

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FLORIDA RISING TOGETHER, INC. and
FLORIDA RISING, INC.

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Secretary of State for the State of Florida, et
al.,

Defendants.

CIVIL CASE NO. 6:24-cv-01682

**ORAL ARGUMENT
REQUESTED**

**PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO INTERVENOR-DEFENDANTS' MOTION TO DISMISS**

RETRIEVED FROM DEMOCRACY DOCKET.COM

INTRODUCTION

Intervenor-Defendants Republican National Committee and Republican Party of Florida (“Intervenors”) contend that Plaintiffs Florida Rising Together (“FRT”) and Florida Rising, Inc. (“Florida Rising”) (collectively, “Plaintiffs”) fail to state claims in their Amended Complaint (“Am. Compl.”) under the First and Fourteenth Amendments to the United States Constitution, the National Voter Registration Act (“NVRA”) and the Voting Rights Act (“VRA”). Intervenors’ arguments are unavailing.

Intervenors’ brief paints a rosy picture of a flawless election administration system, which ignores Plaintiffs’ allegations that Florida’s voter registration verification protocol (the “Match Protocol”) is currently keeping nearly 80,000 Floridians off the Florida rolls and has needlessly burdened an additional 188,000 eligible Floridians in recent years. Intervenors then suggest that federal law gives the State carte blanche to impose the Match Protocol—or virtually any other burdensome restriction or requirement—on Floridians. Intervenors misconstrue the import of the Supreme Court’s holding in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), which bears relatively few lessons for resolving a motion to dismiss an *Anderson-Burdick* challenge to a voter registration verification program. Intervenors also misinterpret the NVRA as being inapplicable to restrictions that deny voters access to the voter rolls and employ an overly restrictive interpretation of the VRA that ignores the Match Protocol’s discriminatory impact and would effectively read Section 2 out of existence.

Ultimately, Intervenor's ignore that the Amended Complaint's facts must be accepted as true at the motion to dismiss stage. Plaintiffs ask that this Court reject Intervenor's invitation to make factual findings at this early stage. Resolving fact-intensive claims under *Anderson-Burdick* and Section 2 of the VRA requires a developed factual record, and Intervenor's request that the Court weigh facts now is premature.

Since Plaintiffs have adequately alleged claims under the U.S. Constitution, the NVRA, and the VRA, the Court should deny Intervenor's Rule 12(b)(6) motion.

BACKGROUND

Florida's Match Protocol has resulted in the rejection of tens of thousands of otherwise valid voter registration applications since 2018. Am Compl ¶ 9. Nearly 80,000 Florida voter registrants are currently ineligible to vote *solely* due to the Match Protocol. *Id.* In Florida, voter registration applicants are not added to the voter rolls if certain identifying information does not produce an exact character-by-character match with other agencies' driver's license or social security information. *Id.* ¶¶ 2-3. Applicants flagged through the Match Protocol are not allowed to cast a ballot that counts unless they provide proof of their identity to election officials. *Id.* ¶¶ 6-7. The Match Protocol is plagued with errors and disenfranchises eligible voters due to factors outside of their control. *Id.* ¶¶ 4, 78-80. The transposition of a single letter or number, deletion or addition of a hyphen, accent mark, or initial in an applicant's name, or the accidental entry of an extra character or space can cause an applicant to be put in "unverified" status through no fault on the applicant's part. *Id.*

Additionally, the Match Protocol is not applied uniformly. Unlike individuals who register to vote with paper forms, individuals who register online or at a motor vehicle office are almost never subject to the Match Protocol and thus nearly immune from being flagged as “unverified.” *Id.* ¶ 8. The Match Protocol’s burden falls disproportionately on Black and other voters of color who register at higher rates using paper forms and third-party voter registration drives than do white voters. *Id.*

LEGAL STANDARD

In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009). “To survive dismissal, the factual allegations must be ‘plausible’ and ‘must be enough to raise a right to relief above the speculative level.’” *Cincinnati Indem. Co. v. Evanston Ins. Co.*, 2024 WL 5010138, at *5 (M.D. Fla. Dec. 6, 2024) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

A. PLAINTIFFS HAVE STATED A CLAIM UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

1. Intervenor’s Motion Would Force the Court to Weigh Evidence and Make Factual Determinations at the Motion to Dismiss Stage

Under *Anderson-Burdick*, courts must “weigh the character and magnitude of the asserted First and Fourteenth Amendment injury against the state’s proffered justifications for the burdens imposed by the rule, taking into consideration the extent to which those justifications require the burden to plaintiffs’ rights.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). This balancing test lies at the heart of voting rights jurisprudence, ensuring that restrictions on the fundamental right to vote serve genuinely important governmental interests rather than as arbitrary barriers. But in the Eleventh Circuit, it is “impossible for [a court] to undertake the proper review required by the Supreme Court” under *Anderson-Burdick* on a motion to dismiss because no factual record has yet been developed. *Duke v. Cleveland*, 5 F.3d 1399, 1405 (11th Cir. 1993); *see also Bergland v. Harris*, 767 F.2d 1551, 1555 (11th Cir. 1985) (remanding and ordering district court “to develop the factual record necessary to follow the weighing process dictated by *Anderson*”); *League of Women Voters of Fla. v. Lee*, 566 F. Supp. 3d 1238, 1258 (N.D. Fla. 2021) (“Because the *Anderson-Burdick* test ‘emphasizes the relevance of context and specific circumstances,’ it is particularly difficult to apply at the motion to dismiss stage”) (quoting *Cowen v.*

Ga. Sec’y of State, 960 F.3d 1339, 1346 (11th Cir. 2020)). *Anderson-Burdick* requires a developed factual record and courts should not weigh facts in the absence of discovery and evidentiary development.

This procedural barrier is dispositive. Intervenor’s nonetheless ask this Court to perform an *Anderson-Burdick* analysis now, despite the absence of any evidence on key factual questions, such as: how many disenfranchised voters were actually ineligible; whether less restrictive alternatives exist; the Match Protocol’s actual fraud-prevention efficacy; and the real costs imposed on voters attempting to cure. *See* Intervenor’s Br. at 4-15. Such questions cannot be resolved at the pleading stage.

Even assuming this Court could properly balance interests at this stage, Plaintiffs’ allegations are plainly sufficient to survive a motion to dismiss. Plaintiffs allege that the Match Protocol undermines, rather than advances, the State’s asserted interests in orderly administration and election integrity. The Amended Complaint details the chaos that the Match Protocol injects: tens of thousands of notices, surges of provisional ballots cast and rejected, and election officials overwhelmed with cure requests. Am. Compl. ¶¶ 9, 95-103, 154-55. The Match Protocol creates disorder, not order. Similarly, the asserted interest in “public confidence” in election integrity is unavailing when nearly 80,000 eligible Floridians are currently excluded from the voter rolls solely because of the Match Protocol. *Id.* ¶¶ 117, 155.

The Eleventh Circuit has consistently rejected arguments like those advanced by Intervenor’s here. *See Lee*, 915 F.3d at 1321-26 (rejecting argument that Florida’s interests in preventing fraud, regulating its elections, and protecting public confidence

in the legitimacy of elections justify burdens imposed by Florida's signature-match scheme); *Fish v. Schwab*, 957 F.3d 1105, 1132-36 (10th Cir. 2020) (rejecting argument that protecting integrity of electoral process, ensuring accuracy of voter rolls, safeguarding voter confidence, and preventing voter fraud justify burdens imposed by Kansas law requiring documentary proof of citizenship for voter registration). Accordingly, Intervenor has not shown that this Court should deviate from established principle and perform the *Anderson-Burdick* balancing test at this time.

The Amended Complaint alleges that the Match Protocol is not supported by any State interest sufficient to justify the burdens it imposes and that the Match Protocol disrupts orderly administration and undermines election integrity. Am. Compl. ¶¶ 152-55. These allegations are sufficient to state a constitutional undue burden claim under *Anderson-Burdick*. See *Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1278 (N.D. Ga. 2021) ("Here, the Amended Complaint contains detailed allegations of burdens that Plaintiffs assert the challenged provisions will impose on Georgia voters. Plaintiffs also maintain that there are no legitimate state interests that would support such burdens. *Anderson* and *Burdick* do not require more from Plaintiffs at the motion to dismiss stage."); *League of Women Voters of Fla., Inc. v. Detzner*, 354 F. Supp. 3d 1280, 1288 (N.D. Fla. 2018) ("It is sufficient for a 12(b)(6) motion that Plaintiffs have alleged the lack of early-voting sites on public university campuses have burdened their voting rights."). Consequently, Intervenor's arguments for dismissing the *Anderson-Burdick* claim are without merit.

2. Intervenor's Reliance on *Crawford* is Misplaced

Intervenor's contend that *Crawford* requires dismissal of Plaintiffs' claims. Despite Intervenor's claims to the contrary, a voter registration verification program is distinguishable from the statute at issue in *Crawford*, which required voters appearing in person at a polling place to present identification.

Crucially, Florida has a separate voter identification requirement on the books that is not at issue here. Fla. Stat. § 101.043(1)(a) (listing IDs that a voter must present at the polls to vote a regular ballot). Plaintiffs are not challenging Florida's in-person voter registration requirement. If Plaintiffs were bringing that (entirely different) sort of case—and, given that case's procedural posture, it had gone to trial—then *Crawford* would be more salient than it is here.

The rationale and purpose for an in-person voter identification requirement are entirely different from the rationale and purpose for a voter registration verification program like the Match Protocol. The purpose of an in-person voter identification requirement is to prevent in-person voter fraud and allow a poll worker to verify that the voter appearing at the polls is the same person who is on the voter rolls and registered to vote in that precinct. *Crawford*, 553 U.S. at 194 (“The only kind of voter fraud that [Indiana's photo ID requirement] addresses is in-person voter impersonation at polling places.”). That is why voters who appear at the polls in Florida must provide photo ID and/or an ID with a signature, which is then compared to the signature provided on the precinct register. Fla. Stat. § 101.043(1)(b).

By contrast, a voter registration verification program like the Match Protocol is a separate prerequisite that applies at an earlier stage in the process: when an individual seeking to register completes their voter registration application and turns it in. *Id.* § 97.053(6). This sort of program cannot prevent in-person voter fraud at the polls; it is instead intended to deter “improper registration entries.” *Fla. State Conf. NAACP v. Browning*, 569 F. Supp. 2d 1237, 1251 (N.D. Fla. 2008) (citing *Fla. State Conf. NAACP v. Browning*, 522 F.3d 1153, 1174 (11th Cir. 2008)). Because a Match Protocol is not a photo ID requirement and is designed to address a different type of fraud, it operates differently from a voter ID requirement. All voters appearing in person have to provide an ID. The Match Protocol specifically impacts individuals who do not make it through the database matching process—who receive a letter informing them that their identity cannot be verified. Unlike in *Crawford* where, “[n]o photo identification [was] required in order to register to vote,” *Crawford*, 553 U.S. at 186, the Match Protocol operates months before the election at the registration stage. Applicants flagged as “unverified” never join the voter rolls in the first place. They must navigate a burdensome curing process, and many (like Suzan Bach) are denied registration despite submitting multiple rounds of documentation. Am. Compl. ¶¶ 104-13. In short, the Intervenor’s argument ignores the constitutional significance of being denied registration altogether.

Second, Intervenor’s ignore that the Match Protocol is far from neutral. The Amended Complaint alleges that the Match Protocol systematically disenfranchises voters of color at dramatically disproportionate rates—Black citizens account for

31.6% of unverified applicants despite representing only 12% of registered voters. Am. Compl. ¶ 121. This is not mere coincidence but the result of a verification system that only applies to certain methods of registration and converts minor discrepancies, arising from no fault of the applicant, into presumptions of ineligibility and leading to disenfranchisement of otherwise eligible voters. *Id.* ¶¶ 76-80, 141-46.

Third, the Match Protocol imposes far more than the minor inconvenience to voters that *Crawford* described. Unlike *Crawford*'s requirement to obtain and present identification, an action within the voter's control, the Match Protocol systematically excludes eligible voters based on database discrepancies entirely outside their control. An applicant can fill out their registration form perfectly and still be flagged as "unverified" due to data entry errors or transcription errors when applications are manually entered into databases. Am. Compl. ¶¶ 78-79. This is not mere "inconvenience"—it is disenfranchisement.

Intervenors are further mistaken when they argue that the availability of provisional ballots cures Plaintiffs' constitutional injury. Intervenors Br. at 6. *Crawford* addressed provisional ballots in the context of a voting-day ID requirement, where already-registered voters could immediately cast a provisional ballot. Here, by contrast, applicants flagged as "unverified" are never registered in the first place. They must navigate a burdensome curing process, often receiving conflicting instructions from county supervisors, and many—like Ms. Bach—are denied registration or disenfranchised despite submitting multiple rounds of documentation. Am. Compl. ¶¶ 104-13. And even if an unverified applicant appears on Election Day and casts a

provisional ballot, that ballot will still be rejected unless the applicant cures the registration deficiency within two days following the election. Fla. Stat. § 97.053(6).

3. Defendants Incorrectly Categorize the Amended Complaint as a Facial Challenge

Intervenors argue that Plaintiffs advance a facial challenge and must demonstrate that the statute is unconstitutional under all circumstances. Intervenors Br. at 7-8. This argument misunderstands the distinction between facial and as-applied challenges and it mischaracterizes this lawsuit, as Plaintiffs bring an as-applied challenge to Defendants' implementation of the Match Protocol. The Eleventh Circuit has described the facial versus as-applied distinction as follows:

A facial challenge is one that seeks to invalidate a law “even though [the law’s] application in the case under consideration may be constitutionally unobjectionable.” Where, as here, plaintiffs seek to vindicate their own rights, the challenge is as-applied.

Jacobs v. The Florida Bar, 50 F.3d 901, 905-06 (11th Cir. 1995) (citing *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123, 129 (1992)). That standard is more than satisfied here. See, e.g., *Abramson v. Gonzalez*, 949 F.2d 1567, 1573-74 (11th Cir. 1992) (persons who had not applied for a psychologist’s license were entitled to bring an as-applied challenge against a Florida law mandating licenses as a prerequisite).

First, Plaintiffs do not seek to invalidate the entirety of Fla. Stat. § 97.053(6)—or any other Florida statute. Instead, Plaintiffs challenge the Match Protocol, which is not required by any Florida statute. Florida law provides that “a voter registration application . . . may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification

card number, or the last four digits of the [SSN] provided by the applicant.” *Id.* While this language authorizes data matching, it does not mandate that Floridians be denied registration due to a failure to match. In other words, the Match Protocol is an administrative creation.

Second, the Amended Complaint asserts that the Match Protocol, as applied to Florida Rising members and to voter applicants registered by FRT, is unconstitutional. *See* Am. Compl. ¶¶ 1, 1 n.1, 12, 13, 152, 159, 166, 179, 188, 194. The Amended Complaint’s proposed relief is tailored to those individuals. *Compare id.* ¶ 194(a)-(c), with *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 331 (2010).

The Amended Complaint alleges that the Match Protocol, as applied to Floridians trying to register to vote, is unconstitutional. *See* Am. Compl. ¶¶ 1, 1 n.1, 12, 13, 152, 159, 166, 179, 188. When raising an as-applied challenge, a plaintiff need not show that a statute is unconstitutional in all contexts. A plaintiff need only allege that the “application of the statute in the particular context” in which it is implemented is unconstitutional. *Doe v. Rausch*, 382 F. Supp. 3d 783, 800 (E.D. Tenn. 2019); *see also Williams v. Pryor*, 240 F.3d 944, 955 (11th Cir. 2001) (after dismissing a facial challenge, the court held that “the district court failed to specifically consider the as-applied challenges raised by the four ‘user’ plaintiffs”).

4. Plaintiffs Allege Severe Burdens on the Right to Vote

Intervenors argue that Plaintiffs allege “de minimis” burdens on “idiosyncratic voters.” Intervenors Br. at 9, 13. Intervenors further argue that Plaintiffs must allege a

“significant increase over the usual burdens of voting” for “most voters.” *Id.* at 13. This argument misconstrues Plaintiffs’ allegations and the applicable legal standard.

The Amended Complaint alleges that the Match Protocol disenfranchises roughly 80,000 otherwise eligible Floridians. Am. Compl. ¶ 9. This is not an idiosyncratic burden affecting a handful of voters with unique circumstances, but rather a systemic burden affecting tens of thousands of Floridians who seek to exercise their fundamental right to vote. *Contrast Crawford*, 553 U.S. at 199 (a “heavier burden” was placed on such a “**limited number** of persons,” estimated to be substantially less than 1% of registered voters, that plaintiffs could not identify **any** individuals severely burdened by the challenged law) (emphasis added). Here, Plaintiffs have identified 80,000 disenfranchised applicants, 31.6% of whom are Black citizens despite Black citizens comprising only 12% of Florida’s registered voters. Am. Compl. ¶¶ 117, 121. *Crawford* does not immunize such systemic disenfranchisement.

Despite Intervenor’s erroneous arguments, Plaintiffs have specifically alleged severe burdens, as endured by Ms. Bach, due to the Match Protocol. Intervenor Br. at 13-14. Ms. Bach—a senior over 65, living overseas—submitted multiple rounds of identification, only to be repeatedly marked “unverified” and ultimately barred from voting in the November 2024 election. *Id.* ¶¶ 104-13. Ms. Bach submitted her driver’s license, passport, a letter from the SSA, and bank account letter, only to be told such evidence was insufficient. *Id.* ¶ 107, 109. The Match Protocol forced Ms. Bach to navigate a bureaucratic headache that ultimately resulted in her partial disenfranchisement in the November 2024 election.

Intervenors further argue that the burdens imposed by the Match Protocol are idiosyncratic and not experienced by “most voters,” unless they have a changed name, compound last names, symbols in their name, are elderly, or live abroad. Intervenors Br. at 14-15. This argument fails. Voters with compound surnames, symbols in their names, or those living overseas are not “idiosyncratic.” They represent substantial and identifiable groups of American voters and have been disenfranchised by the Match Protocol at alarming rates. This is reflected by the fact that nearly 150 Florida Rising members and 5,800 applicants registered by FRT are currently in “unverified” status due to the Match Protocol. Am. Compl. ¶¶ 9, 19, 27.

B. PLAINTIFFS HAVE STATED A CLAIM UNDER SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT

1. Section 8(b) Applies to All Programs and Activities Impacting the Front End of the Registration Process

Intervenors contend that that the Match Protocol is not a voter “removal” program covered by Section 8(b). Intervenors Br. at 15. This argument misreads the plain language of Section 8(b). It requires that “[a]ny 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—shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]” 52 U.S.C. § 20507(b)(1).¹ The Match Protocol falls squarely within this provision.

¹ Section 8(b)’s language parallels, and must be read in tandem with, HAVA’s requirement that “each State . . . shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official,

First, Section 8(b)'s plain language compels its application here. The text of the statute, 52 U.S.C. § 20507(b)(1), does not mention voter removal or purge programs, much less confine its protections to them. And Intervenor's attempt to read a "purge program" limitation into the word "maintenance" defies the word's plain meaning. The Match Protocol involves precisely the sort of "maintenance of an accurate and current voter registration roll" because it determines who is on Florida's voter list—and thus whether that list is "accurate and current." In other words, the Match Protocol is part of Florida's process to keep their voter rolls in good order and is intended to ensure the accuracy of Florida's voter rolls and to protect electoral integrity. *See* SOS Br. at 30. Yet, the Match Protocol has the practical effect of preventing otherwise eligible Floridians from joining the voter rolls (as the Amended Complaint alleges). Florida officials cannot maintain an accurate list if eligible voters are kept off the rolls. Because the Match Protocol determines the makeup and accuracy—or the lack thereof—of the statewide voter list maintained by the Secretary, the Match Protocol must comply with Section 8(b).

Contemporaneous dictionary definitions of "maintenance"² support Plaintiffs' reading. The Match Protocol "preserve[s] [the voter rolls] from lapse, decline, [or]

centralized, interactive computerized statewide voter registration list . . . that contains the name and registration information of every legally registered voter in the State[.]" 52 U.S.C. § 21083(a)(1)(A).

² *See Maintenance*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992) ("The work of keeping something in proper condition; upkeep."); *Maintenance*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1993) ((a) to "[p]reserve from failure or decline" and (b) "to sustain against opposition or danger."); *Maintenance*, BLACK'S LAW DICTIONARY (6th ed. 1990) ("The upkeep or preservation of condition of property, including cost of ordinary repairs necessary and proper from time to time for that purpose.").

failure” by keeping ineligible Floridians off the voter rolls, thereby keeping Florida’s voter list in “proper condition” or “good order.” And the voter rolls cannot be “preserve[d] from lapse, decline, [or] failure” if the Match Protocol bars eligible Floridians from joining the voting rolls.

Second, the Match Protocol’s statutory placement confirms its coverage. Section 8(b)’s uniform and nondiscriminatory provision is titled “Confirmation of voter registration”—not “Voter removal programs” (Section 8(c)) or “Removal of names from voting rolls” (Section 8(d)). The Match Protocol’s purpose under Florida law is to “verify”—that is, to *confirm*—applicants’ identities before adding them to the rolls. *See* Fla. Stat. § 97.053(6). Thus, the Match Protocol falls squarely within Section 8(b).

The canon of consistent usage reinforces this conclusion. Indeed, “a material variation in terms suggests a variation in meaning.” *In re Failla*, 838 F.3d 1170, 1176-77 (11th Cir. 2016) (quoting Antonin Scalia & Bryan Garner, *READING LAW* 170 (2012)). The language in Sections 8(c) and (d) demonstrate that Congress knew how to reference list maintenance activities that narrowly target “remov[ing] the names of a registrant from the official list of eligible voters[.]” *See* 52 U.S.C. § 20507(d)(1). Congress used different, broader language in Section 8(b).

Plaintiffs’ straightforward reading of Section 8(b)’s plain language is consistent with the NVRA’s twin purposes to (1) increase the number of eligible citizens who register to vote and participate in the electoral process, and (2) ensure that accurate and current voter registration rolls are maintained. *See* 52 U.S.C. § 20501(b). By contrast, Intervenor’s proposed construction of Section 8(b) divorces Section 8(b) from its

statutory context and leads to absurd results by creating an exception that swallows the statute. *See Harrison v. Benchmark Elecs. Huntsville, Inc.*, 593 F.3d 1206, 1213 (11th Cir. 2010); *United States v. Velez*, 586 F.3d 875, 879 (11th Cir. 2009).

Legislative history supports this reading. First, the Senate Report suggests that Congress contemplated “activities” in addition to and other than purge programs as falling within Section 8(b)’s ambit. S. Rep. No. 103-06, at 31 (1993) (referring to a “purge program or activity based on lists provided by other parties where such lists were compiled as the result of a selective, non-uniform, or discriminatory program or activity”). Second, the Senate Report states that “registration is complete upon submitting the form to the voter registrar, motor vehicle office, designated agency or office, or on date of postmark, if mailed.” *Id.* at 30-31. Because the Match Protocol matches information from registrants’ timely submitted applications, it fits within this definition. *Cf. United States Student Ass’n Found. v. Land*, 546 F.3d 373, 386 (6th Cir. 2008).

Intervenors’ reliance on *Husted v. A. Philip Randolph Institute*, is misplaced. 584 U.S. 756 (2018). The plaintiffs in that case did not bring a uniform and nondiscriminatory claim, and the Court’s passing observation that Section 8(b)(1) is one of the NVRA’s “two general limitations that are applicable to state removal programs” is dicta that did not purport to define or limit Section 8(b)’s scope. *Id.* at 764. The district court in *Mi Familia Votes v. Fontes*, 691 F. Supp. 3d 1077 (D. Ariz. 2023), mistakenly concluded that this dicta was “[b]inding authority.” *Id.* at 1095. The district court’s misreading of *Husted* is not binding here, its reasoning is not persuasive, and this Court should not follow suit. To the extent Intervenors suggest that the Ninth Circuit endorsed the

district court's faulty reading of *Husted* on appeal, Intervenor's Br. at 16, that is wholly inaccurate. The district court's ruling on that point was not at issue on appeal. *Mi Familia Vota*, 129 F.4th 691, 701-02 (9th Cir. 2025). And the Ninth Circuit's actual holding—that Arizona's citizenship checks of voters who county recorders have "reason to believe" are not citizens is non-uniform and discriminatory in violation of Section 8(b) of the NVRA due to the checks' likely impact on naturalized citizens—strongly supports Plaintiffs' claim here. *Id.* at 714-15.

Finally, Intervenor's suggest that the Match Protocol is required by the Help America Vote Act ("HAVA"). Intervenor's Br. at 16-18. The Court should reject this argument. Nothing in HAVA requires officials to reject voter-registration applications—or even flag them for additional scrutiny—because the information provided by the applicant does not exactly match the applicant's information as contained in State or federal databases. Rather, HAVA permits each state, "in accordance with State law," to "determine whether the information provided by an individual is sufficient" for verification purposes. 52 U.S.C. § 21083(a)(5)(A)(iii). HAVA is directed at voter *identification*, not *eligibility*. *Browning*, 522 F.3d at 1168 ("Assuming that plaintiffs are right that section 303(a)(5) of HAVA does not impose matching as a requirement of voter registration, it also does not seem to prohibit states from implementing it").

Courts, including the Eleventh Circuit, have repeatedly recognized that HAVA does not mandate rejection of voter registration applications for database mismatches like those contemplated by the Match Protocol. *Browning*, 522 F.3d at 1169 n.16,

1171–72; *Washington Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1268-69 (W.D. Wash. 2006); *Morales v. Handel*, 2008 WL 9401054, at *7-8 (N.D. Ga. Oct. 27, 2008). Critically, the vast majority of states do not reject voter registration applications if the applicant’s information fails to match fields in the DHSMV or SSA databases. Am. Compl. ¶¶ 51-55. The Amended Complaint includes detailed allegations about the voter verification practices of Georgia, Ohio, and Pennsylvania. *Id.* ¶¶ 52-54.

2. Plaintiffs Adequately Allege Non-Uniform and Discriminatory Implementation of the Match Protocol

Intervenors contend that Plaintiffs fail to allege that the Match Protocol is non-uniform or discriminatory. Intervenors Br. at 18. This argument ignores the Amended Complaint’s well-pled factual allegations and contradicts on-point authority. Courts interpreting Section 8(b) have held that a voting restriction can be non-uniform if the law is theoretically applicable to all potential registrants but, as a practical matter, only impacts a subset of them. *See, e.g., Mi Familia Vota*, 129 F.4th at 714-15; *United States v. Florida*, 870 F. Supp. 2d 1346, 1350-51 (N.D. Fla. 2012) (holding a requirement to provide proof of citizenship, that was applicable to all voters, was non-uniform because it was more likely to have discriminatory impact on new citizens); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 703-04 (N.D. Ohio 2006).

In any event, the Amended Complaint alleges that the Match Protocol is not uniform because it does not apply to at least three groups of people: (1) applicants who register to vote at the DHSMV; (2) applicants who register online; and (3) applicants who do not have a PIN. *See* Am. Compl. ¶¶ 60 n.3, 142-46. In fact, in his brief, the

Secretary concedes that, per regulation, applicants who register electronically through DHSMV are exempt from the Match Protocol. SOS Br. at 12 (citing F.A.C. Rule 1S-2.039(5)). The fact that the Match Protocol does not apply to all voter registration applicants is alone sufficient to defeat the Secretary's argument.

Finally, the Amended Complaint alleges that the Match Protocol is discriminatory. The Amended Complaint alleges that Black citizens, who account for approximately 12% of Florida's registered voters, constitute 31.6% of applicants in "unverified" status. Am. Compl. ¶¶ 35, 121. By contrast, white citizens, who account for 55% of Florida's registered voters, only make up 9% of applicants in "unverified" status. *Id.* ¶ 122. Stark racial disparities prevail statewide and in each of the individual counties. *Id.* ¶¶ 121-40.

Intervenors also argue that Section 8(b) "nondiscriminatory" claims require proof of discriminatory purpose *and* effect. Intervenors Br. at 19. This argument fails for multiple reasons. The plaintiffs in *Husted* did not bring a Section 8(b)(1) "nondiscriminatory" claim. *Husted*, 584 U.S. at 789. Justice Alito was responding to an argument in Justice Sotomayor's dissent that evidence of a racially discriminatory effect was relevant to the Court's analysis of a separate section of the NVRA—Section 8(b)(2)—that is not at issue in this case. *Compare* 52 U.S.C. § 20507(b)(1), *with* § 20507(b)(2); *Husted*, 584 U.S. at 789. Courts that have ruled on this question have found that a "discriminatory impact" is alone sufficient to constitute a Section 8(b) violation. *Mi Familia Vota*, 129 F.4th at 714-15; *Florida*, 870 F. Supp. 2d at 1350.

The Amended Complaint alleges that the Match Protocol is both non-uniform (exempting DHSMV registrants and those without PINs) and discriminatory in its application (disproportionately burdening Black and non-white applicants). *See* Am. Compl. ¶¶ 60, 121-22. Such allegations are more than sufficient to state a claim under Section 8(b)(1). The Court should deny the Secretary’s motion to dismiss Count II.

C. PLAINTIFFS HAVE STATED A CLAIM UNDER SECTION 2 OF THE VOTING RIGHTS ACT

Section 2(a) of the Voting Rights Act prohibits States from employing “a standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Intervenor contends that Plaintiffs fail to allege that Florida elections are not “equally open” to a protected class. Intervenor Br. at 19-24. This argument fundamentally misconstrues the Amended Complaint and the applicable standard under *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021).

Plaintiffs’ allegations are more than sufficient to state a plausible Section 2 claim. The Amended Complaint alleges stark racial disparities, undue burdens, concrete causal mechanisms, and the absence of legitimate state interests to justify those burdens. Am. Compl. ¶¶ 76-89, 120-47. Such allegations directly address the factors identified by the *Brnovich* court as highly relevant and important: the size of the

burden imposed by the Match Protocol and the size of the disparities between white and non-white Florida voters.³ See *Brnovich*, 594 U.S. at 669, 671.

Intervenors raise six arguments against Plaintiffs' Section 2 claim, Intervenors Br. at 19-24, which all contain the same fatal flaw. These arguments ask the Court to weigh evidence, assess the credibility of Plaintiffs' allegations, and resolve disputed factual questions—none of which is appropriate on a motion to dismiss. Section 2 claims are evaluated under the “totality of circumstances,” and any circumstance bearing on whether voting is “equally open” is relevant. *Brnovich*, 594 U.S. at 668-69 (concluding that Section 2 “requires consideration of the totality of circumstances” and that “any circumstance that has a logical bearing on whether voting is ‘equally open’ and affords equal ‘opportunity’ may be considered”). *Id.* This fact-intensive inquiry is ill-suited to resolution at this stage, as doing so “puts the cart before the horse.” See *Lee*, 566 F. Supp. 3d at 1291 (concluding that the *Brnovich* decision did not support dismissing a Section 2 results claim). District courts in this Circuit accordingly routinely deny dismissal of well-pled Section 2 claims. See, e.g., *Kemp*, 574 F. Supp. 3d at 1276-77 (concluding that the defendants' arguments regarding extent of burdens placed on voters by challenged provisions “are not appropriate at the motion to dismiss stage” and explaining that FRCP 8(a)(2) requires only “a short and plain statement of

³ The Intervenors improperly weigh the six *Brnovich* factors equally. Intervenors Br. at 20-24. *Brnovich*'s non-exhaustive factors are not equally weighted, 594 U.S. at 668-69, and two *Gingles* factors are particularly relevant in such vote denial cases: (i) the history of discrimination against the minority group within the state impacting their right to vote and (ii) the ongoing effects of such discrimination. *Brnovich*, 594 U.S. at 673; *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986). Plaintiffs plainly plead both. Am. Compl. ¶¶ 81-89, 114-40.

the claim showing that the pleader is entitled to relief”); *Greater Birmingham Ministries v. Merrill*, 250 F. Supp. 3d 1238, 1243-44 (N.D. Ala. 2017) (denying motion to dismiss Section 2 claim); *see also Georgia Coal. for the Peoples’ Agenda, Inc. v. Raffensperger*, 2022 WL 22866291, at *9-11 (N.D. Ga. Sept. 29, 2022) (denying summary judgment motion in Section 2 case because of disputed issues of material fact).

Intervenors argue, for example, that this case involves “at most a *de minimis* burden on voting” and that the “racial disparities... are not so significant.” Intervenors Br. at 20-21. These are precisely the sort of factual determinations that are unripe for adjudication at this stage, given that the Amended Complaint details onerous obligations on applicants who fail the Match Protocol, Am. Compl. ¶¶ 81-89, and pleads stark, statistically supported racial disparities and discriminatory effect. *Id.* ¶¶ 120-40; *see also Kemp*, 574 F. Supp. 3d at 1276-77; *Lee*, 566 F. Supp. 3d at 1291.

Intervenors suggest that Florida “generously accommodates” voters and allows different means of registering. Intervenors Br. at 22. However, this argument ignores (1) the current, real-world harm to the 80,000 applicants who are in unverified status now and (2) that the different means of registration is a fundamental problem here. That is because the Match Protocol’s requirements interact with (i) the requirement that third-party voter registration organizations use paper applications, and (ii) the disproportionate use of third-party voter registration organizations by Black and Latino applicants, to produce racially disparate outcomes. Am. Compl. ¶¶ 78, 141-47.

Intervenors also erroneously contend that Florida’s procedures further legitimate state interests and Florida’s ID requirements were “standard practice when

§ 2 was amended in 1982.” Intervenor Br. at 20-21, 23-24. But as detailed above, these asserted interests are undermined by the Match Protocol, *supra* § II.C. Moreover, the Match Protocol was not in place in 1982; the Florida Legislature passed Fla. Stat. § 97.053(6) in 2005. *Browning*, 522 F.3d at 1156. Defendants again conflate the Match Protocol enabled by § 97.053(6) with Florida’s (entirely separate) voter ID law, Fla. Stat. § 101.043(1)(a).

Finally, Intervenor’s reliance on *Greater Birmingham Ministries* and *League of Women Voters* is misplaced. *See* Intervenor Br. at 23-24. These cases addressed an entirely separate type of claim--discriminatory intent within the context of Fourteenth and Fifteenth Amendment claims—not Section 2’s results test. *See Greater Birmingham Ministries v. Sec’y of State for State of Alabama*, 992 F.3d 1299, 1328-29 (11th Cir. 2021); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 922 (11th Cir. 2023).

For these reasons, Plaintiffs have adequately stated a claim challenging the Match Protocol under Section 2 of the VRA.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Intervenor’s motion to dismiss in its entirety.⁴

⁴ If the Court grants the motions to dismiss, Plaintiffs respectfully request an opportunity to replead its complaint.

Respectfully submitted,

Dated: February 17, 2026

/s/ Angela M. Liu

Neil A Steiner*

Angela M. Liu*

Dechert LLP

Three Bryant Park

1095 Avenue of the Americas

New York, NY 10036-6797

(212) 698-3500

Neil.Steiner@dechert.com

Angela.Liu@dechert.com

Miriam Fahsi Haskell

FL Bar No. 69033

Adam Saper

FL Bar No. 111750

Community Justice Project, Inc.

3000 Biscayne Blvd #106

Miami, FL 33137

(305) 907-7697

miriam@communityjusticeproject.com

Zane Martin*

Dechert LLP

45 Fremont Street, 26th Floor

San Francisco, CA 94105

(415) 262-4563

Zane.Martin@dechert.com

John Powers*

Hani Mirza**

Advancement Project

1220 L Street NW, Suite 850

Washington, DC 20005

(202) 728-9557

jpowers@advancementproject.org

Mark Dorosin

FL Bar No. 1041169

201 FAMU Law Lane

Orlando, FL 32801

(407) 254-4043

markdorosin@gmail.com

* Admitted *pro hac vice*

**Application for *pro hac vice* pending

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Angela M. Liu, certify that on February 17, 2026, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Angela M. Liu

Angela M. Liu