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

JUDICIAL WATCH, INC., et al.,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS, et al.,

Defendants.

Civil Action No. 1:24-cv-01867

Judge Sara L. Ellis

PLAINTIFFS' CORRECTED OPPOSITION TO MOTIONS TO DISMISS

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Plaintiffs Judicial Watch, Inc. ("Judicial Watch"), Illinois Family Action ("IFA"), Breakthrough Ideas ("BI"), and Carol J. Davis submit this corrected memorandum of law in opposition to the motions to dismiss filed by Defendant Illinois State Board of Elections and its Executive Director Bernadette Matthews and by Defendant-Intervenors the Illinois AFL-CIO and Illinois Federation of Teachers ("the Unions").

BACKGROUND

A. The National Voter Registration Act of 1993

Congress stated two purposes in enacting the National Voter Registration Act of 1993 ("NVRA" or the "Act"): first, to "increase the number of eligible citizens who register to vote" and "enhance[]" their "participation … as voters in elections for Federal office"; and second, "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). The NVRA seeks to increase voter participation in several ways. It mandates, for example, that offices providing public assistance accept voter applications, and that applications for driver's licenses also serve as registration applications (giving the law its popular name, "Motor Voter"). 52 U.S.C. §§ 20504, 20506.

The NVRA's second stated purpose, ensuring election integrity and accurate, current voter rolls, is embodied in Section 8, which is the subject of this lawsuit. 52 U.S.C. § 20507. It requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" a registrant's death or change in residence. *Id.* § 20507(a)(4). It requires a state-designated "chief State election official to be responsible for coordination of State responsibilities" under the Act. *Id.* § 20509. And it requires states to retain and provide "all records concerning the implementation of programs and activities conducted" to ensure "the accuracy and currency of official lists of eligible voters." *Id*. § 20507(i).

The NVRA provides that the registrations of those who have moved out of a jurisdiction may only be cancelled in two ways. First, those who confirm a change of address in writing are removed from the rolls. 52 U.S.C. § 20507(d)(1)(A). Second, registrants who have been sent a "postage prepaid and pre-addressed return card" by forwardable mail asking them to confirm their address (the "Confirmation Notice"), who fail to respond to that notice, and who then fail to "vote[] or appear[] to vote" for two general federal elections—basically, a period of from two to four years—are removed from the rolls. *Id.* § 20507(d)(1)(B), (d)(2). A registrant who fails to respond to a notice is designated "inactive" for the duration of that statutory waiting period of two to four years. 11 C.F.R. § 9428.2(d). Such a registrant may still vote during that period, which stops the NVRA removal process and returns the voter to "active" status. 52 U.S.C. § 20507(e). But unless that happens, states have no discretion about removing a registration once the inactive period is over. To the contrary, "federal law makes this removal mandatory." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018) (citations omitted).

States may define the events that trigger sending Confirmation Notices to start this process, and "States take a variety of approaches." *Husted*, 584 U.S. at 762 (citation omitted). One approach, the so-called "safe harbor," is set out in Section 8(c), which provides that states "may" meet the "reasonable effort" requirements of Section 8(a)(4) "by establishing a program" using "change-of-address information supplied by the Postal Service" to identify registrants who may have moved. 52 U.S.C. § 20507(c)(1)(A). Registrants identified this way are then sent Confirmation Notices. *Id.* § 20507(c)(1)(B)(ii). As discussed below, a safe harbor program only complies with the NVRA if it is actually used to identify and remove registrants. The safe harbor has no application to any Illinois program to cancel the registrations of those who have died.

Depending on when a violation occurred, a person aggrieved by a violation of the NVRA

may provide written notice to a state's chief election official either 90 or 20 days before bringing a civil suit. 52 U.S.C. § 20510(b)(1), (2). No notice is necessary, however, if a violation occurs within 30 days prior to a federal election. *Id.* § 20510(b)(3).

B. Election Assistance Commission's Election Administration and Voting Survey

The U.S. Election Assistance Commission ("EAC") was created by the Help America Vote Act of 2002 ("HAVA"), to be an independent agency of the federal government. Its mission is to help election officials improve the administration of elections and help Americans participate in the voting process. In June of each odd-numbered year, the EAC is required by law to report to Congress its findings relating to state voter registration practices. 52 U.S.C. § 20508(a)(3). Federal regulations require states to provide various kinds of NVRA-related data to the EAC for use in its biennial report, specifically including the "total number of registered voters statewide" in the most recent elections, "including both 'active' and 'inactive' voters"; the "total number of registrations statewide that were, for whatever reason, deleted from the registration list" between the last two elections; and the "statewide number" of Confirmation Notices mailed, and responses received, between the last two elections. 11 C.F.R. § 9428.7(b)(1), (2), (4), (5), (8).

On June 29, 2023, the EAC published its biennial, NVRA-related report, titled, "Election Administration and Voting Survey 2022 Comprehensive Report, A Report from the U.S. Election Assistance Commission to the 118th Congress. Along with this report, the EAC published the responses it received to a voter registration survey it sent to the states. States, in consultation with their own county and local officials, certified the answers to this voting survey directly to the EAC.[1]

C. Defendants Illinois State Board of Elections and Bernadette Matthews

[1] *See* ECF 80-2 at 251 (discussing certification process).

Defendant Illinois State Board of Elections is an independent state agency created under the laws of the State of Illinois. ECF 70 ¶ 8. Under Illinois law, it has "general supervision over the administration of the registration and election laws throughout the State." 10 ILCS 5/1A-1. Its powers and duties include: "(2) Disseminat[ing] information to and consult[ing] with election authorities concerning the conduct of elections and registration …"; "(6) Requir[ing] such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary"; "(7) Review[ing] and inspect[ing] procedures and records relating to conduct of elections and registration as may be deemed necessary, and [] report[ing] violations of election laws …"; "(9) Adopt[ing], amend[ing] or rescind[ing] rules and regulations in the performance of its duties …"; and "(12) Supervis[ing] the administration of the registration and election laws throughout the State." 10 ILCS 5/1A-8. The State Board may delegate its duties or functions, but Illinois law provides that "final determinations and orders under this Article shall be issued only by the Board." *Id*. It also provides that the "centralized statewide voter registration list required by [HAVA] shall be created and maintained" by the State Board. 10 ILCS 5/1A-25.[2]

Defendant Bernadette Matthews is the Executive Director of the Illinois State Board of Elections and the Chief State Election Official of the State of Illinois. *Id.* ¶ 9. The NVRA requires each state to select a "chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. Illinois has designated the Executive Director of the State Board as this official. 26 Ill. Adm. Code § 216.100(b). Illinois law empowers the Executive Director to "issue such opinions or directions as he or she deems necessary to insure that" the NVRA and provisions of the Illinois Administrative Code dealing with voter registration "are implemented uniformly throughout Illinois." *Id*. § 216.100(c).

[2] HAVA requires the centralized statewide voter registration list to be updated to remove ineligible registrants "in accordance with" Section 8 of the NVRA. 52 U.S.C. § 21083(a)(2)(A)(i).

D. Plaintiff Breakthrough Ideas

Plaintiff Breakthrough Ideas, or BI, is non-profit policy advocacy and education network incorporated under the laws of Illinois and headquartered in Wheaton, Illinois. ECF 70 ¶¶ 6, 83. Its core activities include engaging in public advocacy and education about its core issues, persuading voters to support favored policies and candidates, setting up targeted mailings and door-to-door visits for political groups and candidates who work with BI, and contributing funds directly to candidates it prefers. *Id*. ¶ 85. BI must, therefore, make hard choices about how it will use its resources in furtherance of these core activities. *Id*. ¶ 84.

With its limited budget, BI purchases voter lists that are derived from Illinois' official voter list. ECF 70 ¶ 86. The state's voter list "is always the least expensive way for cash-strapped causes or candidates to reach out to voters." *Id*. If Illinois complied with the NVRA's voter list maintenance requirements, the list could also be one of the most accurate ways to identify voters for outreach. But because Illinois has not complied with the NVRA, resulting in more outdated and ineligible registrations, it is harder for BI to conduct each of its core activities. *Id*. ¶ 87.

In particular, BI suffers direct, economic injuries because Defendants have failed to remove ineligible registrants from their voter rolls as required by the NVRA. BI, both on its own and working with political groups and candidates, engages in targeted mailing campaigns to Illinois voters. ECF 70 ¶¶ 88-89. In BI's experience, every mailing campaign based on Illinois' voter list has resulted in a significant proportion of mailings returned as undeliverable because addressees no longer reside at the listed addresses. *See id*. ¶ 91. In light of all the allegations discussed in the Amended Complaint (and below) describing Defendants' failure to remove ineligible registrants who have moved, it is clear that a large number of the bad addresses on Illinois' voter list are due to poor list maintenance. As a result, BI currently suffers out-of-pocket, monetary losses due to

Defendants' neglect of their NVRA responsibilities. *Id.* ¶¶ 92-93.

BI, by itself and working with political groups and candidates, also hires individuals to visit voters' homes. ECF 70 ¶ 94. This means of contacting voters also relies on voter addresses from Illinois' voter list. *Id*. ¶ 95. These "walk programs" have resulted in a significant proportion of visits where the identified voter did not respond or was not at the address. *Id*. ¶¶ 96-97. Just as with BI's targeted mailings, the proportion of failed home visits is higher because of Illinois' failure to conduct NVRA-required voter list maintenance. *Id.* ¶ 99. Therefore, BI has suffered additional economic injuries by paying walkers to visit voters who were no longer at a listed address—something that happens more often because Illinois has not complied with the NVRA's voter list maintenance requirements. *Id.* ¶¶ 92-93.

Because inaccuracies in Illinois' voter list have made mailings and home visits more expensive and less effective, BI has been forced to divert resources to social media and billboards to conduct their core activities. ECF 70 ¶¶ 99-100. These means of communication, however, are less effective. Social media often fails to reach older members of the public, who are often among the most active and financially able voters. *Id.* ¶ 102. Billboards only reach those who drive by them, regardless of voter status, and even then only for a glance, meaning that the opportunities for BI to engage in meaningful advocacy and education are severely limited. *Id.* ¶ 103. In sum, BI must spend time and money on broad communication channels in the hope of contacting voters because its targeted means of doing so have been rendered less effective by Illinois' failure to comply with the NVRA's voter list maintenance requirements.

For an organization the size of BI, with only three full-time employees and one part-time employee (ECF 70 ¶ 84), with its limited budget, these economic losses have had consequences. In furtherance of its core activities, BI has used radio to educate the public about its core principles.

See ECF 70 ¶ 109. But BI recently had to forgo a promotional radio spot called "Reveille," a short policy discussion each morning. *Id.* And BI did not have enough money to air its radio show in December 2024. *Id.* The radio show was only preserved for the month when BI's president decided to "self-fund," meaning that she contributed her own money to keep the show on the air, without any guarantee or promise of reimbursement. *Id.*

Finally, the inaccurate addresses on Illinois' voter rolls impair BI's ability to conduct an "email check" on friendly emails, to ensure that they are from Illinois voters, and to allow BI to respond with local issues and candidates likely to interest that person. *Id*. ¶ 111.

E. Plaintiff Illinois Family Action

Illinois Family Action, or IFA, is a non-profit political advocacy and lobbying organization, incorporated under the laws of Illinois, headquartered in Tinley Park, Illinois, and dedicated to advancing specific core principles in the public arena. ECF 70 ¶ 112. In furtherance of its mission, IFA engages in public advocacy and education and endorses and supports like-minded candidates. *Id.* ¶ 114-15. Its core activities, therefore, include contacting voters to encourage them to support IFA-aligned causes and political candidates through contributions, volunteer work, and voting. *Id.* ¶ 115. Because IFA has a limited budget and no full-time employees, it must make hard choices about how to use its limited resources. *Id.* ¶ 113.

Like BI, IFA purchases voter lists that are derived from Illinois' official voter list, which is always the least expensive way to reach out to voters. ECF 70 ¶ 116. These voter lists should be one of the more accurate ways to identify voters; however, they are not because Illinois' voter rolls contain more outdated and ineligible registrations than they would if Defendants complied with Section 8(a)(4) of the NVRA. *See id*. ¶ 117. As a result, Illinois has made IFA's ability to engage in its core activities more difficult and more expensive.

Because of Illinois' failure to comply with the voter list maintenance requirements of the NVRA, IFA is suffering economic injury. IFA uses a telephone call service to make automated telephone calls to deliver recorded messages about issues or candidates that IFA supports. ECF 70 ¶ 118. To target voters for these telephone calls, IFA purchases voter lists derived from Illinois' official voter list. *See id.* But because of Illinois' failure to conduct NVRA-required voter list maintenance, IFA is unable to reach as many voters from the lists they purchased than they otherwise should. *See id.* ¶ 119. Illinois' failure to conduct NVRA-required voter list maintenance has also impaired ability to conduct its core activities. *Id*.

Like BI, IFA periodically engages in mailing campaigns targeted to Illinois voters. *See* ECF 70 ¶ 120. A significant proportion of IFA's mailings are returned as undeliverable because the addressee no longer resides at the address derived from Illinois' official voter list. *See id*. ¶ 121. Like BI, IFA suffers direct, economic injury by purchasing non-NVRA compliant voter lists and by relying on the addresses they contain to send mail to voters who no longer reside at the listed address—which happens more frequently than it should because Illinois has not complied with the NVRA's voter list maintenance requirements. *Id.* ¶¶ 122-24.

F. Plaintiff Carol Davis

Plaintiff Carol Davis is a resident of Illinois, a lawfully registered voter in DuPage County, and a member of Judicial Watch. ECF 70 ¶ 7. For the last ten years, she has been a dedicated political actor, being a member of, or serving as a volunteer or officer in, a variety of political organizations. ECF 70 ¶ 125. This includes serving as the chairman of the Illinois Conservative Union (*id.*) and as a poll watcher, poll worker, and election judge in DuPage County. *Id.* ¶ 127. Ms. Davis' commitment to Illinois' political process and the integrity of its elections has made her a keen observer of the state's voter list maintenance program. *Id.* ¶ 129.

Through her work with political organizations and her service to DuPage County voters, Ms. Davis has become aware of problems affecting Illinois' official voter list. ECF 70 ¶ 126. For instance, while serving in DuPage County's polling places, she has observed instances where clearly invalid voter registrations remained on the voter rolls. *Id*. ¶ 130. Among other things, she is aware of several reports of possibly deceased registrants voting and requesting mail ballots in Illinois's 2016 and 2020 general elections. *Id.* ¶ 130; *see id*. ¶ 128. Unsurprisingly, these reports, combined with Defendants' failure to maintain accurate and current voter registration lists, has undermined Ms. Davis' confidence in the integrity of Illinois' electoral process. *Id.* ¶ 131.

G. Plaintiff Judicial Watch

Plaintiff Judicial Watch is a not-for-profit educational organization based in Washington, DC. ECF 70 ¶ 4. Its mission is to promote transparency, integrity, and accountability in government and fidelity to the rule of law. *Id.* ¶ 132. The organization fulfills its mission through public records requests and litigation, among other activities. *Id*.

Judicial Watch is supported in its mission by hundreds of thousands of individuals across the nation. ECF 70 ¶ 133. An individual becomes a member by making a financial contribution to the organization in any amount. *Id.* Members' contributions are by far the single most important source of income to Judicial Watch and provide the means by which the organization finances its activities in support of its mission. *Id.* Judicial Watch in turn represents the interests of its members. *Id*.

Over the past several years, Judicial Watch's members, including Plaintiff Carol J. Davis, have become increasingly concerned about the state of the nation's voter registration rolls and whether state and local officials are complying with the NVRA's voter list maintenance obligations. ECF 70 ¶ 134. They are concerned that failing to comply with the NVRA's voter list

maintenance obligations impairs the integrity of elections by increasing the opportunity for ineligible voters, or voters intent on fraud, to cast ballots. *Id.* In response to these concerns, Judicial Watch commenced a nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations. *Id.* ¶ 135. As part of this program, Judicial Watch utilizes public records laws to request and receive records and data from jurisdictions across the nation about their voter list maintenance efforts. *Id*. It analyzes these records and data and publishes the results of its findings to these jurisdictions, its members, and the general public. *Id*.

Defendants' failure to comply with their NVRA voter list maintenance obligations burdens the voting rights of individual members of Judicial Watch who are registered to vote in Illinois, including Ms. Davis, by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted by ineligible votes. ECF 70 ¶ 136. Protecting the voting rights of its members is germane to Judicial Watch's mission, and well within the scope of the reasons why members of Judicial Watch join the organization. *Id.* ¶ 137.

On August 4, 2023, Judicial Watch sent a letter to Defendant Bernadette Matthews as Illinois' chief election official regarding data that Defendant Illinois State Board of Elections had reported to the EAC. ECF 70 ¶ 52. This data indicated that, over a two-year measuring period, 23 Illinois counties reported removing 15 or fewer registrants under the NVRA's notice-and-waiting-period procedure, with 11 of those counties reporting *zero* such removals during that time. *Id.* ¶¶ 28-29. Judicial Watch asked Ms. Matthews 1) to confirm the accuracy of data reporting low removals by 23 counties and, if it was not accurate, to supply correct data; 2) to supply the missing county or city-level data about Section 8(d)(1)(B) removals, Confirmation Notices, and inactive registrations; and 3) to provide public data pursuant to Section 8(i) of the NVRA, including a list

"of the names and addresses of all persons to whom [Confirmation Notices] were sent, and information concerning whether or not such person responded to the notice." *Id.* ¶¶ 52-53.

Defendants Illinois State Board of Elections and Ms. Matthews, through counsel, responded by letter on September 1, 2023, informing Judicial Watch that Defendants were not obligated to respond to its requests. ECF 70 ¶ 55. In addition, Ms. Matthews admitted that the State Board "does not have access to local election authorities' list maintenance records," adding that "[a]ny request for more information regarding specific jurisdiction's list maintenance activities and/or [EAVS] survey statistics should be made [] directly to the local election authority." *Id.* ¶ 56. This was because, according to Ms. Matthews, "local election authorities, not [the State Board] maintain lists of all voters to whom a forwardable confirmation address notice has been sent." *Id.* ¶ 57. With respect to Judicial Watch's specific request for the Confirmation Notice lists, Defendants admitted that the Illinois State Board of Elections "does not possess documents responsive to this request, as explained above." *Id.* ¶ 58.

As discussed below, the Amended Complaint alleges that (1) Defendants have failed to implement the NVRA's required "general program that makes a reasonable effort" to remove voters who have moved or died; (2) Defendant Matthews has failed in her duty as Illinois' chief State election official to coordinate state responsibilities under the Act; and (3) Defendants have failed to retain and provide NVRA-related records as required by law. The support for these allegations derives primarily from Defendants' admissions to the EAC's biannual survey and in their correspondence with Plaintiffs. *See* ECF 70 ¶¶ 24-51, 54-58; 52 U.S.C. § 20508(a)(3); 11 C.F.R. § 9428.7. Defendants have moved to dismiss, arguing that Plaintiffs lack standing, that the Eleventh Amendment bars claims against Defendant Illinois State Board of Elections, and that the complaint fails to state a claim. ECF 80-1. Defendant-Intervenors ("the Unions"), have also moved

to dismiss on substantively similar grounds. ECF 77. These motions should be denied.

STANDARDS ON A MOTION TO DISMISS

"When examining a motion to dismiss, [courts] accept as true all well-pleaded facts in the complaint and draw reasonable inferences in favor of the plaintiff." *KAP Holdings, LLC v. Mar-Cone Appliance Parts Co*., 55 F.4th 517, 523 (7th Cir. 2022) (citation omitted). "To avoid dismissal, the complaint must state a claim to relief that is plausible on its face." *Id*. (citations and internal quotations omitted). However, a "complaint does 'not need detailed factual allegations,' but … 'enough to raise a right to relief above the speculative level.'" *Mack v. Resurgent Cap. Servs., L.P*., 70 F.4th 395, 405 (7th Cir. 2023) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A complaint may meet this standard by pleading enough factual matter (taken as true) 'to raise a reasonable expectation that discovery will reveal evidence of' a necessary element of the claim." *Id*. (quoting *Twombly*, 550 U.S. at 556).

In making this determination, "[t]he allegations in the Complaint must be viewed in context," and "read together." *Babcock v. Lakin*, No. 21-cv-268, 2022 U.S. Dist. LEXIS 21732, at *9 (S.D. Ill. Feb. 7, 2022). *See Doe v. Purdue Univ*., 928 F.3d 652, 670 (7th Cir. 2019) ("Taken together, [the plaintiff's] allegations raise a plausible inference" of a Title IX claim); *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 46 n.13 (2011) (allegation "in combination with the other allegations, is sufficient to survive a motion to dismiss" a securities claim); *SoftView LLC v. Apple Inc*., No. 10-389, 2012 U.S. Dist. LEXIS 104677, at *16-17 (D. Del. July 26, 2012) (while "none of the allegations standing alone adequately alleges" knowledge of patents, the plaintiff "has not merely alleged only one of these inadequate allegations, but all three. Taken in combination," they showed a "plausible basis").

To determine "whether a complaint adequately pleads the elements of standing, courts

apply the same analysis used to review whether a complaint adequately states a claim," namely, they "'accept as true all material allegations of the complaint, and … construe the complaint in favor of the complaining party.'" *Silha v. ACT, Inc*., 807 F.3d 169, 173 (7th Cir. 2015) (citations omitted); *Spuhler v. State Collection Serv., Inc.*, 983 F.3d 282, 285 (7th Cir. 2020) ("a plaintiff may demonstrate standing by clearly pleading allegations that 'plausibly suggest' each element of standing when all reasonable inferences are drawn in the plaintiff's favor" (citations omitted)); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice" for standing).[3]

I. PLAINTIFFS HAVE ALLEGED STANDING TO BRING A CLAIM THAT DEFENDANTS HAVE NOT COMPLIED WITH SECTION 8(a)(4) OF THE NVRA

To have standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan*, 504 U.S. at 560-561). At the pleading stage, "the plaintiff must 'clearly … allege facts demonstrating' each element." *Id*. (citation omitted). An injury in fact is one where a plaintiff has "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (citing *Lujan*, 504 U.S. at 560). An injury may be "fairly traceable" even if it is not the "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997). "By particularized, we mean that the injury must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1.[4] "The Supreme Court has

[3] This is the standard that applies where a 12(b)(1) motion makes a "facial challenge" contending that jurisdictional allegations in the complaint are inadequate. *Silha*, 807 F.3d at 173. By contrast, a "factual challenge" argues that there is no jurisdiction in fact, "even if the pleadings are formally sufficient." *Id.* (citation omitted). The motions to dismiss here are facial challenges. Defendants and the Unions do not dispute, and filed no affidavits contesting, the truth of Plaintiffs' jurisdictional allegations, but only their adequacy.

[4] Defendants cite *Lujan* for its statement that "when the plaintiff is not himself the object of the

described a 'concrete' injury as an injury in fact, one that is real and not abstract, although it need not necessarily be tangible." *Mack*, 70 F.4th at 403 (quoting *Spokeo*, 578 U.S. at 339-40).

A. Plaintiffs BI and IFA have met the requirements for organizational standing[5]

To have standing, organizations, like individuals, "must satisfy the usual standards for injury in fact, causation, and redressability." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393-94 (2024) (citation omitted).

An organizational injury is typically characterized in two ways, either as a direct economic injury or as a diversion of resources. The distinction between these kinds of organizational standing was explained in *Republican Nat'l Comm. v. Wetzel*, 742 F. Supp. 3d 587 (S.D. Miss. 2024), *rev'd on other grds*., 120 F.4th 200 (5th Cir. 2024). The plaintiffs there included political parties who challenged a Mississippi law allowing ballots to be received and counted up to five business days after Election Day. *Id*. at 591. The plaintiffs claimed that the extended ballot receipt deadline forced them to spend additional funds after Election Day on ballot-chase, poll watching, and monitoring activities. *Id*. at 594-95. The court first discussed "direct standing" which "applies when the 'defendant's actions perceptibly impair the organization's activities and consequently drain the organization's resources.'" *Id*. at 592 (citations omitted). The court then observed that "[a]n organization's diversion of 'significant resources to counteract the defendant's conduct' will also satisfy this [injury-in-fact] requirement." *Id*. (citations omitted). The court ultimately found

government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." 504 U.S. at 562 (citations omitted). But the opinion was referring to cases where "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*," such that "causation and redressability … hinge on the response of the regulated (or regulable) third party to the government action or inaction[.]" *Id*. Here, Defendants are the regulated party, so these considerations do not apply.

[5] Unlike BI and IFA, Plaintiff Judicial Watch does not claim organizational standing to sue under Section 8(a)(4). It claims associational standing to sue under that provision (*see* point I.B *infra*), and standing to enforce Section 8(i) (as the Court already has determined, *see* ECF 69 at 17; point II *infra*).

that the parties had pleaded both kinds of standing, namely, "that they suffered concrete injuries in the form of economic loss *and* diversion of resources." *Id*. at 595 (emphasis added); *see id*. at 595-96 ("The injuries alleged by the political parties—economic injury as well as diversion of resources—in this case are specific to each party, such that these parties have shown they have a direct stake in the outcome of this lawsuit." (citations omitted)).[6]

In the Amended Complaint, Plaintiffs BI and IFA have pleaded both direct, economic injuries and injuries due to a diversion of resources.

1. BI and IFA have pleaded direct, economic injuries caused by Defendants' failure to fully comply with the NVRA

"[C]ertain harms readily qualify as concrete injuries under Article III. The most obvious are traditional tangible harms, such as … monetary harms." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (citing *Spokeo*); *Mack*, 70 F.4th at 406 (noting that "money damages are almost always found to be concrete harm" (citation omitted)); *see id*. at 407 (finding economic injury where plaintiff had to "fix[] the problem" that the defendant caused by devoting time and spending money to mail a letter). Even where losses are "slight … an 'identifiable trifle' suffices" for standing. *Craftwood II, Inc. v. Generac Power Sys. Inc.*, 920 F.3d 479, 481 (7th Cir. 2019) (citation omitted); *Jackson Mun. Airport Auth. v. Harkins*, 98 F.4th 144, 149 (5th Cir. 2024) (en banc) (Ho, J., concurring) (holding that "there's no *de minimis* exception to economic injury under Article III") (citations omitted).

In particular, a "political party's 'need to raise and expend additional funds and resources' satisfies the injury-in-fact requirement of organizational standing because 'economic injury is a

[6] While the district court found the plaintiffs had standing, it granted summary judgment to the defendants on the merits. 742 F. Supp. 3d at 601. This ruling was later reversed by the Fifth Circuit. In the course of this ruling the court of appeals confirmed that the plaintiffs had standing. *Wetzel*, 120 F.4th at 205 n. 3 ("Neither party disputes the plaintiffs' standing before this court. That is presumably because this case fits comfortably within our precedents." (citation omitted)).

quintessential injury upon which to base standing.'" *Wetzel*, 742 F. Supp. 3d at 592 (quoting *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006)). The Fifth Circuit's decision in *Benkiser* perfectly illustrates this principle. In that case, the Texas Democratic Party challenged a candidate's removal from the ballot pursuant to a state law allowing such a removal based on a party finding of ineligibility. The court held that the Party "has direct standing because [the candidate's] replacement would cause it economic loss. … [It] would suffer an injury in fact because it 'would need to raise and expend additional funds and resources to prepare a new and different campaign in a short time frame.'" *Id*. at 586 (citation omitted).

Plaintiffs BI and IFA are both small non-profits, who engage in voter outreach in furtherance of their core political activities. ECF 70 ¶¶ 85, 115. They both plead tangible, out-of-pocket monetary injuries in the form of increased costs of mailing, door-to-door visits, and voter telephone calls. These costs, which impair their core voter outreach efforts, are traceable to Defendants' failure to comply with the list maintenance provisions of the NVRA. If Defendants had complied with the NVRA's requirements, they would have removed more registrations belonging to voters who have changed residence—and BI and IFA would not waste as much money and resources trying to reach them at the wrong addresses.

Defendants and the Unions here say very little that is relevant to a claim of standing based on direct monetary harm. Cases they do cite concern elective expenditures made in response to actions challenged under a diversion of resources claim, which analysis differs from a direct standing claim. *See All. for Hippocratic Med.*, 602 U.S. at 395 (2024) ("*AHM*") (plaintiff claimed "under *Havens Realty Corp.* v. *Coleman*, [455 U. S. 363 (1982)]" that "standing exists when an organization diverts its resources in response to a defendant's actions"); *Legal Aid Chicago v. Hunter Properties*, No. 23 CV 4809, 2024 U.S. Dist. LEXIS 177188, at *15 (N.D. Ill. Sept. 30,

2024) ("Legal Aid Chicago contends that the policy harms the organization itself by 'frustrating its mission of, and diverting its limited resources from, maximizing low-income Cook County residents' access to safe, decent and affordable housing'"); *Democratic Party of Wis. v. Vos*, 966 F.3d 581, 587 (7th Cir. 2020) (rejecting claim that in the case before it that an "organizational plaintiff[] had an injury sufficient to confer standing because the laws at issue … forced [it] to devote resources to counteracting the effects of the laws").

In any event, even if these cases were relevant to a claim of direct monetary injury, the expenditures the plaintiffs alleged in these cases are all distinguishable, because they all relate to decisions about how to run broadly defined advocacy programs. *See AHM*, 602 U.S. at 394 (plaintiffs claimed resources were spent "conduct[ing] their own studies" about drug risks, "drafting citizen petitions," and "engaging in public advocacy and public education"); *Legal Aid Chicago*, 2024 U.S. Dist. LEXIS 177188, *15-16 (Legal Aid Chicago claimed it spent resources "representing tenants"; "providing training and education" about eviction records; "pursuing more cases through to trial"; "resolving threatened evictions"; and "bringing this case"); *Vos*, 966 F.3d at 587 (the "harm the Party has suffered is psychological: it asserts that it will have a harder time organizing voters and fielding candidates" and "must spend more money to generate enthusiasm among the populace"). All of these claimed expenditures seem like choices that these organizations could—but did not have to—make. They all run afoul of the principle that "an organization that has not suffered a concrete injury *caused by* a defendant's action cannot spend its way into standing simply expending money to gather information and advocate against the defendant's action." *AHF*, 602 U.S. at 394 (emphasis added).

By contrast, BI and IFA allege here that it is more expensive than it should be for them to use Illinois' voter rolls to make contact, for any reason, with Illinois voters, by means of mailings,

in-person visits, or telephone calls. Contacting voters in these basic ways is not an organizational "choice" made by BI and IFA; it is what they exist (and can afford) to do. ECF 70 ¶¶ 85-86, 115-116. If they stop doing these things they may as well dissolve. Note also that these additional expenses arose independently of any action or decision taken by BI or IFA. Thus, they did not "spend [their] way into standing." *AHM*, 602 U.S. at 394. To the contrary, BI and IFA were injured by increases in expenditures for voter contacts, over which they had no control, and which they had to pay for out of pocket. These costs naturally impaired their ability to contact voters. And these increases—as opposed to the ordinary expenses BI and IFA would have incurred if the voter rolls were more accurate—were, and are, caused by Defendants' failure to comply with the NVRA's list maintenance procedures.

2. BI and IFA have pleaded diversion of resources from core activities because of Defendants' failure to fully comply with the NVRA

Plaintiffs' amended allegations are also sufficient for standing under the theory that BI and IFA have had to divert resources to counteract the harmful effects of Defendants' non-compliance with the NVRA. The controlling case in this circuit for this kind of claim is *Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019). *Lawson* involved a challenge to an Indiana law that authorized immediate removal of registrants believed to have moved, notwithstanding the NVRA's prescribed waiting period of two general federal elections. *Id.* at 948-49. Each organizational plaintiff was a "non-profit entity that advocates for voter access, conducts voter education to promote voter access, helps voters overcome any challenges they face trying to vote, and helps voters register to vote (or re-register if needed)." *Id.* at 951. Considering a motion for preliminary relief, the Court found an injury in fact where the plaintiffs would "be required to increase the time or funds (or both) spent on certain activities to alleviate potentially harmful effects" of the law, and where "their missions will be thwarted" because such efforts "will displace

other projects they normally undertake." *Id*. at 952. In short, standing existed where the law cost plaintiffs "time and money they would have spent differently or not spent at all." *Id*. at 954.

Defendants and the Unions repeatedly state that expenses that are "ordinary," "operational," or "baseline" cannot constitute an injury in fact. *E.g*., ECF 77 at 10, 11, 12; ECF 80-1 at 18, 19, 20. Insofar as they mean that even *increased* expenses relating to what an organization usually does cannot establish an injury, they are simply incorrect, as *Lawson* itself makes clear. The defendant in *Lawson* had argued that because "voter advocacy is central to each of the [plaintiff organizations'] missions," then "any resources they spend" challenging the Indiana voting law "are not a 'diversion' of resources as contemplated by *Havens*." 937 F.3d at 954. Rejecting this argument, the Court pointed out that "[a]ny work to undo a frustrated mission is, by definition, something in furtherance of that mission. … Indeed, we have a hard time imagining …why it is that an organization would undertake any additional work if that work had nothing to do with its mission." *Id*. at 954-55. It added that "[t]hat is not to say that organizations have standing based solely on the baseline work they are already doing" (*id*. at 955). But the Court immediately clarified that "[t]he question is what *additional or new burdens* are created by the law the organization is challenging." *Id*. (emphasis added, citations omitted). An organization "must show that the disruption is real and its response is warranted." *Id*. (citation omitted).

Here, both BI and IFA have abundantly pleaded a diversion of resources under *Lawson*. They identify their core activities as including various kinds of voter contact, which they must achieve within the limits imposed by their constrained resources. ECF 70 ¶¶ 84-86, 113-116. They identify the additional burdens Illinois' especially inaccurate voter rolls inflict on their voter mailing, home visit, and telephone programs. *Id*. ¶¶ 87, 92, 99, 100, 108, 117, 119, 122, 124. BI alleges that it has been compelled to divert its resources, from mailings to less desirable methods

of reaching voters, like billboards and social media. *Id.* ¶¶ 101-104. BI also identifies radio programs and activities it has had to curtail or consider curtailing because of a lack of funds. *Id.* ¶¶ 109.[7]

These allegations readily establish standing based on a diversion of resources. Indeed, Plaintiffs' allegations here are far more detailed than the allegations contained in the complaints that were held to have alleged diversion-of-resources standing in *Lawson*. *See* Complaint, *Common Cause v. Lawson*, No. 1:17-cv-3936 (S.D. Ind. Oct. 27, 2017), ECF 1 ¶¶ 57-60 (attached as Exhibit 1); Complaint, *Ind. State Conf. of the NAACP v. Lawson*, No. 1:17-cv-2897 (S.D. Ind. Aug. 23, 2017), ECF 1 ¶¶ 8, 10, 11 (attached as Exhibit 2).

3. BI and IFA have pleaded facts demonstrating that their injuries were caused by Defendants' failure to comply with the NVRA

Under either theory of injury, direct economic loss or a diversion of resources from core activities, BI and IFA have pleaded facts demonstrating that these injuries were caused by Defendants' failure to fully comply with the NVRA and will persist until Defendants meet their obligations under the NVRA. In their brief, Defendants note that the proper enforcement of the NVRA results in outdated voter registrations being placed in an inactive status for years. They then argue that Plaintiffs, especially BI and IFA, "cannot establish that their alleged injury—difficulty contacting Illinois voters resulting from the voter registration list including ineligible voters—is traceable to the State's action," as opposed to being the normal result of registrations

[7] The Unions argue that the Amended Complaint "conspicuously avoids linking" BI's curtailed radio show "to Illinois's list-maintenance procedures, instead attributing it to 'across the board' budget tightening." ECF 77 at 12. This is misguided. Money is, of course, fungible, so the additional expenses inflicted on BI will necessarily affect every activity it undertakes, including its radio show. The Unions' facile argument that BI's December 2024 radio show "did air" (ECF 77 at 12), even though it only did so after BI's president contributed her own money to make it happen, does not negate the fact that financial pressures, including those arising from Defendants' noncompliance with the NVRA, made this personal sacrifice necessary.

being inactivated during the NVRA's statutory waiting period, or that "an order from this Court would redress their alleged injury." ECF 80-1 at 21. This argument is fundamentally flawed. To begin with, it asserts, in effect, that Plaintiffs must disprove a specific factual contention, namely, that Defendants' inaccurate voter registration lists are due to the ordinary workings of the NVRA rather than their own neglect. This ignores the basic rules governing this motion, where all factual allegations are construed as true and all inferences are drawn in favor of Plaintiffs. Indeed, Defendants' argument, properly understood, is nothing more than a gratuitous factual assertion about the merits, which must be assumed to favor Plaintiffs when determining standing. *See Sierra Club v. U.S. E.P.A.*, 774 F.3d 383, 389 (7th Cir. 2014) ("[I]n reviewing the standing question, the court must … assume that on the merits the plaintiffs would be successful in their claims." (citation and internal quotations omitted)); *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022) (when evaluating standing, federal courts must "accept as valid the merits of [plaintiffs'] legal claims" (citation omitted)).

In any case, even as a merits argument, Defendants' unsupported suggestion that Illinois' inaccurate voter rolls might be due to *too much* enforcement of the NVRA, rather than too little, is baseless. Citing Defendants' own admissions, the complaint alleges that, over a two-year measuring period, 23 Illinois counties reported removing 15 or fewer registrants under the NVRA's notice-and-waiting-period procedure, with 11 of those counties reporting *zero* such removals during that time. ECF 70 ¶¶ 26, 29-30. These 23 counties, with 980,089 total registered voters, removed a combined 100 registrations under the relevant procedures in those two years. *Id.* ¶ 30. For context, the complaint notes that notice-and-waiting-period removals are usually the most numerous kind (*id.* ¶ 27); that such removal numbers should not be that low, and should never be

zero (*id*. ¶ 31);[8] that 11.8% of Illinois residents move each year (*id*. ¶ 32); that 297,000 residents moved out of state in 2023, and 344,000 residents moved out of state in 2022 (*id*. ¶ 33); and that "tiny Pope County, Illinois, with 2,772 voter registrations, removed 175 registrations" under the same provision in the same time period, which is more than those 23 counties combined (*id*. ¶ 36). Add to this that 34 Illinois counties reported no data on such removals (*id*. ¶ 38), 19 counties reported no data on death removals (*id*. ¶ 39), 29 counties reported no data on NVRA Confirmation Notices (*id*. ¶ 43); 22 counties did not report inactive registrations (*id*. ¶ 46); and the chief State election official admitted she "does not have access to local election authorities' list maintenance records" (*id*. ¶ 56), and it is plain, whether or not inferences are drawn in Plaintiffs' favor, that Illinois' inaccurate voter rolls are *not* due to ordinary NVRA enforcement, but to a colossal failure to comply with the Act. Under the liberal standards governing notice pleading, BI and IFA have clearly pleaded that they have suffered injuries caused by Defendants' failure to fully comply with the NVRA and that those injuries will persist unless Defendants meet their legal obligations.

4. BI's and IFA's standing is sufficient to establish the Court's jurisdiction

Because Plaintiffs BI and IFA have clearly alleged injuries arising both from monetary losses and from their need to divert resources to counteract Defendants' failure to comply with the list maintenance provisions of the NVRA, they have standing, and this Court has jurisdiction over this action. *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) ("[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." (citations omitted)).

B. Plaintiff Carol J. Davis, and Judicial Watch as an association representing its members, have standing as voters

[8] Whatever the final evidence shows regarding Defendants' "reasonable effort" under the NVRA, the failure to remove *any* voters after the statutory inactive period is objectively unreasonable.

Plaintiff Carol J. Davis, and Judicial Watch on behalf of its individual members who are Illinois voters,[9] independently have standing based on the allegation that "Defendants' failure to comply with their NVRA voter list maintenance obligations … undermin[es] their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted." ECF 70 ¶ 85.

The Supreme Court, in *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), observed that

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Consistent with this insight, in upholding Indiana's voter ID laws in *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008) the Supreme Court credited the State's legitimate "interest in counting only the votes of eligible voters." But it further noted that, while "closely related to the State's interest in preventing voter fraud, *public confidence in the integrity of the electoral process has independent significance*, because it encourages citizen participation in the democratic process." *Id.* at 197 (emphasis added).

In *Judicial Watch, Inc. v. King*, 993 F. Supp. 2d 919, 920 (S.D. Ind. 2012), the plaintiffs sued Indiana for failing to conduct list maintenance required by the Act. Judicial Watch alleged that its members were injured by "Indiana's failure to comply with the NVRA list maintenance requirements because that failure 'undermin[es] their confidence in the legitimacy of the elections … and thereby burden[s] their right to vote.'" *Id.* at 924. In denying a motion to dismiss for lack of standing, the court, citing *Crawford*, reasoned that "[i]f the state has a legitimate interest in

[9] An association may sue for its members when any one "would have individual standing to sue, the interests involved are germane to the organization's purpose, and neither the claim nor requested relief are of the type that would require individual member participation." *Shakman v. Clerk of Cook Cty.*, 994 F.3d 832, 840 (7th Cir. 2021) (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

preventing" the undermining of voters' confidence, "surely a voter who alleges that such harm has befallen him or her has standing to redress the cause of that harm." *Id.*; *see id*. at 924 n.6 (finding that Judicial Watch had "associational standing to pursue its claim on behalf of its members who are registered to vote in Indiana" who otherwise had individual standing to sue). Other courts have reached the same conclusion.[10] *See Green v. Bell*, No. 3:21-cv-00493, 2023 U.S. Dist. LEXIS 45989, at *10 (W.D.N.C. Mar. 19, 2023) (claims that "North Carolina's 'inaccurate rolls' undermine [the plaintiffs'] confidence in the state's elections, which further 'burdens their right to vote[] … qualify as injuries in fact"); *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1104 (D. Colo. 2021) ("undermined confidence and discouraged participation are [not] 'common to all members of the public.' … Nor are these fears speculative or hypothetical. … plaintiffs are not worried that their confidence *could* be undermined at some point in the future; their confidence is undermined now." (citation omitted)).

In the Court's order dismissing the complaint without prejudice, the Court characterized *King* as "an outlier to the general approach other courts have taken," expressing agreement "with the majority view that generalized concerns over vote dilution do not give rise to standing." ECF 69 at 11; *see, e.g., Am. Civ. Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789, 803 (W.D. Tex. 2015) (rejecting standing based on a loss of voter confidence, noting disagreement with *King*). The Court noted "[a] plaintiff cannot obtain standing by alleging a generalized grievance," such as "'claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large.'" ECF 69 at 10. But Plaintiff Davis, in the Amended Complaint, pleads a particularized,

[10] Note that the complaint speaks only to the *concerns* of Carol J. Davis and Judicial Watch's members as registered voters. It does not specifically allege that these individuals have been *directly* harmed by fraud or vote dilution. Defendants continue to miss this point. ECF 80-1 at 1 ("Plaintiffs continue to rely on fearmongering claims, such as election fraud and vote dilution.").

decreased confidence in the voting system and fear of vote dilution. Ms. Davis has explained that she is an active participant in political causes and organizations, giving her a particular interest in political outcomes affecting her state. She is also involved in the voting process through her work as a poll watcher, poll worker, and election judge, giving her a particular interest in the proper administration of Illinois's voter list. And her commitment to political causes and to outcomes favorable to those political causes makes her keenly interested in the integrity of Illinois' elections and keenly aware of the consequences of Defendants' failure to fully comply with the NVRA. ECF 70 ¶ 125-131. Put differently, Ms. Davis has not pleaded general grievances about the lawful conduct of elections, but instead described how Illinois' non-compliant voter list directly affects her as an active political actor.

C. Plaintiffs have stated a claim under Section 8(a)(4) of the NVRA

All of Defendants' arguments that the complaint fails to state a claim amount to blatant efforts, unsupported by affidavits or sworn testimony, to dispute the facts Plaintiffs have alleged and to construe factual inferences in Defendants' favor. These arguments should be rejected given the well-known standards governing this motion, which direct courts to "accept as true all well-pleaded facts … and draw reasonable inferences in favor of the plaintiff." *KAP Holdings*, 55 F.4th at 523 (citation omitted).[11]

[11] Defendants' attempts to argue the facts are particularly misguided given that the NVRA requires a program that makes "a reasonable effort" to remove certain ineligible registrants. 52 U.S.C. § 20507(a)(4). In a number of different contexts, "reasonableness" has been held to be unsuitable for determination on a motion to dismiss. *Cf. Oakley v. Dolan*, 980 F.3d 279, 284 (2d Cir. 2020) (principle that reasonable force is a fact question applies "with even greater force at the motion to dismiss stage, where a court must assume the truth of the plaintiff's allegations and avoid resolving factual disputes"); *Levine v. Am. Psychological Ass'n*, 766 F.3d 39, 48 (D.C. Cir. 2014) (deciding reasonableness of reliance on misrepresentations not appropriate on motion to dismiss); *Brown v. Cook Cty.*, Case No. 17-8085, 2018 U.S. Dist. LEXIS 106746, at *35 (N.D. Ill. June 26, 2018) (reasonableness of employer's response to harassment was "better-suited for a summary judgment motion than a motion to dismiss" (citation omitted)).

Relying on assertions from their own correspondence, Defendants argue that Illinois is utilizing the NVRA's "safe harbor" provision. ECF 80-1 at 22; *see also* ECF 77 at 16-17 n.1. That provision allows states to meet the "reasonable effort" requirement of Section 8(a)(4) "by establishing a program" using "change-of-address information supplied by the Postal Service" to identify registrants who may have moved, who are then subject to the usual NVRA procedures, including Confirmation Notices. 52 U.S.C. § 20507(c)(1)(A), (B). But even assuming Defendants have such a program (which is not conclusively established by an unsworn assertion in their correspondence) it is a different, factual matter as to whether they actually *use* it. As the Eleventh Circuit noted, "an election official in order to comply with the NVRA and take advantage of the safe-harbor provision must not only identify potentially ineligible registrants using the [Post Office's] database and mailing procedures, *but must also actually remove those ineligible registrants from the rolls*." *Bellitto v. Snipes*, 935 F.3d 1192, 1204 (11th Cir. 2019) (citation omitted) (emphasis added).

For this reason, courts addressing a "safe harbor" argument in a motion to dismiss have uniformly denied dismissal on that ground. *See Judicial Watch*, 554 F. Supp. 3d at 1108-09 ("While it appears undisputed that this is Colorado's program, the Court has no information about Colorado's compliance, and the Court finds that determining whether Colorado has availed itself of the safe harbor cannot be resolved without 'further development of the record.'" (citing *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017) ("Whether [the county board of election's] compliance is sufficient to satisfy the 'safe harbor' provision is best resolved after further development of the record."); and *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1366 (S.D. Fla. 2016) ("compliance with subsection (c)(1) [the safe harbor] … is a fact-based argument more properly addressed at a later stage of the proceedings" than on a

motion to dismiss)). Here, relying on Defendants' own admissions, the complaint plausibly alleges that over one fifth of Illinois' counties are *not* removing the registrations of voters who failed to respond to a Confirmation Notice, under the safe harbor provision, or under any other program concerning such registrants. *See* ECF 70 ¶¶ 28-30 (reporting from Illinois's data that 23 counties reported removing 15 or fewer registrants under the Confirmation Notice procedure in a two-year period, and 11 reported zero removals); *see id*. ¶¶ 32-39 (providing context and showing how these low numbers establish noncompliance). Those allegations easily state a claim for noncompliance with the NVRA, which Defendants cannot defeat simply by making gratuitous assertions about their safe harbor program.[12]

The Unions make several arguments to the effect that EAVS data cannot be relied on to establish noncompliance with the NVRA. They cite *Bellitto*, 935 F.3d at 1208 for the proposition that an "EAVS snapshot" cannot establish a county's registration rate and that census data may underestimate county population. ECF 77 at 18, 19-20. But that case (which is citing a defendant's expert) was an appeal following a full bench trial. While EAVS and census data may not constitute final proof at trial, NVRA complaints that have relied on EAVS data have uniformly been held to state a claim. *See, e.g., Griswold*, 554 F. Supp. 3d at 1107 (allegations that "public records and statistical analysis" of EAC data showed "high registration rates … [and] that the Secretary sends too few Confirmation Notices, removes too few registrants, and has too high a number of inactive voters" stated a claim); *see Bell*, 2023 U.S. Dist. LEXIS 45989, at *12-13 ("'unreasonably high registration rate[s]'" of greater than 100% "raise a 'strong inference of a violation of the NVRA'"

[12] In a similar vein, both Defendants and the Unions recite numerous Illinois statutes specifying what state and local election officials "must" do. ECF80-1 at 9-10; ECF 77 at 16. Of course, neither the existence of these statutes nor their mandatory language establishes that Illinois officials actually comply with them—while the allegations in the Amended Complaint support the inference that they are not complied with.

(citing *Martinez-Rivera*, 166 F. Supp. 3d at 805; *Voter Integrity Proj. NC*, 301 F. Supp. 3d at 618-20; *Griswold*, 554 F. Supp. 3d at 1107-09)).

The Unions' other arguments on this topic amount to blatant attempts to draw inferences or weigh evidence in Defendants' favor. The Unions point out that the NVRA itself envisions a two to four-year removal period for those who do not respond to a Confirmation Notice. ECF 77 at 18. This is, in essence, a rehash of Defendants' suggestion that the problem in Illinois may be too much enforcement, rather than too little. As discussed *supra* at point I.A.3, the evidence of noncompliance in this case simply overwhelms any such suggestion. Next, after belittling the EAVS data, the Unions then rely on it to argue that, in their view, and without any support from affidavits or expert testimony, the 23 counties identified in ECF 70 ¶¶ 28-30 removed sufficient numbers of voters in the category of "moved outside the jurisdiction" to render the Amended Complaint so implausible that it should be dismissed. There is much that is wrong with this argument, but the main conceptual error is that the category of "moved outside the jurisdiction" (which is question A9b in the EAC's survey) includes those who moved and notified the jurisdiction, *and* those who did not initially notify the jurisdiction but later responded to a Confirmation Notice. It is a different category from those who never responded and are later removed after the statutory waiting period (which is captured in question A9e: "Failure to respond to confirmation notice sent and failure to vote in the two most recent federal elections").

Both Defendants and the Unions cite the statement in the EAC report that "data on registered and eligible voters as reported in the EAVS should be used with caution," given the length of the statutory waiting period. ECF 77 at 19; ECF 80-1 at 21; *see* ECF 80-2 at 152. This is, at best, an argument as to evidentiary weight, which is inappropriate on this motion, and not a reason to dismiss the Amended Complaint. In any case, Plaintiffs are aware of the statutory waiting

period and have used the data "with caution." When it comes time to argue the weight of the evidence, moreover, Plaintiffs will cite the statement from the same document that

> The EAVS provides the most comprehensive source of state- and local jurisdiction-level data about election administration in the United States. These data play a vital role in helping election officials, policymakers, and other election stakeholders identify trends, anticipate and respond to changing voter needs, invest resources to improve election administration and the voter experience, and better secure U.S. elections infrastructure.

ECF 80-2 at 17.

The Unions cite *Judicial Watch, Inc. v. North Carolina*, No. 3:20-CV-211, 2021 U.S. Dist. LEXIS 254725, at *28-29 (W.D.N.C. Aug. 20, 2021), which doubted the evidentiary value (in the context of a notice letter) of high registration rates. Specifically, the magistrate in that case "recommend[ed] that this Court decline to adopt the position … that a high voter registration rate is sufficient evidence of an NVRA violation to support a notice of violation." *Id.* But that decision was a magistrate's report and recommendation, which was never adopted and was declared moot by the district court. *Jud. Watch, Inc. v. N.C. State Bd. of Elections*, No. 3:20-CV-211, 2022 U.S. Dist. LEXIS 40041, at *3-4 (W.D.N.C. March 7, 2022) ("The Court declines to adopt the Magistrate Judge's M&R (Doc. No. 61) because the motions considered by the M&R are moot"). The Unions also cite *Judicial Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021), as finding "similar allegations 'implausible for several reasons.'" ECF 77 at 15. But the Unions have left out most of the story. The initial complaint in that case was dismissed against four county defendants (but not the state) when updated EAVS data showed that Section 8(d)(1)(B) removals were far higher than previously reported. 524 F. Supp. 3d at 406-07. An amended complaint filed against five other counties proceeded on the same theories presented here, including new data from the EAC survey. *See* ECF 61-1, ¶¶ 42-57, 58-61. The court granted leave to amend based on the plaintiff's allegations of "'extremely low removal rates' for each of the

newly named counties," and allegations that "these low removal rates demonstrate that the Commonwealth defendants have failed to comply with their statewide obligations under the NVRA." *See* ECF 61-2 at 3.[13] Thus, the Pennsylvania case *supports* Plaintiffs' claims.

The Unions invoke the "presumption of regularity" (ECF 77 at 17), by which, "'in the absence of clear evidence to the contrary,' courts presume that public officers 'have properly discharged their official duties.'" *McDonough v. Anoka Cnty.*, 799 F.3d 931, 948 (8th Cir. 2015) (citations omitted). It is doubtful, however, that this factual presumption even applies to motions to dismiss. *See Dorce v. City of N.Y.*, 608 F. Supp. 3d 118, 142 n.9 (S.D.N.Y. 2022) ("The Court also declines to consider the presumption of regularity at the motion to dismiss stage … 'since presumptions are evidentiary standards that are inappropriate for evaluation at the pleadings stage.'") (citation omitted). But even if it did apply, Plaintiffs allegations have amply rebutted it. *See McDonough*, 799 F.3d at 948 ("Whatever weight the 'presumption of regularity' might otherwise have at this [motion to dismiss] stage in the litigation," the plaintiffs "have sufficiently rebutted it" by their allegations) (citation omitted).

Defendants and the Unions argue that their participation in the Electronic Registration Information Center (ERIC) shows that they are "doing more than the minimum requirements of the NVRA." ECF 80-1 at 27, ECF 77 at 11. Like their other arguments about Plaintiffs' claims, this contention raises factual questions which should not be decided on a motion to dismiss. The complaint, moreover, specifically alleges why "[p]articipation as a member of ERIC does not ensure compliance with the NVRA." ECF 70 ¶ 70. It notes that "ERIC recently has been plagued by accusations of partisanship and ineffectiveness and has been rapidly losing member states," and that its current members "contain only 40% of the total U.S. population." *Id.* ¶¶ 71-72. It notes that

[13] The case later settled. *See* https://www.judicialwatch.org/wp-content/uploads/2023/05/JW-v-PA-NVRA-Settlement-Agreement-00708-1.pdf (including reporting obligations and monetary payment).

recent census data shows that only one of the five states most Illinoisans move to is a member of ERIC. *Id.* ¶ 73. And, importantly, it notes Defendants' admission that data from the ERIC program is "merely shared with local election authorities. It is left to those authorities to 'confirm any matches and make the required updates to the applicable voter records.'" *Id.* ¶ 74. Considering the facts alleged and drawing all reasonable inferences in Plaintiffs' favor, the complaint plausibly alleges that Defendants and local election authorities are *not* removing ineligible voter records. This states a claim for an NVRA violation.

Aside from the outright failure of 23 Illinois counties to remove registrants who fail to respond to Confirmation Notices, the complaint also listed counties who lack data that is crucial to list maintenance efforts under the NVRA. Again relying on Defendants' own admissions to the EAC, the complaint notes that 34 counties could only report "Data not available" regarding Confirmation Notice removals, and 19 of these reported the same thing for death removals. ECF 70 ¶¶ 38-39. In addition, 29 counties reported "Data not available" regarding the number of Confirmation Notices sent, and 22 counties said the same thing about the number of inactive registrations. *Id.* ¶¶ 43, 46. In all, "[f]ifty-two of 108 Illinois jurisdictions failed to report any data to the EAC in one or more of the crucial data categories identified above." *Id.* ¶ 48. For her part, Defendant Matthews confirmed that she "does not have access to local election authorities' list maintenance records." *Id.* ¶ 56. Apparently, no one in Illinois has access to this data.

In response, Defendants cite the EAC's most recent report to Congress, the Election Administration and Voting Survey 2022 Comprehensive Report (EAVS), which contains a chart indicating "that Illinois had a 99.6% survey response rate with a 99.9% response rate for section A, which covers voter registration and notices sent to voters who were thought to have moved and voters who were removed from the voter registration list." ECF 80-1 at 27. Defendants maintain

that this "disprove[s]" and "belie[s]" the allegations in the complaint that so many Illinois counties failed to report NVRA-related data. *Id*.

There are several basic flaws in this argument. Yet again, Defendants are arguing facts and factual inferences, which is inappropriate on a motion to dismiss. But even ignoring that point, Defendants have misread the relevant pages of that report. In describing the methodology used to determine the data in the chart Defendants cite, the report explains: "Response rates were calculated as the percentage of jurisdictional responses within a state that were not left blank (i.e., had a numerical response of zero or greater *or a response of 'Data not available,'* 'Does not apply,' or 'Valid skip')." ECF 80-2 at 257 (emphasis added). In other words, a county's response "Data not available" was *counted as a survey response* rather than as a non-response. Regardless of why the EAC made that peculiar choice in compiling the data, it means that the response rates reported by the EAC are wholly consistent with the complaint's allegations that 52 counties reported "Data not available" in those crucial categories. *See* ECF 70 ¶¶ 38-39, 43, 46, 48. Indeed, it is odd that Defendants would doubt this. As alleged in the complaint, "States' responses to EAC surveys are compiled in datasets available online in several different software formats, at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys." *Id*. ¶ 26. The parties and the Court may view the dataset cited in the complaint (Version 1.0 released June 29, 2023) and confirm the "Data not available" indication for each county, in columns CZ (Confirmation Notice removals), CX (removals for death), CJ (Confirmation Notices sent), and G (inactive registrations).[14]

Defendants next offer to "look[] at the granular data," ECF 80-1 at 28, although this is exactly what the Court ought not to do on a motion to dismiss. Based on their review, however,

[14] For reference, the survey questions are available online at https://www.eac.gov/sites/default/files/EAVS%202022/2022_EAVS_FINAL_508c.pdf.

Defendants argue that the *total* number of removals of ineligible voters *in all categories* by Illinois counties identified in the complaint is, in their view, significant. *Id*. They similarly argue that the aggregate numbers of Confirmation Notices sent and of ineligible registrations cancelled *statewide*, are, in their view, reasonable, or reasonable compared to other states. *Id.* These purely factual assertions, which are unsupported by expert or other testimony, are in any case inappropriate to determine on a motion to dismiss.

These arguments are also misguided. The total number of removals of ineligible voters in all categories includes, as explained above, voters who notified the state in advance or in writing that they were moving, and voters who *did* respond to a Confirmation Notice by confirming that they were moving. Defendants appear to be suggesting that a significant number of removals of registrations in these categories should be found to absolve or "make up for" a failure to remove the ineligible registrations of voters in other categories—like those who do not respond to a Confirmation Notice, or who have died. In a similar vein, Defendants appear to argue that counties that *do* appear to remove adequate numbers of ineligible registrations under the NVRA's notice-and-waiting-period procedure (two such counties are identified in the complaint, *see* ECF 70 ¶¶ 35-36) somehow "make up for" counties that do not. The NVRA incorporates no such principle. Nor is there any logical reason why the failure of *one fifth* of Illinois' counties to remove registrations under the notice-and-waiting-period procedure, or the failure of *one half* of Illinois' counties to possess crucial NVRA data, should be treated as irrelevant merely because Defendants did not violate the NVRA in other ways, or violate it even more than they already have.

II. PLAINTIFF JUDICIAL WATCH HAS ALLEGED STANDING TO BRING THE CLAIM THAT DEFENDANTS HAVE NOT COMPLIED WITH SECTION 8(i) OF THE NVRA

The Court, in its Order of October 28, 2024, found that "Judicial Watch has sufficiently

alleged an informational injury that caused it adverse effects, allowing it to proceed on its Section 8(i) claim." ECF 69 at 17. It further found that, "as Judicial Watch sufficiently alleges an injury in fact, given Defendants' lack of opposition to the remaining standing factors, the Court accepts as true Judicial Watch's other allegations that the State Defendants' actions caused the harm and that this Court may provide Judicial Watch with relief." *Id.* at 18. Based on these findings, the Court found that Judicial Watch had standing to pursue its Section 8(i) claim. Accordingly, Plaintiffs will not recapitulate and renew its arguments in opposition to Defendants and the Unions that are largely repeated in their most recent motions to dismiss.

In its ruling, the Court indicated that the question "whether the Board's referral of Judicial Watch to Illinois' county elections offices to obtain voter registration records satisfies Section 8(i)" had not been adequately briefed by the parties. ECF 69 at 21. That provision of the NVRA sets forth the entirety of a state's obligation to produce specific information at the request of the public:

> (i) Public disclosure of voter registration activities.
>
> > (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.
> >
> > (2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

52 U.S.C. § 20507(i).

It is a "well-established principle[] of statutory interpretation" that, when a court interprets a statute, it looks first to the statute's language. *Greenfield Mills, Inc. v. Macklin*, 361 F.3d 934, 954 (7th Cir. 2004). This is because "[t]he first rule of statutory construction is to give words their

plain meaning." *United States v. Jones*, 372 F.3d 910, 912 (7th Cir. 2004). Absent specific statutory definitions, statutory terms are presumed to have their ordinary or natural meaning. *Carmichael v. Payment Ctr., Inc.*, 336 F.3d 636, 640 (7th Cir. 2003) ("Without a statutory definition, we construe the term 'in accordance with its ordinary or natural meaning,' a meaning which may be supplied by a dictionary." (quoting *FDIC v. Meyer*, 510 U.S. 471, 476 (1994))). If that language is plain, "the sole function of the courts is to enforce it according to its terms." *Evans v. United States*, No. 23-1151, 2025 U.S. App. LEXIS 5972, at *7 (7th Cir. Mar. 13, 2025) (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1975)); *see Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (internal quotations and citations omitted); *see also F.J.A.P. v. Garland*, 94 F.4th 620, 633 (7th Cir. 2024) ("We interpret statutory language according to 'ordinary, contemporary, common meaning,' unless Congress has explicitly dictated another interpretation." (quoting *United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020)).

On its face, the language of Section 8(i) is plain and unambiguous. Congress has clearly placed the obligation to "maintain … and make available for public inspection … all [specified records] on "[e]ach State." *United States v. Louisiana*, 196 F. Supp. 3d 612, 629-30 (M.D. La. 2016) (finding that the NVRA "particular introductory formulation" of "Each *State* shall …" means that "'under the plain language of the statute, *states* must take specific actions' and thus bear ultimately liability and final responsibility for any contrary nonaction") (quoting *United States v. Missouri*, 535 F.3d 844, 849 (8th Cir. 2008)). This is consistent with other courts that have reviewed the NVRA, which have found that the statutory language is plain and unambiguous. *See, e.g., Stringer v. Hughes*, Nos. SA-20-CV-46-OG, SA-16-CV-257-OG, 2020 U.S. Dist. LEXIS

221555, at *65 (W.D. Tex. Aug. 28, 2020) (finding that language of the NVRA is plain and unambiguous with respect to voter registration); *Action NC v. Strach*, 216 F. Supp. 3d 597, 634 (M.D.N.C. 2016) (applying the plain meaning of words in Sections 5 and 7 of the NVRA); *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1329 (N.D. Ga. 2012) ("At bottom, the language of paragraph (a)(6) of Section 7 [of the NVRA] is unambiguous"); *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 705-08 (E.D. Va. 2010) (applying "the common and ordinary meanings of the terms of [Section 8(i)]"), *aff'd by* 682 F.3d 331 (4th Cir. 2012). Furthermore, Plaintiffs are unaware of any case that has found that Section 8(i) is ambiguous or that the words in Section 8(i) should not be given their plain and ordinary meaning.[15]

Defendants urge the court to construe the obligatory language of Section 8(i) more broadly than just as to "[e]ach state," arguing that references to "registrars" in other parts of Section 8 must reflect a statutory intent to place "ultimately liability and final responsibility" on more than "[e]ach State." *Louisiana*, 196 F. Supp. 3d at 630. Defendants start their argument by stretching the statutory definition of "registrar's jurisdiction" into a definition of "registrar." This distinction between registrar and registrar's jurisdiction is a meaningful one under the statutory framework of Section 8. Congress' use of the term "registrar's jurisdiction," as defined in Section 8(j), bears specifically on the Section's provisions for the removal of voters who have changed addresses, and on how those voters are to be treated if they have changed addresses within the registrar's jurisdiction versus outside of the registrar's jurisdiction. *See, e.g.,* 52 U.S.C. § 20507(d)(2).

[15] Defendants also argue that the Court should interpret the statute in a way that maximizes federalism. Defendants cannot, however, identify a single case involving any part of the NVRA where constitutional concerns about federalism trumped Congress' constitutional authority to regulate the time, place, and manner of federal elections. In any event, the Supreme Court previously rejected this argument in the NVRA context. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 13-14 (2013) (noting that "federalism concerns" are weaker when analyzing statutes like the NVRA that Congress enacted pursuant to its Elections Clause powers).

Congress' use of the term "registrar," by contrast, is with respect to specific actions that Congress intends the registrar to undertake.

Defendants' argument runs not into just one canon of statutory interpretation, the plain language requirement, but two. When Congress makes a distinction between actors in a statute, such as it does in Section 8, it is presumed to have done so intentionally. *See City and Cnty. of San Francisco v. EPA*, 145 S. Ct. 704, 713-14 (2025) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Defendants effectively concede that when Congress wanted a registrar to be the actor, especially within the context of the registrar's jurisdiction, it did so specifically. Take Defendants' example from Section 8(b)(2)(A). ECF 80-1 at 30. This provision states:

> (b) Confirmation of voter registration. Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office— …
>
> > (2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that *nothing in this paragraph may be construed to prohibit a State* from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters *if the individual—*
> >
> > > (A) *has not either notified the applicable registrar* (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar;

52 U.S.C. § 20507(b)(2)(A) (emphasis added). In subsection (b), Congress clearly made a distinction between the State and its role and the registrar and its role. Defendants' other example, drawn from subsection (d), makes this same distinction between the State and the registrar.

The plain reading of Section 8(i), particularly in the context of the entire section, places

the obligation squarely on the State. Although unnecessary given the unambiguous nature of the NVRA, the Court may also look to the statutory and regulatory framework that has arisen around this provision. As discussed above, the statutory language places the obligation on "[e]ach State" to maintain and make available "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters," including "lists of the names and addresses of all persons to whom [Confirmation Notices] are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i). The NVRA also requires that "*[e]ach State* shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act." 52 U.S.C. § 20509 (emphasis added). EAC regulations implement this requirement in 11 C.F.R. § 9428.2(b), defining the chief state election official as "the designated *state* officer or employee responsible for the coordination of *state* responsibilities under [National Voter Registration Act]." 11 C.F.R. § 9428.2(b) (emphasis added). One of the regulatory responsibilities of the chief state election official is to report to the EAC, on a biannual basis, specific information drawn from records concerning the implementation of programs and activities under the NVRA, including the "total number of registrants statewide that were considered 'inactive' at the close of the most recent federal election," "total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both 'active' and 'inactive' voters if such a distinction is made by the state, between the past two federal general elections," and "statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period." 11 C.F.R. § 9428.7(a). Accepting Defendants invitation to read "registrars" into Section 8(i)'s specific language regarding

"[e]ach state" would not only violate canons of statutory construction, but would be inconsistent with the statutory and regulatory framework created by the NVRA and the EAC.

Section 8(i) clearly and unambiguously place the obligation to maintain and make available all records set forth in that subsection on "[e]ach State." Defendants violated this provision of the NVRA when they improperly denied Judicial Watch's right to public records. Defendants cannot shirk this statutory responsibility by improperly shifting it to each of Illinois's 108 election authorities, thereby requiring Judicial Watch to make 108 requests to get what the NVRA contemplated to be maintained and made available by a single source.

CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss and the Union's motion to dismiss should be denied.

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/s/ Eric W. Lee

Eric W. Lee (No. 1049158)
Robert D. Popper*
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
Phone: (202) 646-5172
elee@judicialwatch.org
rpopper@judicialwatch.org

Christine Svenson, Esq.
(IL Bar No. 6230370)
CHALMERS, ADAMS, BACKER & KAUFMAN, LLC
345 N. Eric Drive
Palatine, IL 60067
T: 312.467.2900
csvenson@chalmersadams.com

* *Admitted pro hac vice*

T. Russell Nobile
JUDICIAL WATCH, INC.
Post Office Box 6592
Gulfport, Mississippi 39506
Phone: (202) 527-9866
rnobile@judicialwatch.org