IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-02499-RMR-SBP

UNITED SOVEREIGN AMERICANS, INC.; RAMEY JOHNSON; and MICHAEL CAHOON,

Petitioners,

v.

COLORADO SECRETARY OF STATE JENNA GRISWOLD, in her official capacity; PHIL WEISER, in his official capacity as the Attorney General of Colorado; COLORADO OFFICE OF ATTORNEY GENERAL; MERRICK GARLAND, in his official capacity as the Attorney General of the United States; and THE UNITED STATES DEPARTMENT OF JUSTICE,[1]

Respondents.

MOTION TO DISMISS PETITION FOR RELIEF IN THE FORM OF A WRIT OF MANDAMUS

Colorado Attorney General Philip J. Weiser ("AG Weiser") and Colorado Secretary of State Jena Griswold ("Secretary Griswold") (collectively, "State Respondents"), by and through the Colorado Attorney General's Office and undersigned counsel, hereby respectfully move to dismiss the Petition for Relief in the Form of a Writ of Mandamus (the "Petition") [ECF no. 1].

Certificate of Conferral under Civ. Practice Standard 7.1B

Undersigned counsel certify that they conferred in good faith with counsel for Petitioners. Petitioners oppose dismissal.

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[1] Secretary of State Jena Griswold's name is misspelled in the official caption.

INTRODUCTION

Petitioners claim to have unearthed irregularities in Colorado's 2022 voter registration data that allegedly render the 2022 election "*per se* unreliable." Pet. ¶ 17. Relying on a federal law setting permissible error rates for voting *systems*,[2] they insist that "[w]hile Congress may not have specifically intended" for the law to apply to voter registration errors, they "believe and therefore aver that a federal election that exceeded an error rate" extrapolated from the voting systems law is "unreliable." *Id.* ¶¶ 30, 41-42. Petitioners suspect Colorado's election officials must not be complying with federal and state law, so they "believe and therefore aver that the 2024 (and subsequent) Colorado federal election results" will similarly be "unreliable," unless this Court intervenes. *Id.* ¶ 5. They seek sweeping relief in the form of a writ of mandamus to require State Respondents to, among other items, "ascertain to the Court's satisfaction . . . why the 2022 errors occurred," prevent any future errors, and "perform their duties as the law intended whether it be conducting federal elections in conformity with the law or investigating, and where warranted in their discretion, prosecuting persons or entities for failing to perform their duties in conformity to the law." Pet. at 46-47.

[2] The relevant federal law, which is part of the Help America Vote Act, defines "voting system" as "(1) the total combination of mechanical, electromechanical, or electronic equipment . . . that is used (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information," along with "(2) the practices and associated documentation used (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots)." 52 U.S.C. § 21081(b).

Petitioners' request for this Court to micromanage Colorado's elections lacks any legal basis. Petitioner United Sovereign Americans, Inc. ("USA"), has filed substantially similar petitions around the country with nearly identical allegations. To date, every court has rejected their claims. *See United Sovereign Ams. Inc. v. Nelson*, No. 2:24-CV-184-Z, 2025 WL 105260, at *4 (N.D. Tex. Jan. 15, 2025) (granting motion to dismiss); *Md. Election Integrity, LLC v. Md. State Bd. of Elections*, No. CV SAG-24-00672, 2024 WL 2053773, at *4 (D. Md. May 8, 2024) (same); *United Sovereign Ams., Inc. v. Byrd*, No. 4:24-cv-327-MW-MAF (N.D. Fla. Jan. 29, 2025) (slip op.) (same) *See* State Respondents' Appx.

Petitioners' claims here against State Respondents should similarly be dismissed. First, Petitioners lack Article III standing. Second, Petitioners' claims are not justiciable because they are either moot or not ripe. Third, the Eleventh Amendment bars all claims against AG Weiser, and bars all state claims against the State Respondents. Fourth, Petitioners cannot assert a valid claim under the All Writs Act. Fifth, Petitioners fail to state a claim for mandamus relief. Sixth, Petitioners cannot bring a HAVA claim either under HAVA itself or under 42 U.S.C. § 1983, and their NVRA claim fails because they did not provide requisite statutory notice. Finally, this Court should decline to exercise supplemental jurisdiction over any remaining state law claims.

LEGAL STANDARD

Fed. R. Civ. P. 12(b)(1). Plaintiffs bear the burden of establishing subject matter jurisdiction. *Port City Props. v. Union Pac. R.R. Co.*, 518 F.3d 1186, 1189 (10th Cir.

2008); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("*SBA List*") (same, regarding standing). Eleventh Amendment immunity, standing, and ripeness all concern the subject matter jurisdiction of the district court. *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002) (Eleventh Amendment); *Hill v. Vanderbilt Cap. Advisors, LLC*, 702 F.3d 1220, 1225 (10th Cir. 2012) (standing); *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1498-99 (10th Cir. 1995) (ripeness).

Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A court is not required to accept conclusory, speculative, or unsupported allegations. *See Twombly*, 550 U.S. at 555. A claim may be dismissed "either because it asserts a legal theory not cognizable as a matter of law or because the claim fails to allege sufficient facts to support a cognizable legal claim." *Essex Ins. Co. v. Tyler*, 309 F. Supp. 2d 1270, 1271 (D. Colo. 2004).

ARGUMENT

I. Petitioners lack Article III standing to bring their claims.

"Standing to sue . . . limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Petitioners bear the burden of establishing standing. *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). To meet the burden, Petitioners must demonstrate that they "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a

favorable judicial decision." *Spokeo, Inc.*, 136 S. Ct. at 1547; *see also Am. Humanist Ass'n, Inc v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1250 (10th Cir. 2017). "'[S]tanding is not dispensed in gross': A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 585 U.S. 48, 73 (2018) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)).

Petitioners lack standing in three ways, all of which require dismissing the Petition: (1) USA lacks both organizational and associational standing; (2) Petitioners' claimed injuries are speculative; and (3) Petitioners cannot establish causation or redressability.

A. USA lacks both organizational standing and associational standing.

In line with a recent decision by another federal district court, this Court "can begin and end its analysis with . . . standing." *Md. Election Integrity, LLC*, 2024 WL 2053773, at *2 (concluding that USA and local Maryland organization lacked both organizational and associational standing).

"Organizations . . . have two methods to achieve Article III standing. They can claim organizational standing because they suffered an injury of their own, or they can claim associational standing based on injuries suffered by their members." *Citizens Project v. Colo. Springs*, No. 22-cv-01365-SKC-MDB, 2024 WL 3345229 (D. Colo. July 9, 2024), at *4 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) ("*SFFA*")). Here, USA can claim neither organizational nor associational standing.

1. USA cannot claim organizational standing.

When organizations allege standing for injuries they sustain directly, they "must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." *See FDA v. All. for Hippocratic Med.,* 602 U.S. 367, 369 (2024). Here, USA seems to disclaim any organizational standing at all, and instead relies on alleged injuries to the two other Petitioners. *See* Pet. ¶ 77 ("[USA] is not seeking a distinct form of relief from the other Petitioners and therefore has standing.")]. Moreover, USA's allegations about its own activities—which consist of reviewing voter registration data to produce a "scorecard" and a "General Election Validity Reconciliation"—are too generalized to show that any injury is sufficiently traceable to State Respondents' conduct. *E.g.*, Pet. ¶¶ 150–55; 162; *see Ass'n of Cmty. Orgs. for Reform Now v. Fowler,* 178 F.3d 350, 359 (5th Cir. 1999) ("These general allegations of activities related to monitoring the implementation of the NVRA fail to confer standing on [plaintiffs] to bring this lawsuit on its own behalf."). Thus, USA does not have organizational standing.

2. USA cannot claim associational standing.

To invoke associational standing, an organization must show "that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *SFFA*, 600 U.S. at 199 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

Here, USA does not allege sufficient facts to show associational standing. USA alleges no facts regarding the composition of its membership, its interests, or even its purpose. The Petition states only that USA is a Missouri non-profit organization and "is not seeking a distinct form of relief from the other Petitioners . . . ." Pet. ¶¶ 60, 77. The Petition suggests that Petitioner Michael Cahoon "act[ed] on behalf of" USA at one point but does not even allege that he is a member. *See id.* ¶ 151. USA does not otherwise allege how its members suffered any cognizable harm or how that harm was caused by State Respondents' alleged conduct. And as argued further below, neither of the two individual Petitioners has standing to bring this lawsuit. *See Nat'l Ass'n for Gun Rts. v. Polis,* No. 24-cv-00001-GPG-STV, 2024 WL 3085865, at *9 (D. Colo. May 2, 2024) (finding no organizational standing when members do not have standing in their own right). Accordingly, USA does not have associational standing.

B. The individual Petitioners' alleged injuries are conjectural and hypothetical.

For standing purposes, an injury in fact must be "concrete," "particularized," and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). A plaintiff must therefore identify the harm—the "invasion of a legally protected interest"—and adequately identify how that harm affects the plaintiff "in a personal and individual way." *Gill*, 585 U.S. at 65 (quoting *Lujan*, 504 U.S. at 560).

Both Ms. Johnson and Mr. Cahoon raise generalized grievances about election integrity that are not sufficiently concrete, particularized, and actual or imminent, and therefore fail to demonstrate standing. *See O'Rourke v. Dominion Voting Sys. Inc.*, No.

20-cv-03747, 2021 WL 1662742, at *6–8 (D. Colo. Apr. 28, 2021) (noting "[i]t should be no surprise to Plaintiffs or their counsel that their generalized grievances about their votes being diluted or other votes being improperly counted would be insufficient to grant them the standing required under Article III of the Constitution" and collecting cases), *aff'd*, No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022). Beyond these general grievances, Ms. Johnson and Mr. Cahoon's "allegations with respect to injury all boil down to prior system vulnerabilities, previous equipment malfunctions, and past election mistakes." *See Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020); *e.g.*, Pet. ¶ 72 (alleging certain election irregularities discovered by Petitioners). Allegations of past election irregularities (even if unlawful) fail to show a "substantial risk" of future injury, let alone an injury that is "'certainly impending." *Hargett*, 947 F.3d at 982. The fact that Petitioners have not moved to amend their Petition since the completion of the 2024 General Election further suggests that Ms. Johnson and Mr. Cahoon cannot identify any concrete injury to their legally protected interests. For these reasons, these Petitioners do not have standing.

C. Petitioners cannot establish causation or redressability.

Petitioners cannot establish that their alleged injuries were caused by any of State Respondents' actions because Petitioners allege harms caused by independent third parties, and further allege that State Respondents have not acted to redress such alleged harms. *See* Pet. ¶ 47 ("Petitioners have brought this issue [voter registration apparent errors, relief from blatantly inaccurate voter registration rolls, relief from discrepancies between votes cast and actual votes reported, and relief from extreme

voting errors generally] to the attention of Respondents, who have done nothing to address these errors or ensure future elections will suffer from the same deficiencies."). "[I]t does not suffice if the injury complained of is 'th[e] result [of] the *independent* action of some third party not before the court. . . .'" *Bennett v. Spear*, 520 U.S. 154, 169 (1997) (quoting *Lujan*, 504 U.S. at 560–61) (emphasis in original). By alleging that their injury arises from alleged non-party actors casting illegal votes, Petitioners effectively concede that State Respondents have not caused their injury.

What's more, Petitioners cannot establish that any proposed relief would "remedy the injury suffered." *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998). Petitioners do not seek to overturn the 2022 or 2024 elections, but instead seek an order requiring State Respondents to "ministerially correct the apparent errors" in the 2022 election and to "prevent" such errors from occurring again. Pet. at 46. Because these elections have already occurred, and the results have been certified, any remedy ordered by this Court would not undo the results of these elections and therefore could not advance Petitioners' interests. Because Petitioners' alleged injuries are not redressable by this Court, they lack standing.

II. Petitioners' claims are not justiciable because they are either moot or not ripe.

A. Petitioners' claims related to the 2022 and 2024 elections are moot.

"Constitutional mootness doctrine is grounded in the Article III requirement that federal courts may only decide actual, ongoing cases or controversies." *Seneca–Cayuga Tribe v. Nat'l Indian Gaming Comm'n*, 327 F.3d 1019, 1028 (10th Cir. 2003) (quotation and alteration omitted). "Mootness is essentially 'standing set in a time frame'

and ensures that '[t]he requisite personal interest that must exist at the commencement of the litigation . . . continue[s] throughout its existence.'" *Shields Law Grp., LLC v. Stueve Siegel Hanson LLP*, 95 F.4th 1251, 1280 (10th Cir. 2024) (quoting *Prison Legal News v. Fed. Bureau of Prisons*, 944 F.3d 868, 879 (10th Cir. 2019)). "The crucial question is whether granting a present determination of the issues offered will have some effect in the real world. Put another way, a case becomes moot when a plaintiff no longer suffers actual injury that can be redressed by a favorable judicial decision." *Brown v. Buhman*, 822 F.3d 1151, 1165–66 (10th Cir. 2016) (quotation marks and citations omitted).

Here, Petitioners request that State Respondents "ministerially correct the apparent errors evident from the 2022 elections data, ascertain to the Court's satisfaction the reasons why the 2022 errors occurred, and prevent those same or similar ministerial errors from recurring during the Colorado 2024 General Election and all subsequent federal general elections," and further request that State Respondents not "certify the 2024 General Election unless and until the relevant Respondents have demonstrated to the Court that the 2024 General Election and subsequent elections were conducted in conformity with federal and state law and with fewer than the maximum errors permissible." Pet. at 46–47. This Court cannot grant such relief as to the 2022 and 2024 elections, because both the 2022 and 2024 elections are over. On December 12, 2022, Secretary Griswold certified the results of the 2022 election.[3] On

[3] https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2022/PR20221212ElectionCertification.html

December 6, 2024, Secretary Griswold certified the results of the 2024 election.[4] Thus, Petitioners cannot obtain any relief with respect to these elections because there is no longer a live controversy surrounding these elections or their results.

B. Petitioners' claims related to "all subsequent federal general elections" are not ripe for adjudication.

"The doctrine of ripeness prevents courts 'from entangling themselves in abstract disagreements over administrative policies,' while also 'protect[ing] the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1158 (10th Cir. 2013) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–49 (1967)). "'In evaluating ripeness the central focus is on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (quoting *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1097 (10th Cir. 2006) (en banc)).

Here, Petitioners' request for relief pertaining to "all subsequent federal general elections" is simply not ripe for review. *See* Pet. at 46. The next general election is nearly two years away. Neither Petitioners, nor the State Respondents, nor this Court can predict whether any new election laws or regulations might be promulgated, or any intervening events might occur, that would affect the conduct or outcome of the 2026 election—let alone the conduct or outcome of general elections into perpetuity. Because this "case involves uncertain or contingent future events that may not occur as

[4] https://www.coloradosos.gov/pubs/newsRoom/pressReleases/2024/PR20241206Election.html

anticipated," Petitioners' claims related to the 2026 General Election onward are not ripe for review and should therefore be dismissed.

III. The Eleventh Amendment bars Petitioners' claims against the Colorado Office of the Attorney General and AG Weiser, as well as claims based on state law.

A. Petitioners' claims against the Colorado Office of the Attorney General and AG Weiser are barred by sovereign immunity.

This court also lacks jurisdiction over many of Petitioners' claims under the Eleventh Amendment. Sovereign immunity "precludes unconsented suits in federal court against a state and arms of the state." *Wagoner Cnty. Rural Water Dist. No. 2 v. Grand River Dam Auth.*, 577 F.3d 1255, 1258 (10th Cir. 2009). State officials sued in their official capacities are immune because they are "an arm of the State," *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977), and "such suits are no different from a suit against the State itself," *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021) (quotations omitted).

First, though not identified as a respondent in the body of the Petition, *see* Pet. at 11-12, the caption names the "Colorado Office of Attorney General" as a respondent. To the extent Petitioners seek relief against the Colorado Office of the Attorney General as an entity, those claims are barred by sovereign immunity and must be dismissed.[5]

The Eleventh Amendment also bars the claims against AG Weiser. Under *Ex parte Young*, 209 U.S. 123 (1908), in limited circumstances, a plaintiff may seek

[5] While "Congress may abrogate the States' Eleventh Amendment immunity pursuant to a valid grant of constitutional authority," *Fowler v. Stitt*, 104 F.4th 770, 782 n.8 (10th Cir. 2024), the Petition does not allege it did so in the federal statutes relied on here.

prospective relief against a state official alleged to be engaged in an ongoing violation of federal law. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). But for *Young* to apply, the state official must have "some connection with the enforcement of the challenged action." *Fowler*, 104 F.4th at 782 (quotations omitted). Specifically, he must have (1) "a particular duty to enforce the [challenged action]" and (2) "a demonstrated willingness to exercise that duty." *Hendrickson*, 992 F.3d at 965 (quotations omitted). Importantly, there "must be more than a mere general duty to enforce the law." *Id.* (quotations omitted). "Otherwise, the suit is merely making the official a party as a representative of the state and therefore impermissibly attempting to make the state a party." *Id.* (alterations and quotation marks omitted). It is a "narrow exception." *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532 (2021).

Petitioners' allegations about AG Weiser address only his generalized duties to enforce, and to advise state entities about, state law. *See* Pet. ¶¶ 64, 125. That is not enough to meet *Young*'s requirements. *See Hendrickson*, 992 F.3d at 967 (Attorney General's "general enforcement power ... does not suffice for *Ex parte Young*"); *Sgaggio v. Weiser*, No. 22-cv-01791-PAB, 2022 WL 3700723, at *3-4 (D. Colo. Aug. 26, 2022) (same); 13 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3524.3 (3d ed., June 2024 update) ("[T]he duty must be more than a mere general duty to enforce the law."). Sovereign immunity thus bars the claims against AG Weiser.

B. The Eleventh Amendment bars any claims against State Respondents based on state law.

Sovereign immunity also protects State Respondents from any claims based on alleged violations of state law. *See, e.g.*, Pet. ¶ 227 ("Petitioners [are] seeking to have

Colorado election officials . . . bring the State into compliance with federal and state law."). The Eleventh Amendment prohibits unconsented suits against arms of the state unless an exception applies, and the *Young* exception is "inapplicable in a suit against state officials on the basis of state law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *see also Loggins v. Norwood*, No. 18-3016-DDC-KGG, 2020 WL 224544, at *7 (D. Kan. Jan. 15, 2020), *aff'd*, 854 F. App'x 954 (10th Cir. 2021) ("The Eleventh Amendment prohibits federal courts from considering state law claims asserted against state officials in their official capacity."). This is because "the *Young* doctrine rests on the need to promote the vindication of federal rights," which "is wholly absent . . . when a plaintiff alleges that a state official has violated *state* law." *Pennhurst*, 465 U.S. at 105. Any claims based on alleged state law violations are therefore barred.

IV. Petitioners have not asserted a valid claim for relief under the All Writs Act, which is not an independent source of jurisdiction.

Petitioners' request for a writ of mandamus against State Respondents also fails because they have not identified any source for the court's alleged jurisdiction over that request. The sole cause of action on which Petitioners rely for their request for mandamus against State Respondents is the All Writs Act, 28 U.S.C. § 1651. *See* Pet. at 35-42. But the All Writs Act is "not a source of subject-matter jurisdiction." *United States v. Denedo*, 556 U.S. 904, 913 (2009). Rather, "[a]ny writ sought under the Act must be one that is necessary to preserve the Court's *existing* jurisdiction or orders." *Khdir v. Gonzales*, No. 07-cv-00908-MSK-MEH, 2007 WL 3308001, at *4 (D. Colo. Nov. 6, 2007) (emphasis added). The All Writs Act cannot itself confer jurisdiction over Petitioners' request for mandamus relief, and without another basis for invoking this

Court's jurisdiction over State Respondents, Petitioners' All Writs Act claim fails as a matter of law. *See Nelson*, 2025 WL 105260, at *3.

Petitioners have not identified any other valid basis for invoking this Court's jurisdiction. The Petition asserts a cause of action under the Mandamus Act, 28 U.S.C. § 1361. But this claim seems to be directed only against the federal respondents, the U.S. Attorney General and U.S. Department of Justice. *See* Pet. ¶¶ 217-20. And rightly so: the Mandamus Act confers on U.S. district courts "original jurisdiction of any action in the nature of mandamus to compel an *officer or employee of the United States or any agency thereof* to perform a duty owed to the plaintiff." 28 U.S.C. § 1361 (emphasis added). It is not a source of jurisdiction for federal courts to grant relief against *state* officials or agencies. *See Amisub (PSL), Inc. v. State of Colo. Dep't of Soc. Servs.*, 879 F.2d 789, 790 (10th Cir. 1989).

In discussing their All Writs Act claim (though not their Mandamus Act claim), Petitioners suggest this Court should treat State Respondents as federal officials. They theorize that since the U.S. Constitution delegates to state legislatures certain responsibilities regarding U.S. Congressional elections, *see* U.S. Const. art. I, § 4, cl. 1, they "believe and therefore aver" that this transforms "State Respondents into federal officers by agency or quasi-federal officials." Pet. ¶¶ 209-10. But Petitioners cite no legal authority to support their novel theory, and no court has accepted it. *See Nelson*, 2025 WL 105260, at *3; *Byrd*, No. 4:24-cv-327-MW-MAF, State Respondents' Appx.

Nor have Petitioners identified any other basis for this Court to take jurisdiction over their request for mandamus relief against State Respondents. As they concede,

Federal Rule of Civil Procedure 81 abolished the writ of mandamus, and now "[r]elief previously available through [the writ] may be obtained by appropriate action," only. Fed. R. Civ. P. 81(b); *see* Pet. at 1 n.1.

Finally, Petitioners cannot rely on the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 et seq., or the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 et seq., to establish jurisdiction. To begin with, it is unclear if Petitioners even purport to assert HAVA or NVRA claims. In certain portions of the Petition, they say they seek to bring claims under HAVA and the NVRA. *See* Pet. ¶¶ 106 (NVRA); 120 (HAVA). But elsewhere they disclaim doing so, and indeed, the entire basis for their mandamus request is the assertion that no other relief is available. *Id.* ¶¶ 198-99 (asserting that "Petitioners have no other remedy apart from a writ of *mandamus*" and there is no "specific, existing private cause of action Petitioners could assert that affords Petitioners relief"). Even if Petitioners do attempt to assert HAVA or NVRA claims, they fail to state plausible claims for relief under those laws, as discussed *infra*. Without a federal cause of action, Petitioners cannot invoke this Court's jurisdiction under 28 U.S.C. § 1331.

Thus, Petitioners' claim under the All Writs Act must be dismissed, because it does not confer jurisdiction on this Court, and Petitioners have not identified any other basis for this Court to take jurisdiction over their request for a writ of mandamus. *See Penn. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985) ("Although [the All Writs] Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate.").

V. Petitioners fail to state a claim for mandamus relief.

Even if Petitioners identified a valid jurisdictional basis for their mandamus request, they fail to state a plausible claim for mandamus relief. "To be eligible for mandamus relief, the petitioner must establish (1) that he has a clear right to relief, (2) that the respondent's duty to perform the act in question is plainly defined and peremptory, and (3) that he has no other adequate remedy." *Rios v. Ziglar*, 398 F.3d 1201, 1206-07 (10th Cir. 2005). The petitioner's right to the writ must be "clear and indisputable," and the respondent's duty must be "ministerial, clearly defined and peremptory," rather than discretionary. *Id.* at 1207-08.[6]

Those criteria are not satisfied here. First, Petitioners' right to relief is far from "clear and indisputable." *Id*. This action is rife with justiciability problems; Petitioners lack standing, and they have not identified any valid jurisdictional basis for their request for a writ of mandamus. Their allegations are based on speculation about perceived election administration failures, Pet. ¶ 134, and a novel legal theory that would apply HAVA's error rate for voting systems to voter registration data based on Petitioners' "beliefs" about Congressional intent, *id*. ¶¶ 166-84.

Nor are Petitioners asking this Court to direct State Respondents to perform a "ministerial, clearly defined" duty. They ask for a mandamus order compelling State Respondents to "ministerially correct the apparent errors evident from the 2022

[6] In the context of a petition for writ of mandamus to be issued to a lower court, the U.S. Supreme Court has identified a similar test, under which mandamus may issue if "(1) no other adequate means exist to attain the relief [], (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (quotations omitted).

elections data" (though it is unclear what changes Petitioners think should be made), to "ascertain to the Court's satisfaction the reasons why the 2022 errors occurred," to prevent any similar issues from recurring in the future, and to "perform their duties as the law intended whether it be conducting federal elections in conformity with the law or investigating, and where warranted in their discretion, prosecuting persons or entities for failing to perform their duties in conformity to the law." Pet. at 46-47. These are far-reaching requests, which would intrude into numerous areas of election administration and cover activities that unquestionably require significant exercise of discretion. Mandamus relief is thus entirely inappropriate. *Cf. Rios*, 398 F.3d at 1207 (a request for a federal agency to process an unprocessed application is an appropriate request for mandamus relief, where processing applications is not a discretionary function).

Petitioners also seek an order directing Colorado and its subdivisions to "submit voter registration requests . . . to the Department of Homeland Security" to verify voters' citizenship status. Pet. at 47. But the statutes they cite do not establish that State Respondents have any duty, let alone a clearly defined one, to do so. *See* 8 U.S.C. §§ 1373(c) (imposing duties on federal immigration authorities to respond to inquiries made by states, but not imposing any duties on the states); 1644 (providing that states cannot be restricted from communicating with federal immigration services about individuals' immigration status, but imposing no requirements). Thus, Petitioners have not stated a plausible claim for mandamus relief.

VI. Petitioners fail to state viable claims under HAVA and the NVRA.

A. The HAVA claim fails because there is no private right of action.

To the extent Petitioners assert claims against the State Respondents under HAVA, those claims should be dismissed because HAVA does not create a private right of action. *See Morales-Garza v. Lorenzo-Giguere*, 277 F. App'x 444, 446 (5th Cir. 2008) (affirming dismissal of plaintiff's complaint for failure to state a claim because, among other things, HAVA does not create a private right of action) (citations omitted); *Soudelier v. Off. of Sec'y of State, La.*, No. 22-30809, 2023 WL 7870601, at *2–3 (5th Cir. Nov. 15, 2023) ("HAVA does not contain any implied right of action, because [i]t is canonical that Congress's creation of specific means of enforcing [a] statute indicates that it did not intend to allow an additional remedy—a private right of action—that it did not expressly mention at all.") (citations and internal quotation marks omitted); *accord Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019); *Am. Civ. Rts. Union v. Phila. City Comm'rs*, 872 F.3d 175, 184–85 (3d Cir. 2017).

Moreover, Petitioners cannot sue State Respondents for alleged violations of HAVA under § 1983. *See, e.g.,* Pet. ¶ 122 (alleging legal conclusion that HAVA claim may be vindicated under § 1983). The Supreme Court has "reject[ed] the notion that [its] cases permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). The Petition identifies no such right at issue under HAVA that the State Respondents could have deprived them of—at most, Petitioners seek protection from "the harms Congress sought to avoid by implementation of HAVA and NVRA." Pet. ¶ 135. But harms are not

rights, and the Complaint's allegations are insufficient to support a § 1983 claim. Accordingly, this Court should dismiss any HAVA claim.

B. The NVRA claim fails because Petitioners did not comply with the NVRA's notice requirement.

Petitioners state they "seek to bring a private cause of action under NVRA," Pet. ¶ 106, and further acknowledge that the NVRA contains a notice requirement, *id*. ¶ 101; *see also* 52 U.S.C. § 20510(b) (requiring person aggrieved by NVRA to "provide written notice of the violation to the chief election official of the State involved"). Here, Petitioners fail to allege that they provided notice to Secretary Griswold regarding any alleged noncompliance with the NVRA. Nor do Petitioners attach a copy of any written notice to their Petition. "Congress intended for the notice requirement to provide states with an opportunity to comply with the NVRA before facing litigation." *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1105 (D. Colo. 2021). Because Petitioners failed to provide any notice, let alone timely notice, their NVRA claim fails. *See Scott v. Schedler*, 771 F.3d 831, 836 (5th Cir. 2014).

VII. This Court should decline to exercise supplemental jurisdiction over any remaining state law claims.

Though it is not apparent that Petitioners assert any cause of action under state law, *see* Pet. at 35-46, the Petition states that this Court has subject matter jurisdiction over "the state law claims" under 28 U.S.C. § 1367, *see id.* ¶ 68. Because this Court lacks original jurisdiction over any claims against State Respondents, it should decline to exercise supplemental jurisdiction over any theoretical state law claims. *See* 28 U.S.C. § 1367(c)(3); *Dahlberg v. Avis Rent A Car Sys., Inc.*, 92 F. Supp. 2d 1091, 1111

(D. Colo. 2000) ("As a general rule, the balance of factors to be considered will point towards declining to exercise jurisdiction over state-law claims when the federal claims have been eliminated prior to trial.").

CONCLUSION

For the foregoing reasons, State Respondents respectfully request dismissal of all claims against them in the Petition.

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