havens provided false information
17 to Home, Home's ability to provide counseling services, which
18 was its activities, was directly and perceptibly impaired.
19 They were giving false information to those who they sought to
20 counsel.

21 Here, it's not a core business activity, it's not the
22 mission to counsel and provide advice to voters. That's
23 incidental to their mission of getting people elected.

24 THE COURT: But is that really -- I mean, does it all
25 rise and fall on giving advice?

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1 MS. ST. JULES: Well, I think -- there, they're
2 providing false information. Here, there is no provision of
3 false information. Maybe they're going to reach out to some
4 people who shouldn't be reached out to at that specific
5 address. That's -- that's basically, what's happening.
6 They're not providing false information out the way it was in
7 Havens. And, you know, the Supreme Court was very cautious in
8 saying that Havens was an unusual case.

9 Here, we lack the directness and the perceptible
10 impairment of a business activity which isn't to provide voters
11 with information. It's to get people elected. It is
12 different. We lack that directness and that perceptible
13 impact.

14 THE COURT: All right. All right. I don't have an
15 additional question at this time.

16 I want to -- for you. I apologize.

17 I want to go back and talk about the redressability
18 question. Both parties have answered questions and are now
19 aware that that is where I have spent some time in trying to
20 resolve this motion.

21 And so I'll start with plaintiffs. This is your
22 complaint. And at the motion to dismiss phase, I think it's
23 appropriate to give you every benefit of the doubt to, again,
24 address the redressability question. I think it would be
25 helpful to give, I'll call it, a brief closing argument as to

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1 why redressability isn't a barrier to you in regards to
2 standing.

3 MR. WOODFIN: So, again, on the point of
4 redressability, I'm just going to turn back to the language of
5 the statute. The NVRA requires the defendants to conduct a
6 reasonable program. We allege and we think the complaint shows
7 that they have failed to conduct a reasonable program. And we
8 think that that is a systemic violation. And that's what the
9 complaint and the letter says.

10 What that means is the solution is for -- the solution
11 is -- is an order requiring the defendants to comply with the
12 NVRA and to set up and conduct a program that is reasonable.
13 Now, the details of that, we think, are appropriate to discuss
14 later in the litigation. There's no case that requires us to
15 plead the specifics of that remedy up front. But the fact is
16 that that would remedy the injury here because it would -- over
17 time, it would remove the ineligible voters that shouldn't be
18 on the rolls from the rolls and it would ensure that the State
19 is in compliance with the NVRA.

20 And so, as -- you know, as I said before that
21 inaccurate lists cause the harm. To the extent those lists are
22 more accurate, that will not cause a harm.

23 And it's -- it's a matter of degree certainly, but
24 that doesn't mean it's not redressable. It's redressable
25 because it would bring the State into compliance with the NVRA

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1 and that would obviate all of the harms to the -- to the
2 mission critical activities from the plaintiffs.

3 And I would just end with, you know, Congress set up a
4 cause of action in the NVRA for the purpose of addressing these
5 violations. The Supreme Court has said in Spokeo and in
6 TransUnion and elsewhere that courts owe respect to Congress's
7 decision to set up a cause of action and to designate those
8 injuries.

9 If this isn't an injury, then, really, no
10 organization, no individual plaintiff has standing to challenge
11 these reasonable efforts. It has to be the case that
12 conducting -- failing to conduct reasonable efforts does impose
13 an injury and the -- the -- a court order requiring a defendant
14 to conduct reasonable efforts would -- would redress that
15 injury. That's the injury that Congress has identified. And
16 that's all we need to allege here in the complaint.

17 THE COURT: I don't disagree with you that the cause
18 of action exists for a reason and it's, you know, to address
19 these injuries when needed.

20 I go back to the requirement -- the longstanding
21 requirement that at every stage of the litigation, an injury
22 must be able to be redressed.

23 MR. WOODFIN: Is the hang-up there that the Court
24 maybe couldn't order a remedy immediately before the election?
25 Is that -- is that the difficulty?

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1 THE COURT: No. The timing of the election at this
2 point -- you've made it perfectly clear. So I appreciate that,
3 right?

4 MR. WOODFIN: Okay.

5 THE COURT: The election ultimately isn't the focus --
6 if I understand correctly, and you can correct me if I'm
7 wrong -- isn't the focus of this litigation. For the RNC, it
8 is to correct the injury that you have suffered. And so you
9 have said here, if it happens after, you understand that, you
10 accept that. And I appreciate that clarity because that was a
11 question I had.

12 So long story short, it's not before the election.
13 It's that I couldn't give you the remedy you were seeking at
14 the time that you brought this action because I couldn't order
15 the State to implement -- develop and implement a program at
16 the time because that would be in direct contravention of the
17 law that says they can't do anything to the rolls within that
18 90 day period. And that is where I am, candidly, laser
19 focused. And it's my concern.

20 MR. WOODFIN: So I think that goes more to the notice
21 letter, perhaps.

22 When we filed the complaint, it was after the February
23 primary. So no issue there. So I think that really just goes
24 to the --

25 THE COURT: Right. But this action was brought within

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1 the next 90 day period before the primary.

2 MR. WOODFIN: For the June. Okay.

3 THE COURT: Right.

4 MR. WOODFIN: So I -- so I --

5 THE COURT: I think it was, like, five days so --

6 MR. WOODFIN: Right. So -- I -- again, I return to
7 the -- to the remedy doesn't need to be you must conduct a
8 program now. The remedy is, number one, a declaration that the
9 defendants have violated the program -- the NVRA, and, number
10 two, an order directing them to conduct reasonable list
11 maintenance.

12 It doesn't need to be the case that that injunction
13 issues and requires the defendants to implement that program
14 immediately before the next election. That's -- that's not the
15 remedy we request in the complaint. That's not the remedy we
16 requested in the letter.

17 And so really, there's no -- there's no redressability
18 issue because the injunction would come whenever it comes
19 whether it's before election, during an election, after an
20 election. It -- that -- the issue of timing would not affect
21 the redressability. Does that clarify?

22 THE COURT: I understand your argument. I'm not sure
23 if it clarifies.

24 MR. WOODFIN: The alternative would be no one can
25 bring an NVRA complaint during an election year to allege

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1 systemic violations as we do. They -- you would have to wait
2 until an off year when, perhaps, the voter rolls are -- are
3 cleaner or less accurate. Who knows? But that's, essentially,
4 what the holding would be is that there's a -- it's not a 90
5 day blackout period. It's -- it's a full blackout period
6 before any election during an election year, essentially,
7 because -- I mean, it -- because the --

8 THE COURT: Yeah, I understand. That hits home with
9 me more, right? Because that's where I've honestly gone back
10 and forth. That makes sense, right? That seems to be contrary
11 to the -- the very law itself.

12 But as you know as well as I do that timing is
13 everything in federal court. So that's where my concern lies.

14 MR. WOODFIN: So I'd also just return to the case law.
15 La Raza was brought 30 days before an election. That was a
16 systemic violation. The Court did not note that there were any
17 redressability problems.

18 THE COURT: But there was no issue with Section 7
19 where the Court was prohibited from granting the relief being
20 sought at the time.

21 MR. WOODFIN: So the same is true in Green versus
22 Bell. Let's see. That wasn't -- let me think. Daunt versus
23 Vincent was pretty soon before a election. Bellitto versus
24 Snipes, I don't know exactly when the election was for that,
25 but --

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1 THE COURT: I think that was brought after the
2 election. I could be wrong, though.

3 MR. WOODFIN: That could be.

4 THE COURT: Yeah, I think it was November -- later --
5 unless I'm thinking of a different case. I think that was
6 later in November.

7 Yeah, that's where I'm hung up, full disclosure --

8 MR. WOODFIN: Okay.

9 THE COURT: -- the timing issue.

10 MR. WOODFIN: So I -- again, I would just return back
11 to the fact that we allege a systemic violation. So it's
12 really not a Section 7, Section 8 distinction that matters here
13 because we're not demanding immediate relief. We're not
14 demanding an immediate conduct of a program. We're demanding
15 systemic reforms to the defendants that would result in a
16 program that complies with the NVRA. So we think that's the
17 relevant distinction here.

18 And that distinction, again, was drawn in La Raza. It
19 was drawn in -- in Bellitto, in Action NC. The Fifth Circuit
20 drew the same distinction in Scott versus Schedler. The
21 difference is discrete versus systemic, not Section 7 versus
22 Section 8.

23 THE COURT: All right. Thank you very much.

24 I'd like to hear defendant's closing argument, if you
25 will, on the redressability question.

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1 MS. ST. JULES: Yes, your Honor. Thank you.

2 Like I said before, I think this -- there is a timing
3 issue. And I think prudential ripeness is the -- is the
4 doctrine that's kind of designed to address this timing issue.
5 And it's -- it affords the Court the ability to say that the
6 relief you're asking for right now, it's not fit for judicial
7 decision. You can't rule on it at this time.

8 So I do think there is a timing issue and I think
9 waiting -- delaying adjudication, letting facts actually
10 develop, those are concerns that the Court should focus on.

11 THE COURT: Well, what about his argument, which is
12 well-founded, that if I'm focused on this 90 day I'll call it a
13 dead zone, right, then that, essentially, means no one can
14 bring a Section 8 violation during an election year. How do
15 you address that argument?

16 MS. ST. JULES: I think that -- I'm struggling with
17 that because it's just with the 90 day black out period, you
18 have an inability -- you've tied the State's hands to be able
19 to do -- to take any action.

20 And I would also note, you know, that the -- this --
21 if you're providing an opportunity to cure, if the NVRA is
22 saying that the violation hasn't been cured within 120 days,
23 you can bring an action within 90 days. Or maybe it's the
24 other way around. If they're asking for relief that's far out,
25 I -- I don't understand how that ties into the NVRA's correct

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1 the notice -- or correct the violation language. It seems in
2 very sincere intention to me because they've, more or less,
3 conceded that we couldn't cure the violation. So --

4 THE COURT: Is it sincere intention or is it, perhaps,
5 a reflection of the NVRA's dual purpose of keeping elections --
6 getting people registered while also making sure that they are
7 limiting --

8 MS. ST. JULES: Well I think --

9 THE COURT: -- other concerns?

10 MS. ST. JULES: I think it's implicit within the NVRA
11 that a State could be afforded an opportunity to cure and where
12 they're sending a pre-litigation notice letter and filing a
13 complaint within the times you can't cure, you have a problem
14 there. This isn't how the NVRA was set up. So I think that's
15 the tension that I'm focusing on.

16 And I'd also say, just as far as my colleague's
17 argument about, you know, who would have standing, the FDA case
18 made very clear, it doesn't matter if nobody has standing.
19 That's -- that's not a reason to find standing. So I would
20 just highlight that, as well.

21 And additionally, the NVRA does authorize the Attorney
22 General to bring an action. The Supreme Court said when it
23 comes to vindicating the public interest, that's the function
24 of Congress and the executive.

25 THE COURT: All right. All right. Thank you.

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1 Bear with me. I'm going back over my notes and seeing
2 if I have any additional questions.

3 All right. I don't think I have any additional
4 questions at this time.

5 As I noted at the beginning, I planned on ruling on
6 parts -- or at least a part of this motion on the record which
7 I have already done in regards to Mr. Johnston's lack of
8 standing.

9 I think, in the interest of justice, it would be best
10 for me to rule on this -- this motion on the record here today.
11 And so I'm going the place my findings and conclusions on the
12 record. The transcript of this hearing will serve as a record
13 of my ruling. While the minutes will summarize my decision,
14 they'll be no written order reflecting my ruling. So bear with
15 me; this is going to take a minute.

16 It is well-established that there are limitations on
17 federal jurisdiction. And it is well-established that standing
18 is essential, and I think as the Lujan Court put it, an
19 unchanging part of the case in controversy requirement. And
20 that is a high threshold that I know both parties understand
21 and agree with.

22 I have already placed on the record my reasonings for
23 why I found Mr. Johnston did not have standing. And I asked
24 what additional allegations would be brought if I were to grant
25 him leave to amend. And I wasn't given a lot of information.

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1 And I understand plaintiffs have facts that they are working
2 with, but I don't see and I was not convinced that he would be
3 able to present additional allegations that would establish
4 standing. And so he is dismissed with prejudice.

5 I want to turn next to the notice requirement and the
6 statutory standing. I am concerned about the lack of clarity
7 or specificity in the letter that was sent to the State. But
8 the case law really makes clear that that notice can be pretty
9 general. And so when I look at that case law together with the
10 Ninth Circuit's ruling in the La Raza case, I'm not convinced
11 that plaintiff's notice was so deficient as to not establish
12 statutory standing. And so the motion to dismiss based on that
13 argument is denied.

14 I do think it is important to note that I respectfully
15 disagree that there really isn't a difference whether it's a
16 Section 7 or a Section 8 violation. I think there is an
17 important distinction that was addressed both in the motion and
18 during argument here today. And that is the fact that the
19 State cannot act within the 90 day window of any primary or
20 election regarding the voter rolls. There's, you know, limited
21 exceptions to that, but none of those seem applicable here nor
22 were they argued by the plaintiff. And so, you know, I'm
23 focused on redressability. And I note that I think that
24 distinction between Section 7 and Section 8 is an important
25 one.

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1 I considered carefully the decision that came out last
2 week from the Supreme Court.

3 Can we pause the --

4 (Court and courtroom administrator conferring.)

5 THE COURT: I considered carefully the words from last
6 week's decision and that is that no principle is more
7 fundamental to the judiciary's power or proper rule in our
8 system of Government than its constitutional limit to cases or
9 controversies.

10 And so I turn to standing. And let me be clear.
11 Standing itself is actually a relatively low bar. I think we
12 can all agree on that. The question is making sure that there
13 is standing to be in federal court, which is a strong -- I
14 think is a high standard because that is an important
15 distinction. I think that it is -- I don't think that is an
16 issue or something that's lost on either side.

17 And here, my focus has been on redressing the injury.

18 Plaintiff's argument is that this is a systemic
19 violation and that they are simply seeking a -- in the form of
20 declaratory relief that there is a violation, and then in the
21 form of injunctive relief, an order requiring them to develop
22 and implement a program that would remedy the deficiencies
23 they've identified.

24 But implementation is where I think this action fails.
25 And that is because this action wasn't brought until March --

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1 make sure I get the date right -- 18th of 2024. And I'm going
2 to take judicial notice of the fact that 90 days before the
3 June primary that just concluded on June 11, 2024 is, I
4 believe, March 15th. But let me double check that one more
5 time. I stand corrected. Wednesday, March 13th, 2024. And so
6 there was, again, a 90 day window where the Court simply could
7 not order relief that the defendants -- rather, the plaintiffs
8 are seeking. I could not order the defendants to implement the
9 relief plaintiffs are seeking. So that's issue one.

10 Issue two is the question of ripeness. And as
11 mentioned earlier, and I'll restate again here, timing is
12 really everything in federal court. And that is at the heart
13 of the Ripeness Doctrine. And I think it would be wise to
14 exercise or find that prudential ripeness precludes this action
15 from going forward because -- or for the reasons I have just
16 mentioned in that I could not order the State to develop and
17 implement a program at the time this action was brought.

18 It is not lost on me plaintiff's concern regarding
19 their ability to bring a Section 8 violation during an election
20 year. But time and time again, the Supreme Court, and as
21 binding on me, the Ninth Circuit, has stated that standing,
22 including redressability, must be present from the pleadings
23 stage through trial. And it is simply not present here.

24 So consequently, I grant the motion to dismiss for
25 lack of standing. I do not believe that the RNC has

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1 organizational standing. And that will be the Court's
2 decision.

3 I'm going to start with defendant as this is your
4 motion. Any questions or any clarification you seek from my
5 ruling?

6 MS. ST. JULES: I apologize. I missed the very last
7 part on organizational standing.

8 THE COURT: I do not find they have organizational
9 standing.

10 MS. ST. JULES: Thank you, your Honor.

11 THE COURT: No problem.

12 And let me turn to plaintiff. Same -- same question:
13 Any questions or clarifications you seek regarding my ruling?

14 MR. WOODFIN: Just one. I think you said the RNC
15 lacked organizational standing. What about the Nevada
16 Republican Party?

17 THE COURT: Both. And thank you for that question and
18 need for clarification. Both. And that is for the same reason
19 in that I couldn't grant the relief sought.

20 MR. WOODFIN: And then one more, your Honor. One last
21 question.

22 THE COURT: Sure.

23 MR. WOODFIN: I understand under Ninth Circuit law
24 that dismissal for lack of standing has automatic leave to
25 amend, but I'd just like to formally request leave to amend for

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1 the record.

2 THE COURT: I will grant you leave to amend. My
3 question is, timing-wise, how long are you seeking leave or
4 time for leave to amend? If you want to take a moment, please
5 take your time.

6 MR. WOODFIN: I think 14 days --

7 THE COURT: Fourteen days?

8 MR. WOODFIN: -- is sufficient.

9 THE COURT: All right. That's pretty standard.
10 All right. I'm sorry?

11 MR. DODGE: If I also may be heard on a logistical
12 point of clarification at some point? I just wanted to ask if
13 that was possible.

14 THE COURT: At the conclusion, sure.

15 MR. DODGE: Understood, your Honor.

16 THE COURT: No problem.

17 All right. Fourteens days is a reasonable request,
18 and so you have 14 days to amend the pleadings.

19 Let me think about something really quickly.

20 You know, as I sit here and I've contemplated that
21 request, I know I had said I was going to dismiss him with
22 prejudice, but if you're going to amend the complaint, I'll
23 give you the opportunity to amend the allegations regarding
24 Johnston. So I'll change my ruling in that regard and he is
25 dismissed without prejudice. I think that will give you fair

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1 opportunity to add him back in if you see appropriate and you
2 have additional allegations you can bring forward.

3 All right. Let me then turn to counsel. You had a
4 question regarding -- I don't know what.

5 MR. DODGE: Yes. Thank you, your Honor.

6 At the start of your hearing -- of the hearing, your
7 Honor indicated that you felt you had an obligation to resolve
8 the motion to dismiss before the now-briefed and ripe
9 objections from plaintiffs on the magistrate judge's order
10 recommending our intervention.

11 I just wanted to stress the -- that we would
12 respectfully ask that the motion to intervene be resolved prior
13 to or in tandem with any resolution of the motion to dismiss.
14 I understand leave has been granted to replead so the timing is
15 a little bit less of an issue now. But if the Court were to
16 potentially dismiss the case without resolving the
17 fully-briefed and ripe motion to intervene, it would
18 potentially prejudice our ability to participate in any appeal.

19 And I would note that the magistrate judge found that
20 we had two significantly protectable interests at stake in the
21 case. We think that's amply supported in the record and in our
22 briefing and would urge the Court to ensure that we have the
23 opportunity to participate in further proceedings in view of
24 those findings including potentially involvement in appeal.

25 THE COURT: All right. Let me hear from plaintiff

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1 regarding that request.

2 MR. WOODFIN: We submitted our objections to the
3 magistrate judge's report and recommendation. So those
4 objections are on the record. I won't repeat those here.

5 THE COURT: All right. Okay. I will take a look at
6 that and take that into consideration.

7 MR. DODGE: We appreciate that, your Honor. Thank
8 you.

9 THE COURT: No problem.
10 Anything else that needs to be addressed this
11 afternoon?

12 No?

13 Okay. Thank you all very much for your patience and
14 preparation for this hearing. It was a good hearing. Thank
15 you very much.

16 (The proceedings concluded at 4:30 p.m.)

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COURT REPORTER'S CERTIFICATE

I, SAMANTHA N. MCNETT, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: June 20, 2024

/s/ Samantha N. McNett
Samantha McNett, RMR, CRR, CCR

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