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

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

Plaintiffs,

v.

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

Defendants,

ILLINOIS AFL-CIO and ILLINOIS FEDERATION OF TEACHERS,

Intervenor-Defendants.

No. 1:24-cv-01867

Hon. Sara L. Ellis

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

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INTRODUCTION

The National Voter Registration Act of 1993 ("NVRA") requires states to make a "reasonable effort" to remove ineligible voters from the rolls, subject to strict limitations to protect against the dangers of aggressive list maintenance. Plaintiffs seek to compel the Illinois State Board of Elections and Bernadette Matthews (hereinafter, "State Defendants") to purge more voters from the rolls under an assumption that Illinois is not currently removing enough to constitute a "reasonable" effort. But before the Court can reach the question of what the NVRA requires, it must determine if it has jurisdiction. It does not. Plaintiffs' amended allegations are as fatally flawed as in their first complaint, relying on purported injuries that fall short of Article III's demands. And their amended allegations merely confirm that their asserted injuries are not traceable to Illinois's alleged NVRA violations.

Plaintiffs' list-maintenance claim also fails to plausibly allege an NVRA violation. It relies almost entirely on Election Administration and Voting Survey ("EAVS") data from a single two-year period, but that snapshot is not the NVRA report card Plaintiffs make it out to be. Among other things, the NVRA *requires* a waiting period of up to *four years* before most voters may legally be removed. Plaintiffs also point to inapposite census data and their unsubstantiated assumption that counties that reported "data not available" are hiding their noncompliance with federal law. But Plaintiffs fail to identify any example of Illinois improperly keeping someone on the rolls whom the NVRA required to be removed, or even grapple with Illinois's numerous statutory provisions which describe, in detail, the state's reasonable efforts to comply with the NVRA.

BACKGROUND

The NVRA requires states to provide simplified, voter-friendly systems for voter

registration. Congress aimed to facilitate enfranchisement by establishing "procedures that will increase the number of eligible citizens who register to vote" and by making it "possible . . . to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2); *see also Common Cause Ind. v. Lawson*, 937 F.3d 944, 947 (7th Cir. 2019) (noting "Congress made no mystery of its purposes for passing the NVRA[,] . . . stat[ing] them in the opening section of the statute"). The "NVRA was intended as a shield to protect the right to vote, not as a sword to pierce it." *Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 182 (3d Cir. 2017).

Accordingly, while the NVRA requires that states maintain a "general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters," 52 U.S.C. § 20507(a)(4), it broadly prohibits immediate removal of voters, allowing for it only in rare circumstances, such as upon the voter's express request or for disenfranchising felons. *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may *not* remove a voter without first complying with prescribed procedural minimums meant to minimize the risk of erroneous deregistration. *See, e.g.*, *id.* § 20507(a)(3)(C), (d). For example, when a state suspects a voter has moved, their registration may not be canceled unless the voter confirms the change or fails to both respond to a notice and to vote in two general elections thereafter. *See id.* § 20507(d)(1).

The statute's use of the word "reasonable" is particularly important: the NVRA does *not* require "a perfect effort" to remove registrants. *Pub. Int. Legal Found. v. Benson*, 721 F. Supp. 3d 580, 597 (W.D. Mich. 2024). Outside of the NVRA's express restrictions on removals, states have broad discretion to determine how they conduct list maintenance. This approach reflects the NVRA's twin policy objectives—to "enhance[] the participation of eligible citizens as voters" and "protect the integrity of the electoral process." 52 U.S.C. § 20501(b). It further reflects Congress's

judgment that it is better that some ineligible voters remain on the rolls for some time than risk the removal—and potential disenfranchisement—of eligible voters.

ARGUMENT

Plaintiffs' list-maintenance claim must be dismissed because the Court lacks jurisdiction to adjudicate it. The amended complaint continues to say very little about how Illinois's list-maintenance practices injure Plaintiffs. They fail to allege any concrete, particularized injury, let alone one that is traceable to Defendants or redressable by this Court. And Plaintiffs fare no better on the merits. As with the original complaint, their underlying assumption is that "there is no possible way" Illinois is conducting a reasonable list-maintenance program. Am. Compl. ¶¶ 27–37, ECF No. 70. But they ignore Illinois law requiring robust list maintenance, instead relying on election administration data that federal courts have warned are not indicative of the reasonableness of a state's list-maintenance procedures. *See Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019).

I. Plaintiffs fail to establish they have standing to pursue Count I.

Plaintiffs assert two theories of standing, but both fail. First, Davis and Judicial Watch (on behalf of its Illinois-based "members") continue to claim that State Defendants' alleged list-maintenance failures harm their "confidence" in the state's elections, "dilute[]" their votes, and discourage their participation in elections. Am. Compl. ¶ 136. But this Court already found these bases insufficient for standing, and the amended complaint's paltry additions do not change the calculus. Second, Breakthrough Ideas ("BI") and Illinois Family Action ("IFA") allege that Illinois's list-maintenance efforts have made it "cost[] more money to contact fewer voters." *Id.* ¶¶ 100, 124. But their asserted harms do not perceptibly impair their missions and are not traceable to State Defendants' list-maintenance efforts. Count I must be dismissed for lack of jurisdiction.

A. Plaintiffs lack standing as individuals or on associational grounds.

In its prior order, the Court rightly dismissed Judicial Watch's and Davis's list-maintenance claim because they "assert[ed] only a generalized grievance of decreased confidence in the voting system." Order at 10, ECF No. 69. The amended allegations regarding Davis's "interests" are merely gloss on this same deficient theory. That Davis is "aware of problems" with the state's list maintenance efforts; "served as a poll watcher"; "observed" (unidentified and unexplained) instances where "invalid voter registrations remained on the rolls"; and saw the legislature vote down legislation, do not change the fact that her grievances are too generalized to confer standing. Am. Compl. ¶¶ 126–28, 130. These "observations" and "concerns" are still tied to diminished confidence in "the integrity of the electoral process," *id.* ¶ 131, an ill-defined, speculative harm that is not a "concrete and particularized" injury required by Article III. *See* Order at 10–11 (citing *Iowa Voter All. v. Black Hawk Cnty.*, 515 F. Supp. 3d 980, 991–92 (E.D. Iowa 2021)).

For the same reasons, Judicial Watch likewise still cannot assert standing on behalf of its Illinois-based "members." To allege an associational injury, a party must show that "at least one of its members would 'have standing to sue in their own right.'" *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1008 (7th Cir. 2021) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). Just as the Court concluded before, "generalized concerns over vote dilution do not give rise to standing." Order at 11. Because Judicial Watch's members would not themselves have standing to sue based on these generalized theories, Judicial Watch lacks standing to seek to remedy the same harms on their behalf.

B. Organizational Plaintiffs lack standing in their own right.

Judicial Watch, IFA, and BI also fail to establish organizational standing. First, they fail to allege an injury-in-fact that satisfies Article III and, second, their injuries are not traceable to, or redressable by, State Defendants' list-maintenance efforts.

i. Plaintiffs do not sufficiently allege an injury-in-fact.

In its prior order, the Court concluded that "Judicial Watch's diversion of resources" theory did not establish an injury in fact. *See* Order at 13. The amended complaint omits nearly all of the previous allegations about Judicial Watch's "expended resources," and adds no new ones. *Compare* Compl. ¶¶ 89–92, ECF No. 1, *with* Am. Compl. ¶ 135. As such, Judicial Watch continues to lack organizational standing for the same reasons set forth in the Court's prior order.

The balance of the new allegations concern IFA and BI. In its prior order, the Court correctly concluded that these organizations lacked standing, finding they failed to allege that Defendants' list-maintenance efforts "forced them to spend time and money to amend and adapt their public education or outreach," or show how any difficulty "contact[ing] Illinois voters" would "perceptibly impair[]" their "advocacy interests." Order at 11, 14–15 (citation omitted). The amended complaint does not cure these fatal defects. It simply provides new descriptions about the organizations' "interests" in the "cost of mailings to addresses" returned as "undeliverable," Am. Compl. ¶¶ 93, 123; the "cost of paying members . . . to visit addresses from Illinois' voter list where the addressee has moved," *id.* ¶ 98; the "likelihood" that "email checks" using the State's lists turn up "inaccurate," *id.* ¶ 111; and that automated calls "reach fewer voters," *id.* ¶ 119.

The Seventh Circuit has been clear: "Ordinary expenditures as part of an organization's purpose do not constitute the necessary injury-in-fact required for standing." *Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001). They must plausibly allege that the defendants' actions have forced them to do something differently, causing injury to their mission. *See also Democratic Party of Wis. v. Vos*, 966 F.3d 581, 587 (7th Cir. 2020) (explaining difference between where organizations must "devote resources to counteracting the effects of [] laws" and where they challenge laws that have only a dampening effect on the organization's normal activities).

Plaintiffs do not (and cannot) allege that Illinois's list-maintenance efforts "forced" them to send any mailings, knock on any doors, conduct email checks, target voters with automated calls, or "contribute[] funds directly to candidates." Am. Compl. ¶¶ 85, 93, 98, 111, 119, 123. These "read[] like a list of what" these organizations would do to advance their mission "generally," not anything that they *have* to do because of Defendants' list-maintenance efforts. *Legal Aid Chicago v. Hunter Props., Inc.*, 2024 WL 4346615, at *6 (N.D. Ill. Sept. 30, 2024). Plaintiffs' allegations of "additional costs" associated with "obtain[ing] fewer results from such expenditures," Am. Compl. ¶ 100, mirror the deficient allegations in *Vos*, where the plaintiff asserted "it w[ould] have a harder time organizing voters," and face an "added financial burden insofar as it must spend more money to generate enthusiasm." 966 F.3d at 587. Like there, Plaintiffs' undertakings are simply the "baseline work" of political advocacy organizations; as "ordinary program cost[s]," they are not "injur[ies] in fact." *Id.* (quoting *Lawson*, 937 F.3d at 955).

Nor have Plaintiffs shown that Illinois's list maintenance has caused a consequent "drain[] on their resources" that "displace[s] other projects they normally undertake." *Lawson*, 937 F.3d at 950–52 (quoting *Crawford v. Marion Cnty. Election Bd.*, 472 F.2d 949, 951 (7th Cir. 2007)). While "alleging an injury doesn't require a diversion of resources to an entirely different topic," it "does require the organization to have undertaken activities outside its usual or normal work." *Hunter Props.*, 2024 WL 4346615, at *9 (citing *Lawson*, 937 F.3d at 954–55). Like in the first complaint, "IFA and [BI] do not allege that the State Defendants' actions have forced them to spend time and money to amend and adapt their public education or outreach." Order at 14 (citing *Lawson*, 937 F.3d at 951–52). And while BI now alleges that it "relie[s] more heavily on social media and billboards than [it] otherwise would" because of "relatively higher costs of mailings and door-to-door programs," Am. Compl. ¶ 101, it was not "forced" to do this. There are no allegations that

these activities "add[ed] to" BI's "workload," came at the expense of "ceas[ing] other activities," constituted an "overhaul" of its strategy, or qualify as "something entirely new." *Hunter Props.*, 2024 WL 4346615, at *8–10 (quoting *Lawson*, 937 F.3d at 954–55). Neither do Plaintiffs actually allege that they were forced to "combat" Illinois's list-maintenance efforts by "displac[ing] other projects they normally undertake." *Lawson*, 937 F.3d at 952. Even BI's allegation that it "did not have enough money to air its radio show in December 2024" is not what it seems: Plaintiffs acknowledge the radio show did air. *See* Am. Compl. ¶ 109. And while BI says it once "cut" a promotional radio spot, it conspicuously avoids linking it to Illinois's list-maintenance procedures, instead attributing it to "across the board" budget tightening. *See id.*

This case is markedly different from *Crawford* and *Lawson*. In "both those cases," the Seventh Circuit found the organizations had standing "because the laws at issue affected their members' ability to vote and as a consequence forced the organizations to devote resources to counteracting the effects of the laws." *Vos*, 966 F.3d at 587. Their new activities were aimed at "cleaning up the mess" and "rolling back the effects" of the state's action. *Lawson*, 937 F.3d at 951. But here, Plaintiffs' decisions to supplement their voter-outreach efforts through other conventional means is not "alleviat[ing]" or "counteracting" any "harmful effects of" Illinois's list-maintenance. *Id.* at 952. They are simply baseline work for organizations of this type. *See id.* at 955; *Hunter Props.*, 2024 WL 4346615, at *9.

Nor can Plaintiffs plead their way around this Circuit's binding organizational-standing precedent by reframing their injuries as "economic" losses. *See* Am. Compl. ¶¶ 93, 123. As the Seventh Circuit explained in *Vos*, these types of "financial burden[s]" do not constitute an "injury in fact" because they are part of the organization's "ordinary program cost[s]." 966 F.3d at 587 (citing *Lawson*, 937 F.3d at 955). Moreover, while a "consumer who is hoodwinked into

purchasing a disappointing product may well have an injury-in-fact cognizable under Article III," *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014), Plaintiffs do not allege that they "overpa[id] for a product that underdelivers," *Brodsky v. Aldi Inc.*, 2021 WL 4439304, at *3 (N.D. Ill. Sept. 28, 2021). Indeed, they do not even allege that they pay the State for the lists, or that they purchased them understanding there would not be inaccuracies. Instead, Plaintiffs assert that using lists "based on" Illinois's "official voter list" is "the least expensive way" to target voters, Am. Compl. ¶¶ 86, 116, but choosing to use a product that relies on data required to include some ineligible voters does not give Plaintiffs an injury that allows them to sue the data's originator because the derived product is not perfectly tailored to their needs.

In sum, Plaintiffs have not sufficiently alleged an injury-in-fact.

ii. Plaintiffs fail to satisfy the traceability or redressability requirements.

Plaintiffs also fail to satisfy Article III's separate requirement that they allege plausible facts establishing that their injuries are traceable to the State Defendants' actions. First, Illinois's list-maintenance efforts are not directed at Plaintiffs, and allowing Plaintiffs through the courthouse doors with such a tenuous connection to the violations they challenge would constitute an unprecedented and limitless theory of standing. Second, and in any event, the cause of the "harms" that Plaintiffs complain of—incorrect voter data—are not traceable to any statutory violation of the NVRA; instead, they are entirely consistent with its proper administration.

FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367 (2024), provides reason to reject Plaintiffs' Article III theories. There, medical associations and doctors theorized that the "FDA's relaxed regulation of mifepristone" would "cause downstream economic injuries to" them. *Id.* at 386. The Supreme Court found that those theories could not sustain standing because they "suffer[ed] from . . . a lack of causation." *Id.* at 390. The Court observed that, if those plaintiffs

could sue, then so could "police officers" to "challenge a government decision to legalize certain activities . . . associated with increased crime," and "[t]eachers in border states . . . to challenge allegedly lax immigration policies that lead to overcrowded classrooms." *Id.* at 392. That "unchartered path" would "not end until virtually every citizen had standing to challenge virtually every government action that they do not like—an approach . . . flatly inconsistent with Article III." *Id.* Moreover, there is a key difference when a plaintiff's injury "arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*," and when the "plaintiff is *himself* an object of the action (or forgone action) at issue." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992) (emphases added). When plaintiffs are "not [] the object of the government action," standing is "'substantially more difficult' to establish." *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)); *see also Vos*, 966 F.3d at 586–87.

Plaintiffs' theories suffer from each of these fatal defects. The NVRA serves to "enhance[] the participation of eligible citizens as voters" and "to protect the integrity of the electoral process." 52 U.S.C. § 20501(b). It does not entitle Plaintiffs to perfect voter rolls to use to engage in their political advocacy efforts. When Plaintiffs rely on the State's lists to aid their political activities, they must take them as they come. Allowing Plaintiffs to sue over "downstream economic injuries" from state action that does "not require[] the plaintiffs to do anything or to refrain from doing anything" would allow "virtually every citizen . . . to challenge virtually every government action that they do not like." *All. for Hippocratic Med.*, 602 U.S. at 385–86, 392.

Not only are Plaintiffs *themselves* disconnected from Illinois's NVRA-related efforts, their asserted "harms" are not traceable to any violation by State Defendants. That there are voters who have moved but remain on the rolls does not mean Illinois is violating the NVRA. It is the *opposite*: unless a voter who moves expressly requests removal, the NVRA *requires* Illinois to keep them

on the rolls for at least two election cycles. *See* 52 U.S.C. § 20507(d). The fact that BI, IFA, or the candidates they donate to may sometimes send mail to an out-of-date address or knock on the wrong door is thus not traceable to any alleged violation of the NVRA. And, for the same reason, Plaintiffs do not satisfy the redressability requirement: ordering Defendants to comply with the NVRA will not mean that Plaintiffs will no longer send undeliverable mail and knock on the wrong doors based on the list—or will not need to try to reach voters in other ways to be effective.

Separately, it is unclear from Plaintiffs' own allegations how any difficulties reaching voters are the result of incorrect lists, NVRA violation or not. Unanswered doors at "a large" "percentage of addresses," Am. Compl. ¶ 97, do not mean that those voters moved; they may not be home or be generally averse to meeting strangers at the door. IFA's allegation that it "is able to reach fewer voters by means of [] automated calls," *id.* ¶ 119, is missing a critical allegation that any of its "automated telephone calls" were made in error. *Id.* ¶ 118. Likewise, BI's allegation that "many" of its "email checks" are "likely . . . inaccurate," *id.* ¶ 111, is based on rank speculation: it bases that belief not on observations surrounding its email checks, but on an undisclosed rate of returned *paper* mailings. But there are many reasons why mail may be returned as undeliverable, including mistakes at the Post Office and typographical errors in addresses. *See Plotkin*, 239 F.3d at 886 (rejecting theory of standing where there were "necessarily many outside unknown influences affecting . . . [the] concepts advanced by plaintiffs").

At bottom, Plaintiffs ask the Court to find standing based on State action they are not the subject of; returned letters and unanswered doors familiar to anyone who has worked on political campaigns; allegations of outdated voter information consistent with the NVRA; and automatic calls and email checks that, by all indication, are working as designed. As in *Alliance for Hippocratic Medicine*, "[t]he chain of causation is simply too attenuated." 602 U.S. at 391.

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

To sufficiently state a claim upon which relief may be granted, a plaintiff must "allege facts 'plausibly suggesting (not merely consistent with)' a valid grievance." *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 471 (7th Cir. 2020) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Plaintiffs have not substantively amended any of their allegations related to the merits of their list-maintenance claim. Accordingly, as with the original complaint, Count I must be dismissed under Rule 12(b)(6) because it fails to state a plausible violation of the NVRA.

Plaintiffs ignore or mischaracterize the steps election officials must take under Illinois law to comply with the NVRA. *See* Am. Compl. Ex. 2, ECF 70-2; 10 ILCS 5/1A-16.8(a)–(c). For example, Plaintiffs insinuate that Illinois is falling short because being "a member of ERIC does not ensure compliance with the NVRA." Am. Compl. ¶ 70. But Illinois does not rely exclusively on ERIC to identify voters who have moved; officials also cross reference the voter registration list against other databases—including the National Change of Address ("NCOA") database and USPS data—at least six times a year. 10 ILCS 5/1A-16.8(a)–(b). Plaintiffs also misconstrue Illinois law in claiming that it "merely" requires the Board to "share[]" data about voters who move with local election authorities who are "left to" confirm matches and make updates to voter records. Am. Compl. ¶ 74. But, as the Board has explained, local election authorities "*must* [] confirm any matches and make the required updates to the applicable voter records," Am. Compl. Ex. 2 (emphasis added), including "cancellation of the voter's previous registration." 10 ILCS 5/1A-16.8(c). Plaintiffs fail to plausibly allege that this process falls short of a "reasonable effort" under the NVRA to remove ineligible voters.[1]

[1] In fact, Illinois's system is consistent with the NVRA's "safe harbor" provision by which a state may fulfill their list-maintenance obligations by "establishing a program under which . . . change-

Instead, Plaintiffs jump to the conclusion that election officials are violating the NVRA in practice by "manifestly failing to remove ineligible residents from the voter rolls." Am. Compl. ¶ 76. But "in the absence of clear evidence to the contrary, courts [are to] presume that [public officials] have properly discharged their official duties." *Hebrard v. Nofziger*, 90 F.4th 1000, 1009 (9th Cir. 2024) (alterations in original) (quoting *United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926)). "This presumption of regularity applies equally to a state official's compliance with state law." *Id.* (citing *Nieves v. Bartlett*, 587 U.S. 391, 400 (2019)). Where a claim depends on the conclusion that a state official violated state law, a plaintiff must allege facts supporting that conclusion to state a claim. *See id.* Plaintiffs fail to do so.

Plaintiffs do not point to a single erroneous entry on Illinois's voter rolls. Instead, their list-maintenance claim is based on cherry-picked data points from the 2022 EAVS.[2] Plaintiffs focus on the number of voters Illinois counties reported removing under Section 8(d)(1)(B) of the NVRA, which allows—but does not require—a state to remove a voter from the rolls if that voter is sent an address-confirmation notice, fails to respond, and does not vote in the next two federal elections. *See* 52 U.S.C. § 20507(d)(1)(B).

The fundamental flaw with this approach is that the EAVS data Plaintiffs rely on covers

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of-address information supplied by" USPS "through its licensees is used to identify registrants whose addresses may have changed" and a local registrar confirms this change before cancellation. 52 U.S.C. § 20507(c)(1); *see also A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 703 n.2 (6th Cir. 2016) (explaining the NCOA Process, which is "one way in which states 'may' comply with their obligation under the NVRA to identify and remove voters who are no longer eligible due to a change of residence," "is sometimes referred to . . . as the 'Safe-Harbor Process'" (citation omitted)), *rev'd on other grounds*, 584 U.S. 756 (2018).

[2] The NVRA tasks the EAC with publishing an election report assessing the impact of the NVRA, 52 U.S.C. § 20508(a)(3), and federal regulations require states to provide specific statewide election data to be included in this report, 11 C.F.R. § 9428.7(b). The EAC obtains such data from the states using the EAVS, and the EAC publishes the EAVS data alongside its final report. Each EAVS report covers a single two-year period between federal general elections.

only a two-year period—*i.e.*, removals that occurred between the 2020 and 2022 general elections—and the NVRA *forbids* removing a voter due to a possible change in residence until they fail to vote in at least two federal general elections—a lag period that necessarily takes longer than two years and can take up to *four years*. *See* 52 U.S.C. § 20507(d).[3] That is why federal courts have warned that an "EAVS snapshot" can "in no way be taken as a definitive picture of what a county's registration rate is, 'much less any indication of whether list maintenance is going on and whether it's . . . reasonable.'" *Bellitto*, 935 F.3d at 1208 (alteration in original). Nonetheless, Plaintiffs rely almost exclusively on an EAVS snapshot to support their claim that the removal numbers alleged in the amended complaint are "absurdly small." Am. Compl. ¶ 31.

With their myopic focus on the 2022 EAVS data on Section 8(d)(1)(B) removals, Plaintiffs miss the forest for the trees. Each of the 23 counties Plaintiffs claim removed 15 or fewer voters under Section 8(d)(1)(B), *see* Am. Compl. ¶¶ 28–29, reported removing *at least* several hundred voters under the separate sub-category for "moved outside of jurisdiction"—reporting a combined total of nearly 52,000 removals for that reason.[4] *None* reported removing zero voters who became ineligible after moving. Accordingly, Plaintiffs' claim that State Defendants are not "actually remov[ing]" ineligible residents, *see* Am. Compl. ¶ 75, is both implausible and belied by the data.

Viewed as a whole, the EAVS data shows that Illinois regularly removes tens of thousands

[3] Nor does the NVRA require a voter's removal immediately after they fail to vote in two consecutive federal general elections; it merely *prohibits* removal before that has occurred. *See* 52 U.S.C. § 20507(b)(2). Thus, a county reporting few, or even zero, Section 8(d)(1)(B) removals in a single two-year period can be entirely consistent with the NVRA, if the state's efforts, overall, constitute a "reasonable effort" to remove voters based on a change in residence. *Id.* § 20507(a)(4).

[4] *See* U.S. EAC, EAVS Datasets Version 1.1 (Dec. 18, 2023), available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys ("EAVS Data"); *see also* U.S. EAC, 2022 Election Administration and Voting Survey Instrument (June 2023), available at https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf ("2022 EAVS") (last accessed Jan. 15, 2025) (cited by Plaintiffs at Am. Compl. ¶¶ 24–25).

of individuals whose addresses have changed. Such trends cannot plausibly support an inference that Illinois has failed to make a reasonable effort to cancel the registrations of Illinois voters who have moved. While the Court "must make reasonable inferences in Plaintiffs' favor," "bald assertions" like Plaintiffs' allegations "will not overcome a [motion to dismiss]." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005) (cleaned up).

None of Plaintiffs' attempts to contextualize the EAVS data plausibly support their claims. First, they compare the number of Section 8(d)(1)(B) removals reported by different counties in 2022. Am. Compl. ¶¶ 45–46. But because counties are not required to remove any voters under this provision at any specified time, they certainly are not required to do so on the same schedule as other counties. Plaintiffs' allegation that the EAVS data demonstrates "15 Illinois jurisdictions have more voter registrations than citizens of voting age," Am. Compl. ¶ 79, contradicts the 2022 EAVS Report itself, which warns that its data on registered and eligible voters "should be used with caution, . . . because the removal process laid out by the NVRA can take up to two elections cycles to be completed." U.S. EAC, Election Admin. & Voting Survey 2022 Comprehensive Rep. at 140 (June 2023). Thus, courts have found that the EAVS data on voter registration rates, "without more, does not" provide a meaningful inference of "non-compliance with the NVRA." *Jud. Watch, Inc. v. North Carolina*, 2021 WL 7366792, at *10 (W.D.N.C. Aug. 20, 2021).

Plaintiffs' attempt to compare the EAVS data on total registrations to data produced by the U.S. Census Bureau to estimate the current population of several Illinois counties, *see* Am. Compl. ¶ 79, also runs headlong into caselaw rejecting the same theory. As the Eleventh Circuit recognized, that data may "significantly underestimate[] the population" of a county because it "asks who has resided in the household in the two-month period" preceding the survey, thereby "exclud[ing] many college students, military personnel" and others who may not reside in an area

for the full year. *Bellitto*, 935 F.3d at 1208; *see also Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021) (finding Judicial Watch's similar allegations "implausible for several reasons"). The Census Bureau itself has cautioned that "[d]ue to the variance inherent in survey estimates," it "do[es] not recommend combining survey data from the [Census Bureau's American Community Survey] with administrative record data, such as those produced as part of voter tallies."[5] Yet Plaintiffs do just that in their amended complaint, despite the Census Bureau's warning that "the margin of error could be around 90 percent." *Id.*

Lastly, Plaintiffs allege that certain counties reported "data not available" to certain survey questions, and in their "experience," these isolated omissions "suggest[] non-compliance with the NVRA." Am. Compl. ¶ 40. This is nothing more than a thinly veiled suggestion that counties are covering up non-compliance with federal law by concealing data. But besides alluding to their own "experience," Plaintiffs offer no support for these allegations and do not even *attempt* to identify any specific county that chose not to report available data because it would reveal non-compliance with the NVRA. Such "unwarranted deductions of fact are not admitted as true in a motion to dismiss." *Aldana*, 416 F.3d at 1248 (cleaned up).

Plaintiffs' allegations, taken together, fail to demonstrate that any removable voter has been left on the state's voter rolls or illustrate any systemic issue plaguing Illinois's list-maintenance efforts. The single two-year snapshot on which they rely cannot and does not demonstrate a failure to make a reasonable effort to remove voters after the statutorily required waiting period. Nor does the purported context Plaintiffs supply transform the EAVS snapshot they rely on into a plausible inference that Illinois has violated the NVRA. Without more, they have failed to state a claim.

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[5] Kurt Hildebrand, *Republican National Committee names Douglas in voter roll lawsuit*, TAHOE DAILY TRIB. (Mar. 31, 2024), https://www.tahoedailytribune.com/news/republican-national-committee-names-douglas-in-voter-roll-lawsuit.

CONCLUSION

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

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Sarah F. Weiss, certify that on January 16, 2025, I electronically filed the foregoing **INTERVENOR-DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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

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