UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE, JORDAN JORRITSMA, and EMERSON SILVERNAIL,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as Michigan Secretary of State; and JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections,

Defendants.

CIVIL ACTION

Case No. 1:24-cv-262-JMB-RSK

Hon. Jane M. Beckering

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

ORAL ARGUMENT REQUESTED

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CONCISE STATEMENT OF REASONS

I. This Court lacks subject-matter jurisdiction because Plaintiffs do not have Article III standing to bring their claim. *See* Fed. R. Civ. P. 12(b)(1).

II. Plaintiffs fail to adequately state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

INTRODUCTION

This lawsuit—brought by the Republican National Committee and two Michigan voters, Jordan Jorritsma and Emerson Silvernail—seeks to use this Court to compel Michigan election officials to initiate a sweeping voter purge just months before the 2024 presidential election. Plaintiffs' Complaint draws on spurious tales of voter fraud and immaterial allegations of inflated voter rolls to allege a single, unsubstantiated claim: that Michigan has failed to comply with its responsibility under the National Voter Registration Act ("NVRA") to make "reasonable efforts" to conduct list-maintenance. *See generally* Compl., ECF No. 1 ("Compl."). Because this lawsuit is barred both procedurally and on the merits, it must be dismissed.

First, the alleged harms Plaintiffs assert—concerns over election integrity and vote dilution, and the expenditure of resources to combat those psychosomatic interests—are not sufficient for Article III standing. *Second*, simply alleging that Michigan counties have what Plaintiffs consider to be "inflated" voter rolls does not state a claim under Section 8 of the NVRA. There are many reasons why Michigan counties may have more active registered voters than people living there, not least of which is that the NVRA, which serves to protect voters from erroneous cancellations, requires states to follow a carefully choreographed procedure spanning two federal election cycles before they can remove voters based on their change of residence. *See* 52 U.S.C. § 20507(d). In other words, the NVRA *requires* that some voters who may not vote in a particular jurisdiction because they have established their residence elsewhere remain on the rolls for a period equivalent to four years before they can be removed.

Plaintiffs do not raise their claim upon a blank slate. Just three weeks ago, this same Court rejected a similar challenge to this one because the "reasonable efforts" to remove voters under the NVRA do not require perfect processes or immediate removal, and the Secretary already has

plans to remove thousands of voter registrations in 2025 as part of its scheduled list-maintenance program. *Public Int. Legal Found. v. Benson*, No. 1:21-CV-00929, 2024 WL 1128565, at *9 (W.D. Mich. Mar. 1, 2024) ("*PILF*"). The principles laid out by this Court in *PILF* apply with equal force to Plaintiffs' claim, yet nowhere in their complaint do the Plaintiffs meaningfully address this Court's recent conclusion, or plausibly allege how Michigan's comprehensive list-maintenance regime is unreasonable.

For the reasons set forth herein, Proposed Intervenor-Defendants Detroit Disability Power and the Michigan Alliance for Retired Americans ("Intervenors"), respectfully request that this Court dismiss Plaintiffs' Complaint and decline their invitation to micro-manage the state's election administration, including by requiring Defendants to purge voters from the rolls on the eve of an election. Plaintiffs have no right to demand this, and certainly not in the name of the NVRA—a federal law that was enacted to make it *easier* for qualified voters to register and *remain* registered. Allowing Plaintiffs' claim to proceed past the motion to dismiss stage risks lowering the pleading bar to a level that would allow any plaintiff to bring a lawsuit in federal court with the goal of interfering with a state's list-maintenance procedures based on nothing more than an allegation that the state's removal processes, at one particular snapshot in time, fall short of being omniscient—precisely what this Court just found the NVRA does *not* require. *Id.* at *11.

BACKGROUND

I. Michigan's obligations under the NVRA

The National Voter Registration Act of 1993 ("NVRA") is a federal law that requires states to provide simplified, voter-friendly systems for registering to vote. In enacting the NVRA, Congress expressly aimed to *increase* access to the franchise by establishing "procedures that will

increase the number of eligible citizens who register to vote in elections for Federal office" and by making it "possible for Federal, State, and local governments 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). Congress also made a finding in the NVRA that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities." *Id.* § 20501(a)(3).

To further those pro-voter purposes, the NVRA imposes strict restrictions on whether, when, and how a state may cancel a voter registration. *See id.* § 20507(a)(3)–(4), (b)–(d). A state may *immediately* cancel a registration only in rare circumstances, such as when a registrant requests to be removed from the rolls or is convicted of a disenfranchising felony. *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may not remove voters from the rolls without first complying with prescribed procedural minimums that Congress has mandated to protect qualified voters' access to the franchise and minimize the risk of erroneous cancellations. *See id.* § 20507(a)(3)(C), (c)–(d). For instance, a registrant may be removed from the rolls by reason of change of residence, in most cases, only after failing to respond to a notice and failing to appear to vote for two general elections following that notice. *Id.* § 20507(d)(1). This means that it may take at least four years for a voter to be removed from the registration rolls because of a change of residence.

II. This Court's Ruling in *PILF*

In 2021, the Public Interest Legal Foundation ("PILF") filed suit against the Michigan Secretary of State (the "Secretary") alleging violations of Section 8 of the NVRA. PILF claimed that the Secretary had failed to remove deceased voters from the voter rolls, neglecting its

obligation under the NVRA to conduct "reasonable" list maintenance of the state's voter rolls. Compl. ¶¶ 62–66, *PILF v. Benson*, No. 1:21-cv-00929 (W.D. Mich. Nov. 3, 2021), ECF No. 1, PageID.17–18.[1] PILF sought a declaration that the Secretary had violated Section 8 of the NVRA and a court order requiring the Secretary to implement an NVRA-compliant list maintenance program to cure the alleged violations. *See* Compl. at 19–20, *PILF v. Benson*, No. 1:21-cv-00929 (W.D. Mich. Nov. 3, 2021), ECF No. 1, PageID.19–20.

The Secretary moved for summary judgment, and this Court granted the Secretary's motion, concluding as a matter of law that the Secretary had taken reasonable and NVRA-compliant efforts to remove deceased voters on a "regular and ongoing basis." *PILF*, 2024 WL 1128565, at *11. In its decision, this Court made several important conclusions that are relevant here. First, drawing from the Eleventh Circuit's ruling in *Bellitto v. Snipes*, 935 F.3d 1192 (11th Cir. 2019), this Court concluded that in order for a list-maintenance program to constitute a "reasonable effort" under Section 8 of the NVRA, use of "reasonably reliable" sources, even if they are not exhaustive or perfect, are sufficient as a basis for removing voters. *Id.* at *10–11 (citing *Bellitto*, 935 F.3d at 1205). Second, this Court clarified that the NVRA does not require voters to be removed immediately—natural lags in when a state receives data on deceased voters and when they are actually removed are unavoidable, and evidence that the state *plans* to eliminate outdated registrations is probative of whether a state engages in the required list maintenance activities on a "regular and ongoing basis." *Id.* at *11. Finally, because Michigan was within the top few states for total number of deceased voters removed from the state's voter rolls over the last few years,

[1] PILF also included a second claim, less relevant here, alleging that the Secretary had failed to allow the organization to inspect records related to the state's implementation of list maintenance programs, as allowed under the NVRA. Compl. ¶¶ 68–73, *PILF v. Benson*, No. 1:21-cv-00929 (W.D. Mich. Nov. 3, 2021), ECF No. 1, PageID.18–19.

Michigan's existing programs were effective and reasonable and complied with the NVRA. *Id.* at *4, *11. While Plaintiffs briefly acknowledge *PILF*, Compl. ¶ 81, ECF No. 1, PageID.16–17, they do not explain how its conclusions are consistent with their similar claim here.[2]

III. Plaintiffs' Complaint

On March 13, 2024, less than two weeks after this Court's ruling in *PILF*, the RNC, Jordan Jorritsma, and Emerson Silvernail filed this suit against the Secretary and the Director of the Michigan Bureau of Elections ("Defendants") alleging that they have violated their list-maintenance obligations under Section 8 of the NVRA. Compl. ¶¶ 96–100, ECF No. 1, PageID.19–20. The main allegation in Plaintiffs' single-claim Complaint is that Defendants *must* be violating the NVRA because several Michigan counties presently have "impossibly high" voter registration rates. *See* Compl. ¶ 3, ECF No. 1, PageID.1; *see also* Compl. ¶¶ 48–50, ECF No. 1, PageID.11–12. Plaintiffs seek far-ranging relief: in addition to a declaratory judgment that Defendants are in violation of Section 8 of the NVRA, Plaintiffs demand an order instructing Defendants to develop and implement "reasonable and effective" list-maintenance programs to cure the alleged existing violations, as well as a permanent injunction barring future violations of the NVRA. Compl. at 20, ECF No. 1, PageID.20.

[2] Prior to the *PILF* case, in June 2020, Anthony Daunt, an individual voter in Michigan, filed a complaint against the Secretary, the Director of the Michigan Bureau of Elections, and over a dozen county clerks alleging, like Plaintiffs do in this case, that Michigan had not taken reasonable efforts to clean up their voter rolls in violation of Section 8 of the NVRA. *See* Compl. ¶¶ 5, 78–79, ECF No. 1, PageID.2, 16; *see generally* Compl., *Daunt v. Benson*, No. 1:20-cv-00522-RJJ-RSK (W.D. Mich. June 9, 2020), ECF No. 1. Daunt ultimately voluntarily dismissed his case after the Secretary agreed to engage in several steps to update the state's voter registration lists. *See* Compl. ¶ 7, ECF No. 1, PageID.2.

LEGAL STANDARD

"Whether a party has standing is an issue of the court's subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)." *Lyshe v. Levy*, 854 F.3d 855, 857 (6th Cir. 2017). "[W]here subject matter jurisdiction is challenged under Rule 12(b)(1), . . . the plaintiff has the burden of proving jurisdiction in order to survive the motion." *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (emphasis omitted). To establish Article III standing, a plaintiff must sufficiently allege (1) a "concrete" and "particularized" injury-in-fact, actual or imminent, (2) that is fairly traceable to the defendant's conduct, and (3) is likely to be redressed by a favorable decision from the court. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016). "Injury in fact is a constitutional requirement, and '[i]t is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.'" *Id*. 1547–48 (alteration in original) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997)).

Under Rule 12(b)(6), a claim must be dismissed for failure to state a claim unless the "[f]actual allegations [are] enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). While a court presumes that all well-pleaded material allegations in the complaint are true, *see Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (alteration in original) (quoting Fed. R. Civ. P. 8(a)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not 'show[n]'—'that the pleader is entitled to

relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)).

ARGUMENT

I. Plaintiffs lack standing.

Plaintiffs lack Article III standing because they fail to allege any "concrete and particularized" injuries-in-fact. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Each of their purported bases for standing—concern about election integrity, vote dilution, and vague claims of having to spend resources in response to Michigan's list-maintenance procedures—are woefully insufficient. The Complaint should be dismissed.

A. Plaintiffs' concerns about election integrity and vote dilution are speculative, generalized grievances that are not cognizable under Article III.

Individual Plaintiffs Jordan Jorritsma and Emerson Silvernail assert—at best—only generalized grievances that do not satisfy Article III. Jorritsma and Silvernail first allege that they "reasonably fear[] that ineligible voters can and do vote in Michigan elections," which "undermine[s] their confidence in the integrity of Michigan elections." Compl. ¶¶ 19, 22, ECF No. 1, PageID.5. But this unsubstantiated "fear" of unlawful voting is precisely the sort of "psychic injury [that] falls well short of a concrete harm needed to establish Article III standing." *Glennborough Homeowners Ass'n v. United States Postal Serv.*, 21 F.4th 410, 415 (6th Cir. 2021); *cf. Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 619–20 (2007) (Scalia, J., concurring) (recognizing that a plaintiff whose only injury is subjective mental angst "lacks a concrete and particularized injury" under Article III). Moreover, the individual Plaintiffs' subjective "fears" about election integrity are the type of quintessential "generally available grievance about government" that rely upon assertions of "harm to [plaintiffs'] *and every* citizen's interest in proper application of the Constitution and laws." *Crawford v. U.S. Dep't of Treasury*,

868 F.3d 438, 453 (6th Cir. 2017) (emphasis added by Sixth Circuit) (quoting *Lujan*, 504 U.S. at 573–74). Because Plaintiffs seek redress "that no more directly and tangibly benefits [plaintiffs] than it does the public at large," they fail to "state an Article III case or controversy." *Id*. (quoting *Lujan*, 504 U.S. at 573–74).

The vague allegations in the Complaint that supposedly legitimize Plaintiffs' fears about voter fraud do not create a cognizable injury. Those claims are based on pure speculation and are wholly disconnected from the list-maintenance procedures Plaintiffs challenge. For example, Plaintiffs rely on generic statements from various courts—all located outside of the Sixth Circuit—stating that voter fraud is a legitimate concern, *see* Compl. ¶ 37, ECF No. 1, PageID.8–9, but they nowhere tie these generalized statements to *list-maintenance practices*, never mind *Michigan's* list-maintenance practices, which this Court found to be "reasonable" in the context of deceased voters mere weeks ago. *PILF*, 2024 WL 1128565, at *12. Similarly, Plaintiffs cite to a handful of lines in the 20-year-old Carter-Baker Commission report about how registration lists "lie at the root of most problems encountered in U.S. elections," how inaccurate voter rolls could invite fraud, and how the perception of fraud can contribute to low confidence in elections, Compl. ¶ 36, ECF No. 1, PageID.8, but fail to plausibly allege that voter fraud attributable to poor list-maintenance *presently* exists in *Michigan*. Merely invoking "the possibility and potential for voter fraud," based only on "hypotheticals, rather than actual events," does not suffice. *Donald J. Trump for President, Inc., v. Boockvar*, 493 F.Supp.3d 331, 406 (W.D. Pa. 2020).

Plaintiffs' meager efforts to identify (rare) cases of voter fraud further proves the point—upon cursory examination, *none* of the handful of incidents identified by the Plaintiffs concern fraud attributable to list-maintenance practices (such as an ineligible voter casting a ballot due to failure to remove them from a county voter registration list). *See* Compl. ¶ 38, ECF No. 1,

PageID.9. Plaintiffs' failure to identify any relevant examples of voter fraud related to Michigan's list maintenance is hardly surprising: "incidences of voter fraud and absentee ballot fraud [in Michigan] are minimal and [] the fears of the same are largely exaggerated." Op. & Order at 16, *Mich. All. for Retired Ams. v. Benson*, No. 20-000108-MM (Mich. Ct. Cl. Sept. 18, 2020).

Jorritsma and Silvernail also allege a fear that "ineligible voters can and do vote in Michigan elections," and that those votes will "dilute" the individual plaintiffs' and RNC members' "legitimate vote." Compl. ¶¶ 18–19, 21–22, ECF No. 1, PageID.4–5. These allegations similarly fail to describe a theory of vote dilution that is particularized to Plaintiffs, as opposed to a generalized grievance that could be raised by any voter in Michigan. That is why courts have repeatedly rejected generalized theories of vote dilution as a basis for standing. *See Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020) ("Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing." (internal quotation omitted)). In fact, a "veritable tsunami" of courts that have considered this exact theory of injury have rejected it as insufficient for standing. *O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff'd,* No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022).[3] And, just days ago, a federal district court in the District

[3] *See, e.g.*, *Wash. Election Integrity Coal. United v. Wise*, No. 2:21-CV-01394-LK, 2022 WL 4598508, at *4 (W.D. Wash. Sept. 30, 2022) (collecting cases and concluding that similar allegations of vote dilution do not create standing); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596, 608 (E.D. Wis. 2020) (noting several courts have concluded that similar claims of vote dilution are "generalized grievance[s]"); *Martel v. Condos*, 487 F.Supp.3d 247, 253 (D. Vt. 2020) ("If every voter suffers the same incremental dilution of the franchise caused by some third-party's fraudulent vote, then these voters have experienced a generalized injury."); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926 (D. Nev. 2020) ("But Plaintiffs' purported injury of having their votes diluted due to ostensible election fraud may be conceivably raised by any Nevada voter. Such claimed injury therefore does not satisfy the requirement that Plaintiffs must state a concrete and particularized injury."); *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) ("[T]he risk of vote dilution[is] speculative and, as such, [is] more akin to a generalized grievance about the government than an injury in fact.").

of Columbia joined in, rejecting plaintiffs' vote dilution theory because they were "simply raising a generalized grievance which is insufficient to confer standing." Mem. Op. at 9, *Hall v. D.C. Bd. of Elections*, No. 1:23-cv-01261-ABJ (D.D.C. Mar. 20, 2024), ECF No. 20 (dismissing suit for lack of standing).[4]

B. Plaintiffs do not allege a cognizable diversion of resource injury.

Plaintiffs cannot manufacture standing simply because they choose to spend time and money investigating Michigan's list-maintenance practices in anticipation of the speculative future harm of vote dilution. *See, e.g.*, *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 865 (6th Cir. 2020) (holding a "plaintiff cannot create an injury by taking precautionary measures against a speculative fear," including by spending time or money combating speculative concerns about ineligible voters fraudulently voting); *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 982 (6th Cir. 2020) ("[A]n organization can no more spend its way into standing based on speculative fears of future harm than an individual can."); *Online Merchants Guild v. Cameron*, 995 F.3d 540, 547 (6th Cir. 2021) (concluding courts have "rejected assertions of direct organizational standing where an overly speculative fear triggered the shift in organizational resources"); *accord Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 416 (2013) (noting a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of

[4] In contrast, some courts have found that, in the redistricting context, vote dilution may serve as a basis of standing because it impacts the *weight* of a particular person's vote relative to voters in other districts. As the Eleventh Circuit has reiterated, such vote dilution injuries "require[] a point of comparison. For example, in the racial gerrymandering and malapportionment contexts, vote dilution occurs when voters are harmed compared to 'irrationally favored' voters from other districts." *Wood*, 981 F.3d at 1314 (quoting *Baker v. Carr*, 369 U.S. 186, 207–08 (1962)). But no such allegations are made here—no single Michigan's voter's ballot is alleged to be diluted more than any other, unlike in the redistricting context when a law *minimizes* a voter's or a group of voters' voting strength or ability to access the political process *as compared to other voters*. *See, e.g.*, *Baker*, 369 U.S. at 207–08.

hypothetical future harm that is not certainly impending"). But this is precisely what Plaintiffs do in alleging that Defendants' failure to maintain their voter rolls forces "all" of the Plaintiffs to deploy their time and resources towards more monitoring of Michigan elections for fraud and abuse, mobilizing voters to counteract Defendants' actions, educating the public about election-integrity issues, and persuading elected officials to improve list maintenance. Compl. ¶ 23, ECF No. 1, PageID.5–6; *see also* Compl. ¶¶ 19, 22, ECF No. 1, PageID.5. Such "self-inflicted injuries are not [] injuries in fact" sufficient for standing purposes. *Bucholz*, 946 F.3d at 866 (collecting cases).

The RNC also alleges that it has been injured as an organization because it has spent time and resources on investigating list-maintenance issues. *See* Compl. ¶¶ 24–25, ECF No. 1, PageID.6. But the fact that the RNC does not allege any injury beyond these costs is fatal to its diversion of resource theory for standing because merely alleging it is "spending money" to bring litigation or "spending [] resources" in response to an election law do not suffice. *Shelby Advocs.*, 947 F.3d at 982 (affirming dismissal of a complaint); *accord Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (holding organization had standing where diversion of resources "perceptibly impaired" its mission). By contrast, an organization may be injured by a diversion of resources when it is forced to divert resources "*away* from [] other [] services it provides . . . [,] frustrating its mission." *Hughes v. Peshina*, 96 F. App'x 272, 274 (6th Cir. 2004). But the RNC nowhere alleges that the resources it allocates towards this issue impedes its mission, nor could it given the speculative and fictitious harm it supposedly seeks to prevent.

Finally, the RNC also alleges that, because it relies on "voter registration lists to determine its plans and budgets," when those lists "include names of voters who should no longer be on the list" the "RNC *may* spend more resources on mailers, knocking on doors, and otherwise trying to

contact voters, or it *may* misallocate its scarce resources among different jurisdictions." Compl. ¶ 17, ECF No. 1, PageID.4 (emphases added). In the RNC's own words, this alleged need to spend resources for these other activities is entirely theoretical and speculative. This is merely another abstract injury that is not cognizable for purposes of Article III standing. *See Online Merchants Guild*, 995 F.3d at 547.

II. Plaintiffs fail to state a claim upon which relief can be granted.

Even if the Court found it had jurisdiction, the Complaint still must be dismissed under Rule 12(b)(6) because it fails to state a claim. Plaintiffs allege that Defendants have failed to make "reasonable efforts" to conduct voter-list maintenance under Section 8 of the NVRA, but rather than actually grappling with the state's lawful (and reasonable) processes for removing voters, Plaintiffs simply complain that several Michigan counties have what Plaintiffs believe to be "inflated" voter rolls. Compl. ¶¶ 48–49, ECF No. 1, PageID.11–12. Those allegations do not provide a plausible inference that Michigan is violating the NVRA.

As this Court has recognized, a state's removal program need not be perfect to comply with the NVRA: "[The] state is not required to exhaust all available methods for identifying deceased voters; it need only use reasonably reliable information to identify and remove such voters." *PILF*, 2024 WL 1128565, at *10 (quoting *Bellitto*, 935 F.3d at 1205); *see also Bellitto*, 935 F.3d at 1207 (concluding that the state's "failure to use duplicative tools or to exhaust every conceivable mechanism does not make [an] effort unreasonable."). Furthermore, as this Court also recognized, a reasonable removal effort under the NVRA "does not require states to immediately remove every voter who may become ineligible" either. *PILF*, 2024 WL 1128565, at *11. For instance, there is a natural lag in time between when a registrant dies and when the Secretary's office learns of the registrant's death and cancels their registration. *Id.* And for voters who have moved, the NVRA

requires that election officials comply with a multi-step, multi-year waiting period during which a voter must both fail to respond to a notice from the state *and* fail to vote in two federal elections—spanning a period of four years—before their registration can be cancelled. *See* 52 U.S.C. § 20507(d)(1)(B).[5]

This statutory waiting period reflects Congress's intention for the NVRA to balance maximizing the number of eligible voters who are registered to vote with maintaining the integrity of the electoral process and the accuracy of state voter rolls. *Id.* § 20501(b); *Husted v. A. Philip Randolph Inst*., 584 U.S. 756, 761 (2018) (noting the NVRA has "two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration rolls").[6] Plaintiffs' Complaint does not offer any reason to plausibly infer that Michigan's voter lists have been improperly maintained instead of kept in accordance with the NVRA, which mandates this waiting period. Indeed, and quite strikingly, *nowhere* do Plaintiffs identify a specific deficiency with Michigan's current practices, nor do they identify any specific, presently registered voter whose presence on the rolls violates the NVRA. Instead, Plaintiffs construct their entire Complaint around allegations about selective county voter registration rates, which are just a single snapshot

[5] Plaintiffs' allegations regarding rates of resident reallocation are insufficient, even at this stage, to support an alleged NVRA violation for several reasons, as well. Compl. ¶¶ 65–67, ECF No. 1, PageID.14. First, the mere fact that a resident has moved does not necessarily mean they have moved out of the county or are otherwise ineligible to vote in the jurisdiction in which they are registered. If followed, Plaintiffs' broad assumption that any voter who has moved should automatically and immediately be removed from the voter rolls would itself violate the requirements of the NVRA. *See* 52 U.S.C. § 20507(d). Second, as required by the NVRA, there is a multi-year delay built into the removal process for change of address, such that rates of residential moves in any given year *should not* match the rate of voter registration removal, as Plaintiffs suggest. *See* Compl. ¶ 66, ECF No. 1, PageID.14.

[6] In fact, the NVRA includes an optional safe-harbor procedure that reflects Congress's intention—states are deemed to meet their list maintenance obligations if they use U.S. Postal Service data to identify voters who may have moved and then follow a specified notice procedure that can extend up to four years to confirm the change of residence before actually removing a voter from the rolls. *See* 52 U.S.C. § 20507(c)(1), (d).

in time of Michigan's voter rolls. But as the Eleventh Circuit in *Bellitto* specifically warned, reliance on such a "snapshot" is misleading because it 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." 935 F.3d at 1208 (alteration in original) (citation omitted) (affirming trial court's ruling that Florida's list-maintenance procedures were "reasonable" under the NVRA).

This Court's detailed analysis of the NVRA's list-maintenance requirements in *PILF* further confirms the implausibility of Plaintiffs' sole claim.[7] Recognizing that the NVRA requires safeguards—particularly on the eve of an election—to protect voters from erroneous cancellations, this Court concluded in *PILF* that Michigan's multilateral process to identify and remove deceased voters from the voter rolls in fact met the threshold for "reasonable effort[s]" to comply with the NVRA. *PILF*, 2024 WL 1128565, at *11. In view of the lack of Sixth Circuit authority, this Court gave considerable weight to the Eleventh Circuit's conclusion of what constitutes a reasonable effort to satisfy Section 8 of the NVRA: for the removal of voters who have changed their address, complying with the National Change of Address process as spelled out in the NVRA itself "constitutes a reasonable effort at identifying voters who have changed their addresses." *Bellitto*, 935 F.3d at 1205; *see also* 52 U.S.C. § 20507(c), (d). And for voters who have become ineligible

[7] This Court's decision denying the Secretary's Motion to Dismiss in the *PILF* case does not provide a reason for this Court to deny the motion in this case. In *PILF*, the plaintiff specifically alleged that a specific number of deceased registrants remained on Michigan's voter rolls and that thousands of these same registrants had remained active on the voter rolls for decades. *PILF v. Benson*, No. 1:21-CV-929, 2022 WL 21295936, at *10 (W.D. Mich. Aug. 25, 2022). By contrast, Plaintiffs here have only alleged the state's voter registration rates are not consistent with other demographic data. But as explained, such inconsistences—even if true—do not plausibly allege a violation of the NVRA.

to vote because of death, the state's reliance on death records to identify and remove deceased voters also constitutes a reasonable effort under the NVRA. *Bellitto*, 935 F.3d at 1205.

These are the precise procedures the Michigan legislature has adopted for its list-maintenance program. *See* Mich. Comp. Laws §§168.509o(4); 168.510(1) (outlining procedures to identify deceased voters and to update the voter rolls by canceling voter registrations); § 168.509dd (describing the process by which to identify and remove names of registered voters who are no longer qualified to vote in their jurisdictions, including having a local clerk conduct a house-to-house canvass, send a general mailing to voters for address verification, participate in the national change-of-address program established by the postal service, or use other means the clerk considers appropriate to conduct a removal program). Plaintiffs do not allege—nor could they plausibly allege—that Defendants are failing to adhere to these processes, which are sufficient to bring it into compliance with the NVRA.

Furthermore, this Court determined that the state's scheduled removal of 500,000 of voters in 2025 constitutes undisputed evidence that voters "are removed from Michigan's voter rolls on a regular and ongoing basis." *PILF*, 2024 WL 1128565, at *11; *see also id.* at *4. Since the Court's decision in early March of this year, the number of expected cancellations for 2025 has increased to over 550,000, with more than 94,000 additional cancellations slated for 2027. *See* Mich. Voter Info. Ctr., *Voter Registration Statistics*, Mich. Dep't of State, https://mvic.sos.state.mi.us/VoterCount/Index (last visited Mar. 22, 2024).[8] Plaintiffs no doubt

[8] Plaintiffs' reliance on public record data from the United States Elections Assistance Commission ("EAC") undercuts their contention that Michigan has not taken reasonable efforts to clean their voter rolls. *See* Compl. ¶¶ 64–68, ECF No. 1, PageID.14–15. For instance, compared to other states, Michigan cancelled the eleventh most voter registration records in 2022. U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2022* at 188 (June 2023), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf (Voter

wish for these registrations to be cancelled sooner, but their bare desire to purge voters as swiftly as possible runs headlong into the safeguards Congress mandated when it passed the NVRA. *See* 52 U.S.C. § 20507(d); *PILF*, 2024 WL 1128565, at *11 ("PILF's mere opinion on the topic" of when voters are scheduled to be removed "does not serve to demonstrate that Michigan's timing for removing deceased registrants . . . does not meet the threshold of a 'reasonable effort'").

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants respectfully request that the Court dismiss Plaintiffs' Complaint.

Registration Table 5). Such analysis is helpful in adjudicating whether, as a matter of law, a state has taken reasonable efforts to update their voter rolls. *See PILF*, 2024 WL 1128565, at *11 (noting EAC data was "fatal" to PILF's claims on summary judgment, as over the last several years, Michigan has removed around the fifth largest total number of registrations year to year for several years); *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021) (records of removal numbers can "effectively torpedo" a plaintiff's theories that officials are not fulfilling their list-maintenance obligations under the NVRA).

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Respectfully submitted,

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*Admission pending

CERTIFICATE OF SERVICE

I certify that on this 22nd day of March 2024, I caused to be served a copy of the above document on all counsel of record and parties via the ECF system.

/s/ *Sarah S. Prescott*
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