IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

1789 FOUNDATION, INC. d/b/a CITIZEN AG and JENNIFER McKINNEY,

Plaintiffs,

v.

Case No.: 3:24-cv-00755

ELECTRONIC REGISTRATION INFORMATION CENTER, CENTER FOR ELECTION INNOVATION AND RESEARCH, DAVID J. BECKER, and WISCONSIN DEPARTMENT OF TRANSPORTATION,

Defendants.

BRIEF IN SUPPORT OF CENTER FOR ELECTION INNOVATION AND RESEARCH, INC.'S MOTION TO DISMISS

INTRODUCTION

Plaintiffs' complaint is nothing more than a rambling, fever-dream conspiracy theory alleging the Wisconsin Department of Transportation ("DOT"), the Electronic Registration Information Center ("ERIC"), Center for Election Innovation and Research ("CEIR"), and CEIR's founder, David Becker, engaged in an unexplained scheme to illegally access, share, and use Wisconsin Department of Motor Vehicles ("DMV") data to "bloat" voter rolls and conduct partisan activity, allegedly in violation of the federal Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721 *et seq*.[1]

Beyond the nonsensical nature of Plaintiffs' allegations, the complaint suffers from two fatal flaws, each of which requires the dismissal of the DPPA claim against CEIR. *First*, neither

[1] As of the date of this filing, Plaintiffs have not served Defendant David Becker. The same arguments made in this motion to dismiss will apply to any claims against David Becker.

plaintiff 1789 Foundation, Inc., d/b/a Citizen AG ("Citizen AG"), nor plaintiff Jennifer McKinney has Article III standing to assert a DPPA claim against CEIR, as neither has alleged (and neither can show) any cognizable injury. *Second,* this Court lacks personal jurisdiction over CEIR because it never received any Wisconsin DMV data or otherwise purposefully directed any relevant conduct at the state of Wisconsin. Consequently, even had Plaintiffs' suffered any cognizable injuries, those injuries could not have arisen out of any of CEIR's forum-related activities.

As such, Plaintiffs bring this motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (2) and seek dismissal of all claims made against CEIR.

PROCEDURAL POSTURE

In support of its jurisdictional challenges brought pursuant to Fed. R. Civ. P. 12(b)(1) and (2), CEIR offers limited supplemental evidence herein, including the Declaration of its Chief Operations Officer, Jacob Kipp. As this is not a dismissal motion brought pursuant to Fed. R. Civ. P. 12(b)(6), CEIR's inclusion of this limited evidence does not convert its motion to dismiss to one for summary judgment. *See* Fed. R. Civ. P. 12(d); *Mack v. Resurgent Cap. Servs., L.P.,* 70 F.4th 395, 402 (7th Cir. 2023). Further, as explained below in Section I(A), it is properly presented in order for this Court to assess the jurisdictional issues.

CEIR does not concede or admit any of Plaintiffs' allegations. CEIR accepts the allegations in the complaint as true for purposes of this motion only, and only to the extent they are not specifically contradicted by the evidence CEIR has submitted.

FACTUAL BACKGROUND

CEIR is a Washington, D.C. based, 501(c)(3) charity whose core mission is to work with election officials and build confidence in elections that voters should trust and do trust through its work with election officials across the country. (Declaration of Jacob Kipp in Support of the

Motion to Dismiss ("Kipp Decl.") ¶ 6). David Becker founded CEIR to improve the integrity and efficiency of the election process. (*Id*. ¶ 5). Since then, "CEIR has worked with Democrats and Republicans to move states to paper ballots, audit those ballots, and improve overall cybersecurity of election systems, with the aim of renewing voters' faith in [the] system." (*Id.* ¶ 6.) A pillar of CEIR's work is driving practical election research. (*Id.*¶ 7.) CEIR provides analysis and insight on the state of elections and the electorate, as well as best practices for election administration, integrity, and accessibility. (*Id*.) CEIR works to inform the public about the American election system; CEIR does not conduct partisan voter outreach, does not register voters, and does not access voter registration systems. (*Id*. ¶ 8.)

ERIC is a nonpartisan, non-profit organization founded in 2012 and is comprised of 24 states and the District of Columbia that assists states in improving the accuracy of their voter rolls. (*See Frequently Asked Questions*, ericstates.org/faq/ (last accessed Dec. 5, 2024)). ERIC uses information from each member state's driver license and voter registration systems to provide its members with reports that identify whether individuals have moved to a different state or within the state, whether registrants have died, voters with duplicate registrations, and possible cases of illegal voting. (*Id.*) The Eligible but Unregistered Report—what the parties call "EBUs"—identify whether any individuals may be eligible to vote but remain unregistered. (*Id*.) *See also Assoc. for Gov. Accountability v. Simon*, No. 23-cv-3159-PAM-DTS, 2024 WL 692713 *1 (D. Minn. Feb. 20, 2024) (providing summary of ERIC's activities), *on appeal*, 24-1410 (8th Cir., Feb. 28, 2024).

CEIR does not and has never assisted ERIC with creating the reports ERIC prepares for its members, including the EBU report, and does not receive data from ERIC nor ERIC member states on an ongoing basis. (Kipp Decl. ¶ 9.) The only time CEIR has ever received ERIC data from ERIC member states was in advance of and in connection with CEIR's 2018 and 2020 research

studies assessing whether outreach to EBU individuals would increase voter registration. (*Id*. Ex. 1).

Some ERIC member states voluntarily participated in CEIR's research studies, and gave ERIC permission to share their voter registration files and EBU data to CEIR for the purpose of CEIR's research projects. (*Id.*) Although Wisconsin was and is an ERIC member state, it did not participate in either study, and consequently Wisconsin did not provide its voter registration and driver license data to CEIR via ERIC's secure file transfer system. (*Id*. ¶ 10) As a result, ***CEIR has never accessed or possessed any voter registration or driver license data from Wisconsin.*** (*Id*.) Regardless, all the data that was provided to CEIR from other states was handled confidentially, under conditions set by the participating states. (*Id*. Ex. 1.)

Plaintiffs are Wisconsin registered voter Jennifer McKinney and Citizen AG, a Florida-based nonprofit organization allegedly "dedicated to educating Americans about their rights and to advocating, protecting, and preserving American civil liberties and constitutional rights through an array of means that include, without limitation, public records requests and litigation." (Dkt. 1, ¶¶ 4, 13.)

Plaintiffs bring one claim for relief pursuant to the DPPA.[2] Although their complaint alleges a variety of implausible and irrelevant nefarious activities, including but not limited to election bribery, a conspiracy to register undocumented immigrants to vote, and violations of the nonprofit corporation provisions of the federal tax code, Plaintiffs' claim boils down to one core allegation: that the Wisconsin DMV improperly released Ms. McKinney's and other Wisconsin

[2] Plaintiffs do allege in Paragraph 3 of their complaint that their claims arise under the National Voter Registration Act ("NVRA") as well, but their one claim for relief is brought only under the DPPA. The remainder of the complaint does not address the NVRA. CEIR takes Paragraph 3 to be a scrivener's error and does not address the NVRA in its motion. In the event Plaintiffs counter otherwise, CEIR asserts that Plaintiffs' perfunctory mention of the NVRA is insufficient to plead a claim under the same pursuant to Fed. R. Civ. P. 8 and would likewise suffer from the same jurisdictional defects alleged in CEIR's motion brought pursuant to Fed. R. Civ. P. 12(b)(1) and (2).

residents' personal information to ERIC in violation of the DPPA and that all defendants—CEIR, ERIC, and Mr. Becker—have used and improperly disclosed that information, also in violation of the DPPA.[3] (Dkt. 1, ¶¶ 161, 172.)

ARGUMENT

I. This Court lacks subject matter jurisdiction over Plaintiffs' claims.

Plaintiffs do not have Article III standing to bring a claim under the DPPA against CEIR. This Court therefore lacks subject matter jurisdiction over that claim, and Plaintiffs' complaint should be dismissed for that reason alone.

A. Legal Standard – Fed. R. Civ. P. 12(b)(1).

Article III of the Constitution limits federal judicial power to certain "cases" and "controversies," and the "irreducible constitutional minimum" of standing contains three elements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992) (internal citations and quotation marks omitted). To establish Article III standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81

[3] As stated above, CEIR accepts the allegations in the complaint as true for purposes of this motion to the extent they are not specifically contradicted by the evidence it has submitted. But CEIR does not concede or admit those allegations, which have no basis in reality. CEIR has never had access to Wisconsin DMV records. But, if it had, such access would have been pursuant to well-established exceptions of the DPPA. 18 U.S.C. § 2721(3). It is likewise baseless, and disingenuous, for Plaintiffs to attempt to circumvent the fact that ERIC is an authorized recipient of Wisconsin DMV information. The contract between Wisconsin and ERIC that allows the transfer of DMV information has remained in effect through the present, despite Plaintiffs claims that the creation of the Wisconsin Election Commission somehow obliterated all of the Government Accountability Board's contracts. 2015 Wisconsin Act 118 (requiring "[a]ll contracts entered into by the government accountability board that are in effect on the effective date of this subsection shall remain in effect and are transferred to the elections commission and the ethics commission" unless and until modified by the commission).

(2000) (citing *Lujan*, 504 U.S. at 560–61). "As the party invoking federal jurisdiction, a plaintiff bears the burden of establishing the elements of Article III standing." *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015) (citing *Lujan*, 504 U.S. at 561).

When considering whether it has subject matter jurisdiction, a court must determine whether a factual or facial challenge has been raised. *Silha*, 807 F.3d at 173 (citing *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir.2009)). "A factual challenge contends that there is in fact no subject matter jurisdiction, even if the pleadings are formally sufficient." *Id*. (internal quotations omitted). "In reviewing a factual challenge, the court may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists." *Id.*; *see also Ciarpaglini v. Norwood,* 817 F.3d 541, 543 (7th Cir. 2016) (same)*; St. John's United Church of Christ v. City of Chicago,* 502 F.3d 616, 625 (7th Cir. 2007) (same).

A facial challenge, on the other hand, "argues that the plaintiff has not sufficiently alleged a basis of subject matter jurisdiction" even if all factual allegations are taken as true and all reasonable inference are drawn in favor of the plaintiff. *Silha*, 807 F.3d at 173 (internal quotations omitted).

The Court may consider evidence presented as part of CEIR's factual challenges to Plaintiffs' standing. *See Apex Digital, Inc*., 572 F.3d at 444 ("The law is clear that when considering a motion that launches a factual attack against jurisdiction, '[t]he district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.'" (internal quotations and citation omitted)).

B. Plaintiffs do not have standing to bring their claim.

Plaintiffs lack standing to bring their claim even if the facts of their complaint are taken as true and construed in their favor (facial challenge to subject matter jurisdiction), and certainly when the evidence CEIR has presented is considered (factual challenge to subject matter jurisdiction). Ms. McKinney has not alleged—and cannot provide evidence for—any cognizable injury that would allow her to bring a claim under the DPPA, either as a taxpayer or based on her personal interests. Likewise, Citizen AG does not have standing as either an organization or as an association on behalf of its members. [4]

1. Ms. McKinney lacks Article III standing.

Ms. McKinney has failed to allege any injury that could directly confer her standing under Article III, either as a taxpayer or under the terms of the DPPA.

a. Wis. Stat. § 5.06 does not confer taxpayer standing on Ms. McKinney.

Ms. McKinney claims standing under Wis. Stat. 5.06 as a "taxpayer." (Dkt. 1, ¶ 16.) First and foremost, Wis. Stat. § 5.06 is of no relevance here. That provision allows Wisconsin electors to bring a complaint before the Election Commission if the elector "believes that a decision or action of the [election] official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law

[4] In addition to claims regarding violations of the DPPA, Plaintiffs' complaint appears to bring a type of vote dilution claim. It seems to claim that Ms. McKinney's vote in 2020 was diluted by CEIR's and ERIC's alleged efforts to encourage voters to support candidates aligned with the Democratic Party. Neither Ms. McKinney nor Citizen AG has standing to bring such a claim. A vote dilution claim arises under Section 2 of the Voting Rights Act. *See e.g.*, *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (explaining that the United States Supreme Court has construed Section 2 to extend to "vote dilution" claims). Plaintiffs have brought their claims in this case under the DPPA only, and that narrow statute does not allow for a litigant to bring a claim for vote dilution. *See* 18 U.S.C. § 2724 (allowing only suits arising from the use or disclosure of personal information derived from motor vehicle records).

with respect to any such matter . . . [.]" Wis. Stat. § 5.06(1). The law provides an administrative process to file a complaint with the Elections Commission and an appeals process to a Wisconsin state court. Wis. Stat. § 5.06(2)-(3), (8). Ms. McKinney would need to exhaust those administrative remedies before bringing any suit. *See Wis. Voter All. v. Millis*, 720 F. Supp. 3d 703, 709 (E.D. Wis. 2024). And even if she had done so, she would not have standing to sue a private organization like CEIR in federal court. *See Teigen v. Wis. Elections Comm'n.*, 403 Wis. 2d 607, 642-43 (2022) (holding that Wis. Stat. § 5.06 allows complaints only against elections officials), *overruled on other grounds*, *Priorities USA v. Wis. Elections Comm'n.*, 412 Wis. 2d 594 (2024).

Nor is Ms. McKinney's status as a taxpayer a basis for standing "[a]bsent special circumstances." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011). The United States Supreme Court "has rejected the general proposition that an individual who has paid taxes has a "'continuing, legally cognizable interest in ensuring that those funds are not *used* by the Government in a way that violates the Constitution.'" *Id*. (citing *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 599 (2007) (plurality opinion) (emphasis in the original)).

The only exception to this rule is where the plaintiff can show a "logical link" between her taxpayer status "and the type of legislative enactment" and a "nexus" between her status as a taxpayer and "the precise nature of the constitutional infringement alleged." *Id*. at 138-39 (quoting *Flast v. Cohen*, 392 U.S. 83, 102 (1968). In other words, the taxpayer must show that her tax dollars are being taken from her and spent in violation of "specific constitutional protections against such abuses of legislative power." *Flast*, 392 U.S. at 106. Ms. McKinney has alleged nothing of the sort in her complaint; she simply alleges that she is a taxpayer aggrieved by the purported misuse of her tax dollars. (Dkt. 1, ¶ 16.) But, as the Supreme Court has noted, such

"generalized grievances about the conduct of government" are not appropriate for a federal court. *Flast*, 392 U.S. at 106.

b. Ms. McKinney does not have standing under the DPPA because she cannot articulate any cognizable injury.

Ms. McKinney does not have standing to sue CEIR under the DPPA for another reason: she has not alleged any injury arising out of the alleged disclosure of her driver license information to CEIR. *See Baysal v. Midvale Indem. Co.*, 78 F.4th 976, 977 (7th Cir. 2023) (holding that litigants bringing claims under the DPPA must "must show concrete injury traceable to the disclosure."). And even if disclosure alone were sufficient—and it is not—Ms. McKinney cannot survive a fact-based challenge to her standing, because the evidence shows that CEIR never received her (or any other Wisconsin resident's) driver license information.

In *Baysal*, the Seventh Circuit expressly rejected the plaintiffs' argument that disclosure itself was a sufficient "injury" to give rise to Article III standing under the DPPA. *Baysal*, 78 F.4th at 979. As the court explained, the Supreme Court had already rejected "the proposition that Congress can create standing just by requiring payment in the absence of an injury," and that where Congress creates such a remedy without defining the cognate harm, "courts should inquire whether what the plaintiff asserts as injury has a historical or common-law analog." *Id*. (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016)).

Here, Ms. McKinney has not pleaded any facts to show that she has suffered any such injury due to the alleged disclosure of her driver license information to CEIR. The "injuries" Ms. McKinney has pleaded—an alleged "increase[d]…risk of identity theft, privacy invasion, and unauthorized political targeting" and an alleged infringement of "her fundamental right to privacy" and her "fundamental right to vote" (Dkt. 1, ¶¶ 165, 174)—are so generalized and speculative as to be nonexistent.

"Worry and anxiety" over possible harms is not sufficient to give rise to standing. *Baysal*, 78 F.4th at 977; *see also Kowarsky v. Am. Fam. Life Ins. Co.*, No. 22-cv-00377, 2023 WL 5651846 *2 (W.D. Wis. Aug. 31, 2023) (Conley, J.) (holding that "(1) the heightened threat of future identity theft; (2) anxiety; [and] (3) time spent mitigating that threat" are not cognizable harms under the DPPA). And, as in *Baysal*, Ms. McKinney seeks only statutory liquidated damages, apparently on the misguided basis that the disclosure itself is an injury. (Dkt. 1 at 38, Prayer for Relief, ¶ E.)

Moreover, even if mere disclosure to CEIR *were* enough to establish a concrete injury, that alleged injury simply *did not occur*. Where, as here, a defendant raises a fact-based (as well as facial) challenge to subject matter jurisdiction, a plaintiff cannot rest on mere allegations. *See Apex Digital,* 572 F.3d at 444 (holding that district court permissibly relied on extrinsic evidence when considering motion to dismiss for lack of standing); *see also Silha*, 807 F.3d at 173 ("In reviewing a factual challenge, the court may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists."). Again, because Wisconsin did not participate in either of CEIR's EBU studies, CEIR never received any Wisconsin DMV data—including Ms. McKinney's. (Kipp Decl. ¶ 11.) Therefore, Ms. McKinney cannot have suffered any injury in fact that is traceable to any conduct of CEIR.

2. Citizen AG lacks Article III standing.

Citizen AG has failed to allege any injury that could directly confer it standing under Article III under either organizational or associational standing theories.

a. A DPPA claim must be brought by individuals.

By law, the DPPA allows only for a lawsuit brought by "the individual to whom the information pertains." 18 U.S.C. § 2724(a); *see also Pichler v. UNITE*, 542 F.3d 380, 391 (3d Cir. 2008) (holding that "individuals . . . who are not specifically identified in a motor vehicle record,

have no legally protected privacy interest under the DPPA" and therefore lack standing to sue). An organization such as Citizen AG does not have driver license information to disclose and is clearly not an "individual." *See*, *e.g.*, *Frey v. Coleman*, 903 F.3d 671, 678-79 (7th Cir. 2018) (pursuant to "common usage," both the courts and Congress "routinely use[ ] 'individual' to denote a natural person, and in particular to distinguish between a natural person and a corporation.") (quoting *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454 (2012)). Individuals are therefore necessary for a DPPA claim, and Citizen AG cannot bring such a claim on behalf of its members, to the extent its complaint purports to do so.

Further, the interest that a DPPA claim seeks to protect is an individual right to privacy regarding a party's personal information. *See*, *e.g.*, *In re USAA Data Sec. Litig.*, 621 F. Supp. 3d 454, 465 (S.D.N.Y. 2022) ("loss of privacy" is the injury "against which the DPPA was intended to protect"). That interest is not germane to Citizen AG's purpose of protecting civil liberties and constitutional rights. (*See* Dkt. 1, ¶ 4). A DPPA claim is not a civil rights claim and cannot even be asserted against the government. *See* 18 U.S.C. § 2725(2) (defining "person," for purposes of a DPPA claim, as "an individual, organization or entity, but [not including] a State or agency thereof"); § 2724(a) (allowing a lawsuit under the DPPA against a "person" who "knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted"). Simply put, a DPPA claim is not a claim that can be asserted on behalf of an organization, even if there are individual members who claim an injury.

b. Citizen AG does not have associational standing to bring its claims.

The complaint does not—because it cannot—plead a basis for Citizen AG's associational standing, which allows an organization to sue on behalf of its members. *See Disability Rights Wis., Inc. v. Walworth Cnty. Bd. of Supervisors*, 522 F.3d 796, 801-02 (7th Cir. 2008). To assert

associational standing, an organization must demonstrate that "(1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) neither the claims asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *Id*. at 801. Citizen AG fails to meet any of those requirements.

Citizen AG also lacks associational standing because none of its alleged Wisconsin members have individual standing. First, as explained specifically as to Ms. McKinney above in Section I(B)(1), any claim under the DPPA requires an alleged injury beyond the threshold disclosure. Allegations as to Citizen AG omit this threshold injury requirement.

Second, because Wisconsin did not participate in either of CEIR's EBU studies, CEIR never received any Wisconsin DMV data. (Kipp Decl. ¶ 11.) Therefore, none of Citizen AG's Wisconsin members could have suffered any injury in fact that is traceable to any conduct of CEIR.

c. Citizen AG does not have organizational standing.

Even if the DPPA were to confer standing on organizations in addition to individuals, Citizen AG cannot establish organizational standing. An organization must demonstrate standing the same way an individual does: by alleging "such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal court jurisdiction." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (quoting *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977)). An organization may make this showing by alleging that it has experienced a "concrete and demonstrable injury" to its activities, with a consequent drain on its resources. *Id*. (quoted by *Common Cause Indiana v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019)). The injury must be more substantial than "simply a setback to the organization's abstract social interests." *Id.* at 379. A voting law, for example, may injure an organization by "compelling it to devote resources" to combatting the effects of the law *if they are harmful to the organization's*

mission. *Common Cause Indiana*, 937 F.3d at 950 (citing *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd on other grounds*, 553 U.S. 181 (2008)).

Here, Citizen AG complains that it was "forced to divert significant resources from its regular programmatic activities, including election monitoring and compliance initiatives, to investigate and counteract Defendants' unauthorized use of DMV data."[5] (Dkt. 1, ¶ 173.) But, by that logic, any would-be plaintiff could manufacture standing any time they wished. *See Patterson v. Howe*, 96 F.4th 992, 998 (7th Cir. 2024) ("Hiring an attorney to seek guidance or to file a lawsuit is not a concrete harm […] Otherwise, anyone could sue for any alleged FDCPA violation, whether or not he suffered any other injury from the allegedly misleading practice.").

On top of that, according to its own complaint, Citizen AG's entire mission is "to educat[e] Americans about their rights and [] advocating, protecting, and preserving American civil liberties and constitutional rights through an array of means that include, without limitation, *public records requests and litigation*." (Dkt. 1, ¶ 4 (emphasis added).) Citizen AG also specifically alleges that "[p]rotecting the voting rights of Citizen AG members…is germane to Citizen AG's mission." (*Id.* ¶ 8.)

The only activity Citizen AG alleges it has performed in Wisconsin is generally making public records requests to multiple states nationwide regarding their efforts to maintain voter lists and specifically requesting Wisconsin's ERIC Membership Agreement. (*Id.* ¶ 10.) Beyond that, it has instigated this litigation—an activity which presumably should include some amount of factual investigation. *See* Fed. R. Civ. P. 11(b)(3). In short, the injury Citizen AG alleges is that it

[5] Citizen AG makes similar allegations in claiming standing under Wis. Stat. § 227.40. (Dkt. 1, ¶ 17.) That section of the Wisconsin Administrative Procedure Act provides that "the exclusive means of judicial review of the validity of a rule or guidance document shall be an action for declaratory judgment as to the validity of the rule or guidance document [in a Wisconsin state court]." Wis. Stat. § 227.40(1). Nowhere in the complaint does Citizen AG challenge a "rule or guidance document" from any state agency. Even if it did, this Court would not be the proper forum under Wis. Stat. § 227.40(1). Finally, even if it applied—and it does not—the statute would not provide Citizen AG a basis for standing to sue a private organization such as CEIR.

expended resources on activities that go to the very core of its stated mission—*not* that it had to *divert resources* from that mission.

An injury does not arise when an organization dedicates resources it has already allocated to functions it already performs in furtherance of its mission. *See Legal Aid Chicago v. Hunter Prop., Inc.*, No. 23-cv-4809, 2024 WL 4346615 *9 (N.D. Ill. Sept. 30, 2024) ("[A]n organization cannot allege an injury in fact based on 'baseline' or 'ordinary program costs' of the work that it is already doing." (quoting *Common Cause*, 937 F.3d at 955)); *Democratic Party of Wisconsin v. Vos*, 966 F.3d 581, 586-87 (7th Cir. 2020) (holding that the Democratic Party lacked standing to challenge a Republican-backed law because "[t]he Acts do not target the Party nor do they formally restrict the Party's ability to raise funds, register voters, get candidates on ballots, or otherwise meaningfully participate in elections.").

Likewise, an injury in fact does not arise from advocacy, lobbying, or "an expenditure of resources on general political opposition to a law or practice." *See Stencil v. Johnson*, 605 F. Supp. 3d 1109, 1118 (E.D. Wis. 2022) (quoting *Common Cause*, 937 F.3d at 956 (stating that it had "no problem ruling out standing for lobbying efforts in Indiana's legislature [to repeal the challenged law].")). Citizen AG's baseline activities in furtherance of its stated mission and general opposition to the practices alleged in the lawsuit are insufficient to confer standing as pled.

Because both Plaintiffs lack standing, this Court lacks jurisdiction to resolve this case. *MAO-MSO Recovery II, LLC v. State Farm Mut. Auto. Ins. Co*., 935 F.3d 573, 581 (7th Cir. 2019) (citation omitted) ("The decision that plaintiffs lacked Article III standing is one of jurisdictional significance: it means that the court had no authority to resolve the case.")). That alone is sufficient to justify dismissal.

II. This Court lacks personal jurisdiction over CEIR.

A. Legal Standard – Fed. R. Civ. P. 12(b)(2)

On a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), plaintiffs have "the burden of proving that the court can exercise personal jurisdiction" over the defendants. *Total Admin. Servs. Corp. v. Pipe Fitters Union Local No. 120 Ins. Fund*, 131 F. Supp. 3d 841, 844 (W.D. Wis. 2015). Where, as here, a defendant "has submitted affidavits contesting personal jurisdiction," plaintiffs "'must go beyond the pleadings and submit affirmative evidence supporting the exercise of jurisdiction.'" *Id*. (quoting *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 783 (7th Cir. 2003)).

"In a federal question case such as this one, a federal court has personal jurisdiction over a defendant if either federal law or the law of the state in which the court sits authorizes service of process to that defendant." *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Assocs. Houston*, 623 F.3d 440, 443 (7th Cir. 2010). Because the DPPA does not authorize nationwide service, Plaintiffs must show that CEIR is subject to personal jurisdiction under Wisconsin's long-arm statute, Wis. Stat. § 801.05. *See id*.

"Wisconsin's long-arm statute, Wis. Stat. § 801.05, has been interpreted to confer jurisdiction 'to the fullest extent allowed under the due process clause.'" *Felland v. Clifton*, 682 F.3d 665, 678 (7th Cir. 2012) (citation omitted). Thus, while courts sometimes treat the personal jurisdiction analysis as a two-part test—first statutory, and then constitutional—"the constitutional and statutory questions tend to merge[.]" *Id*. "Once the requirements of due process are satisfied, then there is little need to conduct an independent analysis under the specific terms of the Wisconsin long-arm statute itself because the statute has been interpreted to go to the lengths of due process." *Id*.

Due process requires that personal jurisdiction be established as to each individual defendant. Personal jurisdiction generally may not be asserted over one defendant "based solely on the activities" of another; instead, the requirements for personal jurisdiction "must be met as to each defendant over" which "a state court exercises jurisdiction." *Rush v. Savchuk*, 444 U.S. 320, 331–32 (1980) (reversing state supreme court's finding of personal jurisdiction where there were multiple defendants and the state court "aggregat[ed] their forum contacts in determining whether it had jurisdiction," finding such "result [was] plainly unconstitutional").

B. The exercise of personal jurisdiction over CEIR would not comport with due process.

"The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts" to only those situations in which the out-of-state defendant has "certain minimum contacts… such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (alteration in original) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 210, 316 (1945)).

"Personal jurisdiction takes two forms—general and specific." *Lexington Ins. Co. v. Hotai Ins. Co., Ltd.*, 938 F.3d 874, 878 (7th Cir. 2019). General jurisdiction "permits a defendant to be sued in a forum for any claim, regardless of whether the claim has any connection to the forum state." *Id*. (original emphasis omitted). On the other hand, "[s]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id*. (citation and internal quotation marks omitted).

1. CEIR is not subject to general jurisdiction in Wisconsin.

"General jurisdiction is for suits neither arising out of nor related to the defendant's contacts with the State, and is permitted only where the defendant conducts continuous and

systematic general business within the forum state." *GCIU-Employer Ret. Fund v. Goldfarb Corp.*, 565 F.3d 1018, 1023 (7th Cir. 2009). For "such extensive jurisdiction over a defendant" to exist, the defendant's contacts must render it "essentially at home in the forum state." *Lexington*, 938 F.3d at 878 (internal quotation marks omitted) (citing *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

"Thus far, the [Supreme] Court has identified only two places where that condition will be met: the state of the corporation's principal place of business and the state of its incorporation." *Kipp v. Ski Enter. Corp.*, 783 F.3d 695, 698 (7th Cir. 2015) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)). Plaintiffs do not allege that CEIR is organized under the laws of Wisconsin or that it has its principal place of business in Wisconsin. (Dkt. 1, ¶ 19.) And in fact, neither is the case. (Kipp Decl. ¶ 6.) Accordingly, CEIR is not subject to general jurisdiction in Wisconsin.

2. CEIR is not subject to specific jurisdiction in Wisconsin.

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 283-84 (cleaned up). "Specific jurisdiction has three 'essential requirements.'" *Lexington*, 938 F.3d at 878 (citation omitted). A plaintiff must establish: (1) that the defendant purposefully availed itself of the privilege of conducting business in the forum state or purposefully directed its activities at the state; (2) that the alleged injury arose out of the defendant's forum-related activities; and (3) that the exercise of personal jurisdiction otherwise comports with traditional notions of fair play and substantial justice. *Id*.

As to the first element, whether a defendant "availed itself" of conducting business in the state depends on its "minimum contacts" there. *Lexington*, 938 F.3d at 879. "The Due Process Clause protects a defendant from being forced to submit to the adjudicatory authority of a state with which it has not purposefully established a sufficient connection..." *Id*. (citing *Walden*, 571

U.S. at 285–86). In this case, that connection must be established by showing that CEIR "purposefully directed" allegedly wrongful conduct at Wisconsin, which in turn requires a showing of: (1) intentional conduct; (2) expressly aimed at Wisconsin; (3) with the knowledge that the effects would be felt—that is, that the injury would occur—in Wisconsin. *See Felland*, 682 F.3 at 674-75.

Here, Plaintiffs' DPPA claim against CEIR arises out of CEIR's alleged improper acquisition of Wisconsin DMV data via ERIC. (*See* Dkt. 1, ¶¶ 168-72.) But again, because Wisconsin did not participate in either the 2018 or the 2020 EBU study, ***CEIR never received any Wisconsin DMV data***.[6] (Kipp Decl. ¶ 11.) CEIR thus did not expressly aim any conduct relating to its acquisition of DMV data at Wisconsin, and certainly could not have had knowledge that its conduct would result in any injury that would be felt in Wisconsin. CEIR simply does not have sufficient minimum contacts with Wisconsin to be hauled into court on Plaintiffs' DPPA claim—indeed, it does not have any relevant contacts with Wisconsin ***at all***.[7]

For the same reasons, the complaint also fails to establish that Plaintiffs' alleged injuries arose out of CEIR's "forum-related activities." *See Lexington*, 938 F.3d at 878. Because CEIR

[6] Plaintiffs also allege, unmoored to any claim, that CEIR engaged in "partisan activity" by acting in a "joint venture" with the Center for Technology and Civic Life ("CTCL") to provide grant funds to certain Wisconsin cities, which those cities used to purchase allegedly "illegal" ballot drop boxes. (Dkt. 1, ¶¶ 88-89.) Those allegations are explicitly based on an investigative report prepared by Michael Gableman. (Dkt. 1, ¶ 89 & n.18.) Gableman's report resulted in a 10-count disciplinary complaint against him by the Wisconsin Office of Lawyer Regulation ("OLR"), which accuses him (among other things) of making false statements about Wisconsin elections officials and making false statements to the OLR. *See* Rich Kremer, *"Court regulators call for sanctions against Michael Gableman for election investigation*," Wis. Public Radio, wpr.org (last accessed Dec. 5, 2024); https://wscca.wicourts.gov/caseDetails.do?caseNo=2024AP002356&cacheId=8A0A2231747025E07F3CAE4E26250C88&recordCount=1&offset=0 (last accessed December 5, 2024). And just like the alleged acquisition of Wisconsin DMV data, those allegations are pure fantasy—CEIR had nothing to do with CTCL's separate grant program. (Kipp Decl. ¶ 12.) In fact, CEIR and CTCL have never engaged in a joint venture, and the two entities are completely separate, unrelated organizations. (*Id.*) In any event, Plaintiffs fail to explain how the alleged CTCL grants to Wisconsin cities have anything to do with CEIR's alleged acquisition of Wisconsin DMV data, which is the gravamen of Plaintiffs' DPPA claim.

[7] In 2020, CEIR did provide grants to states that applied for funding for voter education projects. But Wisconsin did not apply for nor receive any grant money from CEIR. (Kipp Decl. ¶ 13.)

never acquired any Wisconsin DMV data, any injury that Plaintiffs claim to have suffered as a result of the improper disclosure or use of such data cannot be traced to any "forum-related activities" on CEIR's part.

Finally, this Court's exercise of personal jurisdiction over CEIR "would offend traditional notions of fair play and substantial justice." *See Felland*, 682 F.3d at 677. In making that determination, the Court must consider the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiffs' interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies. *Id*. (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

Here, CEIR would be burdened by having to litigate in a state with which it has no relevant connection. And because CEIR never obtained any Wisconsin DMV data, Wisconsin has no interest in adjudicating this dispute. There is no discernable policy argument—either in the interests of the interstate judicial system or other states—for requiring CEIR to litigate this case in Wisconsin. And while Plaintiffs presumably wish to inconvenience CEIR as much as possible with frivolous litigation, that is not an interest in obtaining "convenient and effective relief." *Felland*, 682 F.3d at 677.

In short, because CEIR never obtained any Wisconsin DMV data, there is no basis to assert personal jurisdiction over it in Wisconsin in connection with Plaintiffs' DPPA claim. The claim against CEIR must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' complaint in its entirety for want of jurisdiction.

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Respectfully submitted,

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