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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JUDICIAL WATCH, INC. and THE LIBERTARIAN PARTY OF CALIFORNIA, Plaintiffs, **v.** **SHIRLEY N. WEBER, in her official capacity as California Secretary of State; and the STATE OF CALIFORNIA,** Defendants.	2:24-cv-03750-MCS-PVC **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT** Date: June 30, 2025 Time: 9:00 A.M. Judge: Hon. Mark C. Scarsi Action Filed: May 6, 2024

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INTRODUCTION

Plaintiffs bring a challenge under the National Voter Registration Act of 1993 (NVRA), alleging violations of the list maintenance and records production provisions of the NVRA. But they have not alleged a plausible basis for constitutional standing for either plaintiff. They have not alleged that Plaintiff LPCA falls within the zone of interests that would grant it statutory standing to press claims under the NVRA. And they have not shown that the plan of the Convention doctrine abrogates sovereign immunity against the State of California. The Court should grant Defendants' Motion to Dismiss. And because additional factual allegations cannot remedy the Complaint's deficiencies, Plaintiffs should not be given a third chance to clear the Article III and 12(b)(6) bars to move forward with their case.

ARGUMENT

I. PLAINTIFFS LACK CONSTITUTIONAL STANDING

A. Plaintiffs Still Lack Organizational Standing After Amendment

1. Judicial Watch Has Not Made Sufficient Allegations to Establish Organizational Standing

Judicial Watch as an organization asserts only an 8(i) cause of action. ECF No. 39 at 12. It argues that an alleged injury from the withholding of records requested under 8(i) confers standing. *Id.* at 23–24. But as Defendants' Motion explained, a party asserting an informational injury must identify a "concrete and particularized harm . . . from not obtaining the requested personal voter information." *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 937 (5th Cir. 2022); *see also* ECF No. 38 at 13. Though the Ninth Circuit has yet to address this issue, other Courts of Appeals are coalescing around this position in the NVRA context. Since Defendants moved to dismiss, two Circuits have adopted *Scott*'s holding that an organization seeking documents under the NVRA must show a specific injury stemming from the records' denial. *Pub. Int. Legal Found. v. Benson*, — F.4th —,

2025 WL 1300245 (6th Cir. May 6, 2025); *Pub. Int. Legal Found. v. Secretary*, — F.4th —, 2025 WL 1242229 (3d Cir. Apr. 29, 2025). The Sixth Circuit recognized that a party cannot secure standing just by alleging that a state's "failure to produce documents broadly harmed the organizational goals of the plaintiffs." *Benson*, 2025 WL 1300245, at *12; *see also id.* at *11 ("[I]t is not enough for a plaintiff to simply allege that it was unlawfully denied records requests; instead, a plaintiff must also show that some concrete downstream injury resulted"). Judicial Watch's cited interest in "promot[ing] transparency, integrity, and accountability . . . through public records requests" shows, at best, harm to its "organizational goals," lumping Judicial Watch in with *Benson*'s unsuccessful plaintiff. ECF No. 37 at ¶ 78. The Third Circuit agreed with the Sixth, holding that "promot[ing] the integrity of elections nationwide" is insufficiently "essential to a concrete interest protected by the statute" to secure standing. *Secretary*, 2025 WL 1242229, at *8. It thus rejected the District Court's conclusion that "[a] plaintiff suffers an injury in fact when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Id.* at *2 (internal quotations omitted).

By rejecting standing, these opinions call into question the Northern District of Illinois' conclusion in *Judicial Watch v. Illinois State Board of Elections* that a plaintiff can secure standing based on a "fail[ure] to obtain information which must be publicly disclosed pursuant to a statute." 2024 WL 4721512, at *8 (N.D. Ill. Oct. 28, 2024) (quoting *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998)). The district court relied heavily on the Supreme Court's *Akins* opinion, but as the Third Circuit explained, "much has happened in standing jurisprudence since . . . *Akins* w[as] decided." *Secretary*, 2025 WL 1242229, at *4. Notably, the Supreme Court in *TransUnion v. Ramirez* held that a failure to produce records did not confer standing without alleged "downstream consequences." *Id.* at *5 (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021)).

The Third and Sixth Circuits handled this doctrinal development in different ways, both of which end Judicial Watch's 8(i) cause of action. The Sixth Circuit followed the path traced by *Scott* and laid out in Defendants' Motion, recognizing that after *TransUnion*, records-request plaintiffs must assert downstream consequences stemming from the government's alleged failure to disclose records. *Benson*, 2025 WL 1300425, at *11 n.11 (citing *Scott*, 49 F.4th at 937–38); *see also* ECF No. 38 at 13. Defendants thus believe this to be the best reading of the relevant precedents.

The Third Circuit offers a different path. It harmonized *Akins* and *TransUnion* by recognizing that *Akins* allowed standing for a bare records denial in the context of FOIA, a statute with only the purpose of government transparency. *Secretary*, 2025 WL 1242229, at *4. In the NVRA, by contrast, "[t]he required disclosure of certain records is merely one aspect of the statutory scheme." *Id.* So, to the Third Circuit, "if disclosure of information is the essence of a statute, as it is in FOIA," then mere non-production of records conveys standing. *Id.* at *5. But because "the NVRA targets an objective much broader and more expansive than access to records," a plaintiff proceeding under that statute must identify concrete downstream consequences. *Id.*

In short, a chorus of appellate courts has rejected Plaintiffs' reading of *TransUnion*. Judicial Watch thus lacks organizational standing.

2. LPCA's Organizational-Standing Argument Ignores Relevant Precedent

LPCA also again seeks organizational standing. But its opposition suffers from the same issue as its original and Amended Complaints—it overlooks *FDA v. Alliance for Hippocratic Medicine* (*AHM*). "In [*AHM*] the Supreme Court clarified that an organization does not have standing to sue simply because it diverts resources in response to a defendant's actions." ECF No. 34 at 5. LPCA's original

and Amended Complaint both offered such improper diversion-of-resource arguments. *Id.* at 6; ECF No. 38 at 16.

LPCA's responses are unavailing. First, LPCA relies on an out-of-circuit district court case that does not apply (or even cite) *AHM*, instead repeatedly invoking a "diversion of resources" to find standing. *Repub. Nat'l Committee v. Wetzel*, 742 F. Supp. 3d 587, 593–96 (S.D. Miss.), *overruled on other grounds*, 120 F.4th 200 (5th Cir. 2024). LPCA uses that non-binding authority to argue that an organization can pursue two bases for organizational standing: direct injuries attributable to actions taken by Defendants that impaired an organization's activities, and diversion-of-resources injuries that closely resemble those in *Havens Realty Corporation v. Coleman*. ECF No. 39 at 14. Even if the Court embraces this newly crafted theory of standing, LPCA fails both of its (overlapping) prongs.

LPCA first argues that Defendants injured it directly through alleged NVRA non-compliance, but it offers nothing the Court has not already rejected. LPCA argues that, but for Defendants, it would devote less money to contacting voters, allowing it to spend elsewhere. ECF No. 39 at 15 & n.3. Despite the "direct" framing, this injury alleges a diversion of resources, the exact theory forbidden by *AHM*, a case that Plaintiffs do not meaningfully address, even though it is the most recent Supreme Court guidance on the topic and a linchpin of the Court's Order granting the Motion to Dismiss. ECF No. 34 at 5–6. Instead, LPCA offers an out-of-circuit case that predates *AHM* (*Tex. Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006)); a case that both predates *AHM* and concerns individual, not organizational, standing (*De La Fuente v. Padilla*, 930 F.3d 1101 (9th Cir. 2019)); and the above-mentioned *Wetzel*, which repeatedly and improperly blesses diversion-of-resources standing theories, in contravention of *AHM* (742 F. Supp. 3d 587). LPCA acknowledges that it presents a diversion of resources, and asks the Court to overlook Supreme Court precedent. The effort fails.

Even if the Court concludes that this theory of harm does not fail on the diversion-of-resources basis alone, it still fails as overly speculative. LPCA acknowledges that voter rolls will contain outdated registrations. ECF No. 39 at 11 n.1, 15 n.3. And it claims that the rolls bear more outdated registrations than they otherwise would. *Id.* at 15 n.3. But it offers no theory of the degree to which suitable compliance would improve the rolls. This renders its allegations fatally speculative. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

The second form of LPCA's proposed framing, aligned with *Havens*, similarly fails. The Supreme Court cautioned that it had been "careful not to extend" *Havens*' diversion-of-resources standing theory. *AHM*, 602 U.S. 367, 396 (2024). In doing so, it implied that a party would need to present injuries quite similar to *Havens*' direct interference with the organization's "core business activities": its housing counseling services. *Id.* at 395. Nevertheless, LPCA asks the Court to dispense with caution and extend the case here, even though it offers markedly different facts. LPCA claims that "the average cost" of voter contact "has increased," requiring it to divert resources towards contacting voters. ECF No. 39 at 17. But LPCA again repeats the same errors that the Court has already identified, "merely alleg[ing] Defendants' dereliction of their NVRA obligations makes outreach" harder and more expensive. ECF No. 34 at 6; *see* ECF No. 38 at 16. LPCA lacks Article III standing.

B. Plaintiffs Lack Associational Standing

The Court can also easily dispense with any assertion of associational standing, which Plaintiffs do not meaningfully defend in their opposition. As demonstrated in Defendants' Motion, Plaintiffs' naming of specific members does not establish associational standing because those members' alleged standing still rests on fundamentally speculative concerns that the Court already found insufficient. ECF No. 34 at 7; ECF No 38 at 15; ECF No. 38-1. Plaintiffs' cited authorities in opposition are the same ones the Court already found unpersuasive,

and Plaintiffs offer no new basis to justify this already-rejected theory of standing. *Compare* ECF No. 39 at 21–22 *with* ECF No. 17 at 18–19. The Court should again find a lack of associational standing.

II. LPCA'S ARGUMENT FOR STATUTORY STANDING FAILS IN SEVERAL WAYS

Even if the Court found that any of LPCA's injuries conferred Article III standing, LPCA lacks statutory standing. Specifically, it falls outside of the NVRA's zone of interests.

LPCA begins by stating that a "person aggrieved" under the NVRA, the phrase that limits the statute's zone of interests, *see* ECF No. 38 at 22, contains "no other restriction beyond the requirement to send a notice letter." ECF No. 39 at 18. That is a surprising concession, given that LPCA sent Defendants no notice letter, an oversight that led LPCA to drop its 8(i) cause of action in its Amended Complaint. ECF No. 37 at ¶ 134–36; *see also* ECF No. 34 at 8–9 n.3.

Next, LPCA again cites an out-of-circuit opinion, *ACORN*, that read the NVRA's statutory purpose broadly. ECF No. 39 at 18–19; ECF No. 38 at 22. As Defendants have explained, more-recent Supreme Court opinions have narrowed the meaning of "person aggrieved" such that *ACORN* would be decided differently under current law. ECF No. 38 at 22; ECF No. 28 at 11. That non-binding, outdated opinion should not persuade the Court where intervening Supreme Court precedent has superseded it.

LPCA then falls back on the NVRA's legislative history, launching an argument with several holes. First, resorting to legislative history is unnecessary here because the NVRA expressly states its own purposes. 52 U.S.C. § 20501(b); *Dellmuth v. Muth*, 491 U.S. 223, 230 (1989) ("If Congress' intention is unmistakably clear in the language of the statute, recourse to legislative history will be unnecessary") (internal quotation omitted); *see also Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 131 (2014) (explaining that a statute's

interests for purposes of statutory standing can be distilled from reviewing the law's statement of purposes). Plaintiffs identify no ambiguous provision of the NVRA requiring resort to the NVRA's legislative history. And even if the NVRA's legislative history were relevant here, LPCA does not even present it, instead offering the history of "a predecessor bill." ECF No. 39 at 19. The Court should limit its analysis to the text drafted by Congress and signed by the President.

Finally, LPCA simply lists the NVRA's interests and asserts that it shares those goals. ECF No. 39 at 20. This is improper: a court may not credit the claim that a law's goals, "standing alone, plausibly relate to" a plaintiff's asserted interest. ECF No. 38 at 18 (quoting *Air Courier Conf. of Am. v. Am. Postal Workers Union AFL-CIO*, 498 U.S. 517, 524 (1991)). And even looking past this issue, LPCA pursues economic and political goals that the NVRA does not capture in its sweep. *Id.* at 20–21. LPCA thus falls outside of the NVRA's zone of interests.

III. PLAINTIFFS MISPERCEIVE THE PLAN-OF-THE-CONVENTION DOCTRINE'S CONTOURS

Plaintiffs do not establish sovereign immunity's vitiation under the Plan-of-the-Convention doctrine. They argue that states lack sovereign immunity in the elections context by citing several cases for the proposition that Congress may override state election law. ECF No. 39 at 22–23. But that principle, which is misapplied here, is unilluminating—federal law subordinates state law whenever the federal government has constitutional authority to legislate. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819) ("[T]he government of the Union, though limited in its powers, is supreme within its sphere of action."). This argument thus proves nothing relevant to sovereign immunity in the Elections Clause context. Indeed, the Plan-of-the-Convention doctrine states the opposite: "the fact that an area of law 'is under the exclusive control of the Federal Government'" is not alone sufficient to do away with sovereign immunity. *Torres*

v. Texas Dep't of Pub. Safety, 597 U.S. 580, 595 (2022) (quoting *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996)).

Instead, the Plan-of-the-Convention Doctrine asks whether "States consented to the exercise of [a given federal] power—in its entirety—in the plan of the Convention." *PennEast Pipeline Co. v. New Jersey*, 594 U.S. 482, 508 (2021). Courts answer by assessing whether states "have no immunity left to waive or abrogate" in a specified domain. *Id.* If a legal area is "subject to regulation by a sovereign other than the Federal Government," like a state, the federal power is less than "complete" and thus cannot abrogate sovereign immunity. *Torres*, 597 U.S. at 596; *see also id.* at 593 (the Constitution confers "all" powers regarding the armed forces on the federal government, "leav[ing] none to the States").

As Defendants have explained, federal power is not absolute in the elections field due to the many regulations states may enact. ECF No. 38 at 29. Plaintiffs respond by citing *Torres*' conclusion that certain federal powers are "complete" such that states cannot claim immunity if a case implicates them. ECF No. 39 at 23. But that rhetorical ouroboros just cites *Torres*' holding to bolster the claim that its reasoning applies. Instead, *Torres*' reasoning counsels that the Plan-of-the-Convention doctrine applies only if the federal power is so complete that, for example, the Constitution does away with state authority in a given context, or the Framers feared state authority in the relevant domain. 597 U.S. at 590–91.

PennEast illustrates why the doctrine has no foothold here. There, the Court concluded that granting states sovereign immunity in eminent-domain matters would hamstring the federal government's eminent-domain power: "An eminent domain power that is incapable of being exercised amounts to no eminent domain power at all. And that is contrary to the plan of the Convention . . . ." *PennEast*, 594 U.S. at 504. Here, empowering states to administer elections does not leave any corresponding power incapable of full exertion.

Finally, Plaintiffs cite two district court NVRA cases applying the Plan-of-the-Convention doctrine. ECF No. 39 at 23. As the Court has recognized, these opinions predate *Torres*, and thus do not engage with its comprehensive analysis or method of review. ECF No. 29 at 30.

The Court accordingly should grant sovereign immunity here.

IV. JUDICIAL WATCH GAVE INSUFFICIENT NOTICE OF ITS 8(I) CLAIM

The parties have thoroughly presented their dispute over the sufficiency of Judicial Watch's notice required by NVRA section 8(i). ECF No. 16 at 19–23; ECF No. 17 at 21–25; ECF No. 19 at 12–13; ECF No. 29 at 24–28; ECF No. 38 at 23–27; ECF No. 39 at 24–26. The only notable change in the 8(i) legal landscape since this briefing commenced is that the Courts of Appeals have coalesced around the position that plaintiffs like Judicial Watch who assert a "bare procedural violation," *TransUnion*, 594 U.S. at 440 (quotation omitted), lack Article III standing. *See* pp. 1–3 *supra*.

The Court concluded that it need not reach this issue in its prior order because Plaintiffs lack standing. ECF No. 34 at 8. The same is still true. But if the Court does reach the issue, the arguments in Defendants' original Motion and renewed Motion provide an additional basis for dismissal.

CONCLUSION

The Court should grant Defendants' Motion to Dismiss. And because Plaintiffs' amendment demonstrates that they cannot mend their pleading's errors, leave to amend should be denied.

Dated: May 21, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief contains 2,823 words, which:

__ complies with the word limit of L.R. 11-6.1.

_X_ complies with the word limit set by Judge Scarsi's Civil Standing Order

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CERTIFICATE OF SERVICE

Case Name: **Judicial Watch, Inc. v. Shirley N. Weber** No. **2:24-cv-03750-MCS-PVC**

I hereby certify that on May 21, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 21, 2025, at Los Angeles, California.

Dyan Serzo	D. Serzo
Declarant	Signature

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