Stephen Joncus, #013075
JONCUS LAW P.C.
13203 SE 172nd Ave Ste 166 #344
Happy Valley, Oregon 97086
(917) 236-1200
steve@joncus.net

Robert D. Popper*
Eric W. Lee
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
Phone: (202) 646-5172
rpopper@judicialwatch.org

T. Russell Nobile*
JUDICIAL WATCH, INC.
Post Office Box 6592
Gulfport, Mississippi 39506
Phone: (202) 527-9866
rnobile@judicialwatch.org

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JUDICIAL WATCH, INC.; CONSTITUTION PARTY OF OREGON; SUNI DANFORTH; and HANNAH SHIPMAN, Plaintiffs, v. TOBIAS REED, in his official capacity as the Oregon Secretary of State; and THE STATE OF OREGON, Defendants.	Civil Action No. 6:24-cv-1783-MC **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT** **REQUEST FOR ORAL ARGUMENT**

* *Application for admission pro hac vice forthcoming*

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Plaintiffs Judicial Watch, Inc. ("Judicial Watch"), the Constitution Party of Oregon ("CPO"), Suni Danforth, and Hannah Shipman ("Plaintiffs") submit this memorandum of law in opposition to the motion to dismiss Plaintiffs' Amended Complaint filed by Defendants Tobias Reed, in his official capacity as Oregon Secretary of State,[1] and the State of Oregon ("Defendants").

I. BACKGROUND

The National Voter Registration Act of 1993 ("NVRA" or the "Act") was enacted to "increase the number of eligible citizens who register to vote" and "enhance[]" their "participation … as voters in elections for Federal office"; and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). The NVRA seeks to increase voter participation in several ways. It mandates, for example, that offices providing public assistance accept voter applications, and that applications for driver's licenses also serve as registration applications (giving the law its popular name, "Motor Voter"). 52 U.S.C. §§ 20504, 20506.

The NVRA's goal of ensuring election integrity and accurate, current voter rolls is embodied in Section 8, which is the subject of this lawsuit. 52 U.S.C. § 20507. It requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" a registrant's death or change in residence. *Id.* § 20507(a)(4). It requires a state-designated "chief State election official to be responsible for coordination of State responsibilities" under the Act. *Id.* § 20509.

The NVRA provides that the registrations of those who have moved out of a jurisdiction

[1] Tobias Reed was elected as Oregon's Secretary of State in the November 2024 general election and officially assumed office on January 6, 2025. Per Fed. R. Civ. P. 25, Secretary Reed is automatically substituted as a Defendant in this action.

may only be cancelled in two ways. First, those who confirm a change of address in writing are removed from the rolls. 52 U.S.C. § 20507(d)(1)(A). Second, registrants who are sent a "postage prepaid [] pre-addressed return card" by forwardable mail asking them to confirm their address (the "Confirmation Notice"), fail to respond to it, and then fail to "vote[] or appear[] to vote" for two general federal elections—basically, a period of from two to four years—are removed from the rolls. *Id.* § 20507(d)(1)(B) ("Section 8(d)(1)(B) removals"). One who fails to respond to a notice is designated "inactive" for the duration of that statutory waiting period. 11 C.F.R. § 9428.2(d). Such a registrant may still vote during that period (52 U.S.C. § 20507(e)), which stops the NVRA removal process and returns the voter to "active" status. But unless that happens, states have no discretion about removing a registration once the inactive period is over. To the contrary, "federal law makes this removal mandatory." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018) (citations omitted).

The NVRA also requires states to retain and to provide for public inspection or copying at a reasonable cost "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." *Id.* § 20507(i). It expressly provides that these records "shall include lists of the names and addresses of all persons to whom" Confirmation Notices were sent, "and information concerning whether or not each such person has responded" to those notices. 52 U.S.C. § 20507(i)(2).

Plaintiff Judicial Watch is a Washington, D.C. nonprofit founded in 1994 and known for its public transparency work through records requests. Plaintiff CPO is a registered political party in the State of Oregon. Plaintiff Suni Danforth is a resident and registered voter in Umatilla County, and a member of Judicial Watch. Plaintiff Hannah Shipman is a resident and registered voter in Marion County, and a member of CPO.

Plaintiffs filed this action alleging (1) that Defendants have failed to implement the NVRA's required "general program that makes a reasonable effort" to remove voters who have moved or died; (2) that Defendant Oregon's Secretary of State, who is the chief State election official (*see* O.R.S. § 246.110), has failed to coordinate state responsibilities under the Act; and (3) that Defendants have failed to retain and provide to Plaintiffs NVRA-related records they are required to provide. In support of Plaintiffs' list maintenance claims, Plaintiffs cited Defendants' own admissions, made in response to a survey conducted every two years by the federal Election Assistance Commission ("EAC") as it prepares a mandatory report to Congress. *See* ECF 1 ¶¶ 26-28, 66, 68-70; 52 U.S.C. § 20508(a)(3); 11 C.F.R. § 9428.7. Among other things, Plaintiffs alleged that Defendants' self-reported data showed that 29 Oregon counties with a combined total of 2,404,849 voter registrations removed a total of 36 registrations under Section 8(d)(1)(B) over the two-year reporting period, with 19 of these counties reporting zero such removals over this time-period. ECF 12 ¶¶ 26-28. These allegations, along with allegations regarding high numbers of inactive registrations, significant numbers of inactive registrations showing no activity for three or more general federal elections, 35 of 36 Oregon counties reporting more total registrations than eligible citizens, and ten counties reporting more *active* registrations than eligible citizens, plausibly alleged that Defendants are not conducting the required program that makes a reasonable effort to remove ineligible registrants from the rolls under the NVRA. *Id.* ¶¶ 39, 48-53, 56-63. 52 U.S.C. § 20507(a)(4).

Judicial Watch also alleged that it sent a valid Section 8(i) request to inspect list maintenance documents, and that Defendants did not produce responsive documents within the statutory time-period. The request quoted the language of Section 8(i)(2), seeking the list of Confirmation Notices that states are expressly required to retain and provide. Defendants replied

that production of these records "would require significant consultation with county officials, including some who may have retired, and significant additional review of data by the SOS after such consultation" and "take approximately 5,000 hours to complete." *Id.* ¶ 74.

After Defendants moved to dismiss the Complaint, Plaintiffs filed an Amended Complaint, alleging additional injuries to the Plaintiff CPO caused by Defendants' noncompliance with the NVRA. *See* ECF 12 ¶¶ 102-126. Defendants have moved to dismiss Plaintiffs' Amended Complaint, arguing that Plaintiffs lack standing for their voter roll list maintenance claim under Count I and that Plaintiffs failed to provide adequate notice for their document production claim under Count II. ECF 13.

Defendants' motion should be denied.

II. STANDARDS ON A MOTION TO DISMISS

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim "may be granted only when there is no cognizable legal theory to support the claim or when the complaint lacks sufficient factual allegations to state a facially plausible claim for relief." *Univ. of Or. v. Phillips*, 593 F. Supp. 3d 1062, 1068 (D. Or. 2022) (citation omitted). The "court must accept as true all well-pleaded material facts alleged in the complaint and construe them in the light most favorable to the non-moving party." *Id.* (citing *Wilson v. Hewlett-Packard Co.*, 688 F.3d 1136, 1140 (9th Cir. 2012).

Motions to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction "may be either facial or factual." *Phillips*, 593 F. Supp. 3d at 1068 (citation and internal quotation omitted). A facial attack "is based on the assertion that the allegations contained in the complaint are insufficient to invoke federal jurisdiction." *Id.* (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). For facial attacks, "the Court resolves the Rule 12(b)(1) motion 'as it

would a motion to dismiss under Rule 12(b)(6).'" *Dundon v. United States*, 2024 U.S. Dist. LEXIS 217281, at *3 (D. Or. Dec. 2, 2024) (quoting *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014)). In determining whether the complaint survives a facial challenge to subject matter jurisdiction, the Court must "[a]ccept[] the plaintiff's allegations as true and draw[] all reasonable inferences in the plaintiff's favor." *Id.* Even in a "facial challenge to subject matter jurisdiction, the Court may still consider certain materials, such as matters of judicial notice or documents incorporated by reference into the complaint." *Wong v. Fagan*, Case No. 3:22-cv-01714-SB, 2023 U.S. Dist. LEXIS 157401, at *14 (D. Or. June 30, 2023) (citations omitted).

"A 'factual' attack, by contrast, contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside the pleadings." *Leite*, 749 F.3d at 1121 (citation omitted). The plaintiff must "support her jurisdictional allegations with 'competent proof'" under "the same evidentiary standard that governs in the summary judgment context." *Id*. (citations omitted). The "district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Meyer*, 373 F.3d at 1039 (citation omitted).

Defendants' motion involves a facial attack for lack of subject matter jurisdiction, not a factual attack. The only declaration submitted with their motion was non-substantive and for the purpose of introducing documents. The documents themselves were referred to in the Amended Complaint or are subject to judicial notice as government documents. ECF 11.

III. ARGUMENT

A. Plaintiffs Have Alleged Standing.

To have standing, a plaintiff "must have (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. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560-561 (1992)). An injury in fact is one in which plaintiff claims to have "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (citing *Lujan*, 504 U.S. at 560). An injury may be "fairly traceable" even if it is not the "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997).

In this case, Plaintiffs have alleged several concrete and particularized injuries that are directly traceable to Defendants' alleged failures remove ineligible registrations from the rolls.

1. Plaintiff CPO Has Organizational Standing.[2]

a. CPO Has Alleged an Injury Conferring Standing.

The Amended Complaint alleges that CPO "purchases and relies on Oregon's voter rolls to identify in-state voters and to contact them and encourage them to assist the candidates it supports by learning about the Party and its beliefs, volunteering, organizing, contributing, and voting." ECF 12 ¶ 96. "These voter-contact and election-related activities are core activities" of CPO, as they are "core activities of any political party." *Id*. CPO's "ability to contact eligible Oregon voters is interfered with and made more difficult because Defendants' failure to conduct list maintenance required by the NVRA causes Oregon's voter rolls to have many more outdated and ineligible registrations—both on its active and inactive voter lists—than they otherwise would." *Id.* ¶ 100. This fact causes CPO "to waste significant time, effort, and money trying to contact voters, both by mail and in person, who are listed on the rolls but who no longer live at the registered address or who are deceased." *Id.* ¶ 101. With respect to mailings, the "significant proportion" of CPO's mail returned as undeliverable "is greater than it would be if Defendants complied" with their NVRA list maintenance obligations. *Id.* ¶¶ 106-107. This higher proportion

[2] Plaintiffs will not argue that Plaintiff Judicial Watch has organizational standing.

of returned mail increases the overall cost of sending mail. *Id.* ¶ 108. As a result, CPO has been forced to cut back on the number and extent of its mailings. *Id.* ¶¶ 109-110, 116. In the same way, CPO wastes scarce resources relying on Oregon's inaccurate voter lists when campaigning door to door. *Id.* ¶¶ 111-116. This is because "[t]he proportion of addresses visited by [CPO] volunteers that do not result in any contact with the intended voter because the addressee has moved is greater than it would be if Defendants" cleaned more bad addresses off of the voter lists. *Id.* ¶ 114. In addition, CPO's ability to tailor its message to supporters who send friendly communications is impaired by the fact that information on the voter lists about those supporters is less likely to be accurate. *Id.* ¶¶ 117-120.

Finally, Oregon's failure to remove outdated registrations makes it harder for CPO to retain its valuable, legally privileged status as a "minor political party" under Oregon law. *Id.* ¶¶ 121-126. Because retaining this status requires CPO to show that it has registered a fixed percentage of all Oregon voter registrations, the fact that the State's rolls contain ineligible registrants makes this target harder to reach. *Id.* ¶ 123; *see* O.R.S. § 248.008(4)(a). The resulting threat to CPO's legal status is both real, as CPO is presently below its registration target, and imminent, because CPO has only about two-and-a-half years to make up the difference. ECF 12 ¶ 123.

Defendants do not seem to dispute that the forgoing injuries, if established, would be sufficiently particular or concrete for purposes of Article III standing. Rather, Defendants' challenge to CPO's standing relies on the argument that the Amended Complaint does not plausibly allege that CPO relies to its detriment on Oregon's active voter list. Defendants point out that "[v]oter lists distinguish between active and inactive voters." ECF 13 at 24.[3] In fact, the

[3] All page citations to filed documents are to page numbers assigned by ECF, and not to the document's internal pagination.

Amended Complaint specifically alleges that Defendants' neglect of their list maintenance responsibilities has caused *both* categories of voter registrations to be larger than they otherwise would be. *See* ECF 12 ¶¶ 39, 100, 103 ("Oregon's voter rolls contain many more outdated and ineligible registrations, both active and inactive, than they would if Defendants complied with Section 8(a)(4) of the NVRA.").

But Defendants note that inactive registrants do not receive ballots and cannot vote until they have updated their registrations. ECF 13 at 24. For this reason, they argue that CPO "cannot show it has been injured by too many individuals remaining on the 'inactive voter lists.'" *Id*. As for whether CPO is injured by outdated registrations on the *active* list, Defendants argue that "the complaint does not allege facts sufficient to make that allegation plausible." *Id*. Defendants try to support this contention by arguing that high overall registration rates alleged in the Amended Complaint (which fact they appear to concede) can be explained by excessive inactive registration rates (which fact they also appear to concede). *Id*. They also make the obvious point that EAC question A9a, concerning total removals for *any* cause, does not report numbers of active and inactive registrations. *Id*. at 24-25 & n.8. From all of this they infer that the Amended Complaint does not plausibly allege that CPO is injured by Oregon's inaccurate voter rolls.

Defendants' argument is fundamentally flawed in a number of ways. The first problem is with their premise that bloated and inaccurate *inactive* voter lists do not injure CPO. To the contrary, the Amended Complaint notes that, while CPO "primarily uses Oregon's voter rolls to contact voters whose registrations are listed as active," the voter rolls also allow it "to keep track of its own members whose registrations have become inactive." ECF 12 ¶ 99. To the extent inactive registration lists are not current or accurate, CPO's ability to keep track of its inactive members is impaired. Given CPO's effort to remain a "minor political party" under Oregon law (*id*. ¶¶ 121-

126), and given that this depends on its ability to register voters (*Id.* ¶ 123), and given as well that Defendants have basically conceded that Oregon has excessive numbers of inactive registrations, a reasonable inference from the facts alleged is that it matters very much to CPO whether or not it can locate party members currently on the inactive list, but whose residence has not changed, to convince them to reactivate their registrations. For this reason, CPO is injured when *inactive* registration lists are not current or accurate, and Defendants' entire argument collapses.[4]

An equally fundamental problem with Defendants' argument is that it simply ignores allegations in the Amended Complaint showing inaccuracies affecting Oregon's *active* voter lists. Recall that removing the registrations of those who have moved is a multi-step process under Section 8(d)(1)(B) of the NVRA. As a practical matter, that provision requires, at a minimum, that states (1) determine which active voters may have moved,[5] (2) send them Confirmation Notices, (3) record how, or whether, they respond to those notices, (4) monitor, for a period of time encompassing the next two general federal elections, whether voters who failed to respond to a Confirmation Notice either show up to vote or correct their registrations, and (5) cancel the registrations of voters who failed to respond to a Confirmation Notice and failed to vote or correct their registrations during that time.[6] *See generally Husted*, 584 U.S. at 762-66; 52 U.S.C. §

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[4] Defendants overstate the extent to which inactive voters play no role in elections. ECF 13 at 24. Under both federal and Oregon law, inactive voters may still vote up to and including election day. *See* 52 U.S.C. § 20507(e); *Whitehead v. Fagan*, 369 Ore. 112, 126 (2021) ("inactive" status does not mean "unregistered," nor does it mean that a registration has been "fully canceled," and such a registration "may be updated to become active at any time, including on election day").

[5] States have leeway to decide how to make this initial determination. *See Husted*, 584 U.S. at 776-77 ("States can use whatever plan they think best" as long as it complies with federal law).

[6] Oregon law provides that a clerk "may cancel" the registration of a voter who has not responded to a notice or voted during this period. O.R.S. § 246.110. The Supreme Court has made clear, however, that such removal is *not* discretionary. *Husted*, 584 U.S. at 767 ("Not only are States allowed to remove registrants who satisfy these requirements [of Section 8(d)(1)(B)], but federal law makes this removal mandatory.") (citations omitted).

20507(d)(1). A state's compliance with Section 8(d)(1)(B) can break down at any point in this process, if any one of these steps is neglected.

The Amended Complaint alleges that Oregon is failing to record the responses to Confirmation Notices that are sent to active voters who are believed to have moved—that is, failing to perform step (3) above. The EAC's survey requested that Oregon report how many Confirmation Notices sent by its counties were received back confirming a current registration (EAC survey question A8b); were received back confirming that the voter was no longer eligible to vote in the jurisdiction (question A8c); were returned as undeliverable (question A8d); or were never received back (question A8e). ECF 12 ¶ 65; Popper Decl, Ex. 1 at 9. The Amended Complaint notes that "not a single one of [Oregon's] 36 counties provided any numerical data in response to [EAC] survey questions A8b, A8c, A8d, or A8e" for the relevant period. ECF 12 ¶ 66. "Instead, the data cells for each Oregon county merely declare, in the relevant columns, 'Data not available.'" *Id*.[7] This "shows that Oregon officials do not know how many Oregon voters responded to Confirmation Notices either by confirming their ongoing eligibility or by indicating that their registrations should be cancelled" and "do not know how many, if any, Confirmation

[7] These data cells are publicly available on the EAC's website. *See* link described in ECF 12 ¶ 24, Excel data at rows 3481-3516 (data for Oregon), columns CK-CN (responses to questions A8b through A8e).

If any doubt remained about the failure of Oregon officials to track these responses, the entries in the next column (column CO) uniformly state that Oregon's counties "DO NOT TRACK RESPONSES TO NOTICE." Plaintiffs respectfully submit that the Court may consider these entries, both because they are in a document incorporated by reference in the Amended Complaint in ¶ 24, and because they are subject to judicial notice. *Wong*, 2023 U.S. Dist. LEXIS 157401, at *14 (in a facial challenge to jurisdiction, "the Court may still consider … matters of judicial notice or documents incorporated by reference into the complaint") (citations omitted); *People Not Politicians Or. v. Fagan*, Civ. No. 6:20-cv-01053-MC, 2021 U.S. Dist. LEXIS 109256, at *4 (D. Or. June 10, 2021) ("government agency websites, and the information contained within government-agency websites, are typically considered matters of public record and appropriate for judicial notice") (citation omitted).

Notices were either returned as undeliverable or not returned at all." *Id.* ¶¶ 68-69. Without this information, Oregon officials cannot know who should be retained on or removed from the active registration list. The Amended Complaint rightly concludes that "Oregon officials cannot ensure the accuracy and currency of Oregon's voter registration list unless they have the information about Confirmation Notices solicited by EAC survey questions A8b, A8c, A8d, and A8e." *Id.* ¶ 67. CPO is injured as alleged in the Amended Complaint by inaccuracies in Oregon's *active* voter lists. Defendants simply fail to mention the allegations in ECF 12 ¶¶ 64-69.

The Amended Complaint also details the results of an October 2024 study by Plaintiffs comparing "the total number of registrants, active and inactive, on Oregon's voter rolls with the most recent five-year American Community Survey estimates from the Census Bureau of the citizen voting-age populations of Oregon's counties." *Id.* ¶ 39. This comparison showed "that 35 of Oregon's 36 counties had more voter registrations than citizens over the age of 18." *Id*. But the Amended Complaint adds that, "[e]ven when inactive registrations were excluded, the same study showed that 10 of Oregon's 36 counties had more *active* registrations than citizens over the age of 18. In other words, these 10 counties had active registration rates exceeding 100%." *Id*.

This is a remarkable finding. A jurisdiction's registration rate is the number of registrations divided by the number of citizens old enough to vote. *Id.* ¶ 37. Removing inactive registrations from the numerator of that calculation inevitably makes the fraction smaller—that is, it makes the registration rate lower. This effect should be especially pronounced in a state like Oregon which has so many inactive registrations. As the Amended Complaint points out, "Oregon's inactive registration rate is about 20%," which is "the highest known inactive registration rate of any state in the nation." *Id.* ¶ 50. Yet even after all of these inactive registrations have been excluded, Oregon still boasts ten counties where the active registrations alone exceed 100% of the voting age

citizenry. This suggests that there are too many registrations on Oregon's *active* voter lists, which defeats Defendants' argument that the Amended Complaint does not plausibly allege that there are problems with those lists.

Defendants address the allegations in ¶ 39 by arguing their relevance and weight, which is exactly what a movant ought not to do on a motion to dismiss. Thus, they argue that the "amended complaint does not allege Plaintiffs' study accounted for the significant population growth in certain Oregon counties over that time." ECF 13 at 25. While Defendants slyly characterize this as an allegation Plaintiffs failed to make, the claim that any increase in county registrations is due to population growth is actually a positive factual assertion, proposed here by Defendants as a way to rebut Plaintiffs' study. But it would be inappropriate to consider Defendants' conflicting factual assertions in this motion, where "[a]ll reasonable inferences from the factual allegations must be drawn in favor of the plaintiff." *Phillips*, 593 F. Supp. 3d at 1068 (citation omitted); *see Benabou v. Cheo*, No. 2:19-cv-04619, 2019 U.S. Dist. LEXIS 227927, at *13 (C.D. Cal. Nov. 8, 2019) ("Weighing evidence is not proper at the motion to dismiss stage." (citation omitted)); *see also FEC v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022) ("[f]or standing purposes, we accept as valid the merits of [plaintiffs'] legal claims" (citation omitted)).[8]

Defendants argue that the allegation that "[w]hen a registration rate exceeds 100% … it is an indication that a jurisdiction is not taking steps required by law to cancel the registrations of

[8] As an aside, Plaintiffs note that at trial they will have a great deal to say in response to Defendants' point. Defendants support their argument about population increase by citing a university study showing that Crook County's population increased from 2020 to 2024. ECF 13 at 25 n.10. But the same website shows that Josephine County—with more than three times the population of Crook County, and which, as testimony at trial will show, is one of the ten counties whose active registrations exceed their voting-age populations—actually *lost* residents during those same four years.

In any case, the facts asserted by Defendants are not from a government website and are not subject to judicial notice, and should not be considered for the reasons stated in the text.

ineligible registrants" (ECF 12 ¶ 38) is "conclusory."[9] ECF 13 at 26. But several courts have held that this is a valid inference in an NVRA case. *See Green v. Bell*, No. 3:21-cv-00493, 2023 U.S. Dist. LEXIS 45989, at *12-13 (W.D.N.C. Mar. 19, 2023) ("'unreasonably high registration rate[s]'" of greater than 100% "raise a 'strong inference of a violation of the NVRA'" (citing *Am. Civ. Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 805 (W.D. Tex. 2015); *Voter Integrity Proj. NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 618-20 (E.D.N.C. 2017); *Jud. Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1107-09 (D. Colo. 2021)). Defendants cite no case rejecting this inference. They object that the Amended Complaint "does not allege how greatly any county's October 2024 registration numbers diverge from the Census's 2018–2022 population estimates" (ECF 13 at 26), but cite no case that ever found such facts to be relevant. In any event, this is merely another attempt to argue evidentiary weight, which is not proper here.

Finally, Defendants argue that an allegation of high registration rates does not "account for the reality that NVRA *requires* jurisdictions to wait to cancel registrations under certain circumstances." *Id*. It is ironic that Defendants make this point, because the "wait" required by the NVRA only concerns *inactive* registrants who will be removed after two general federal elections, not the active registrants Defendants claim to be discussing. More basically, courts review complaints by considering all of their allegations together. *See Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 46 n.13 (2011) (allegation "in combination with the other allegations, is sufficient to survive a motion to dismiss" a securities claim); *Silva v. Di Vittorio*, 658 F.3d 1090,

[9] Defendants misuse the term "conclusory." The factual allegation that a critical datapoint is inflated is not the type of "conclusory" statement the Supreme Court cautioned against in *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). A "conclusory" allegation is a "bare assertion[]" that "amount[s] to nothing more than a 'formulaic recitation of the elements'" of a claim, divorced from sufficient "factual content" to "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Clearly, that is not the case here.

1105 (9th Cir. 2011) (allegations "when read together … are specific enough to state" a retaliation claim); *Martin v. Naval Crim. Investigative Serv.*, 539 F. App'x 830, 831 (9th Cir. 2013) (allegations "[t]aken as a whole," and "in combination with the complaint's other allegations" stated a First Amendment claim). Given that the complaint alleges admissions in public documents that Oregon's counties remove few or no registrations under Section 8(d)(1)(B) (ECF 12 ¶¶ 26-28); provides ample context for these admissions, including demographic data and the examples of Curry County and Lake County (*id.* ¶¶ 30, 31, 33, 34); shows that Oregon's inactive rates are national outliers (*id.* ¶¶ 48-51); alleges that its inactive registrations are older than the NVRA allows (*id.* ¶¶ 56-59); cites admissions in public documents that Oregon's counties do not track any of the responses to Confirmation Notices (*id.* ¶¶ 65-66); and relates how Oregon officials claimed to have no practical ability to produce Confirmation Notices they were required by law to retain and provide (*id.* ¶¶ 73-74)—then the additional facts that Oregon has both high overall registration rates, *and* high active registration rates (*id*. ¶ 39), in combination with all of these other facts, readily establish that there are severe problems with Oregon's list maintenance efforts, which are not explained by the ordinary workings of the NVRA.

The Amended Complaint abundantly alleges that Plaintiff CPO has an injury in fact sufficient to confer standing.

b. No Case Cited by Defendants Provides a Basis for Denying CPO's Organizational Standing.

It is ambiguous whether certain cases cited by Defendants in various sections of their brief were meant to apply to CPO's organizational standing. As the issue of standing cannot be waived, these cases are discussed here. None of them provides grounds for denying CPO's standing.

Arizona Alliance for Retired Americans v. Mayes, 117 F.4th 1165, 1170 (9th Cir. 2024), *petition for rehearing en banc filed* (9th Cir. Oct. 4, 2024), is cited throughout Defendants' brief.

That Court rejected previous Ninth Circuit rulings that had "broadly construed *Havens Realty v. Coleman*, 455 U.S. 363 [(1982)], as allowing an organization to assert standing if it diverts resources in response to a governmental policy that frustrates its mission." It characterized these prior decisions as "irreconcilable" with the Supreme Court's ruling in *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024), which it interpreted as holding "that neither the frustration of a mission nor the diversion of resources confers standing under Article III." *Ariz. Alliance*, 117 F.4th at 1170. The Ninth Circuit held that "[n]ow, organizations must fully satisfy the traditional requirements of Article III standing." It added that *Havens Realty* "extends *only* to cases in which an organization can show that a challenged governmental action directly injures the organization's pre-existing core activities and does so *apart* from the plaintiffs' response to that governmental action." *Id*.

Applying *Ariz. Alliance* here, it is clear that CPO has standing. CPO's "pre-existing core activities" are stated in the Amended Complaint as "identify[ing] in-state voters" to "contact them and encourage them to assist the candidates it supports by learning about the Party and its beliefs, volunteering, organizing, contributing, and voting." ECF 12 ¶ 96. The Amended Complaint adds that "[t]hese voter-contact and election-related activities are core activities of [CPO], and, indeed, are core activities of any political party." *Id*. Because of the "additional costs of mailings and of conducting door-to-door visits" due to Defendants' neglect, CPO "obtains fewer results from such expenditures and efforts than it would if the voter rolls were better maintained. That is, it costs more money and effort to contact fewer voters, either by mail or in person." *Id*. ¶ 116. In sum, Defendants' failure to comply with the NVRA makes these activities harder and less productive—wholly "*apart* from" from any response by Plaintiffs. These allegations fit perfectly within the standing analysis in *Ariz. Alliance*, 117 F.4th at 1170.

Yet CPO also has standing independently of the doctrines of *Havens Realty* and *Ariz. Alliance*. As long as a real injury falls within a provision's zone of interest—like CPO's injuries here, *see* section III.A.1.c *infra*—then it should suffice for standing. There is no logical reason a plaintiff should *also* have to show an effect on "core activities." (Indeed, now that *Ariz. Alliance* applies "the traditional requirements of Article III" to all standing analysis (117 F.4th at 1170), *Havens Realty* may not even state a separate theory of standing.) Note that CPO is alleging real, unavoidable out-of-pocket costs (ECF 12 ¶¶ 101, 108, 115, 116), a diminished ability to research friendly contacts (*id*. ¶ 120), and a threat to its legal status as a minor party (*id*. ¶¶ 125). These are traditional injuries. *See, e.g., TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (citing *Spokeo*) ("[C]ertain harms readily qualify as concrete injuries under Article III. The most obvious are traditional tangible harms, such as … monetary harms."). Courts often grant political parties standing based on traditional injuries, without applying *Havens Realty* or a diversion-of-resources analysis. *See De La Fuente v. Padilla*, 930 F.3d 1101, 1104 (9th Cir. 2019) (likely cost to independent candidate of collecting signatures of 1% of voters conferred standing to challenge law); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006) (party "ha[d] direct standing" to challenge opposing candidate's removal by his own party, where "it 'would need to raise and expend additional funds and resources to prepare a new and different campaign'") (citation omitted); *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518, 522-23 (7th Cir. 2017) (party had standing to challenge "full slate" rule that "raise[d] the cost of ballot access"); *see also Repub. Nat'l Comm. v. Wetzel*, No. 1:24cv25, 2024 U.S. Dist. LEXIS 132777, at *8 (S.D. Miss. July 28, 2024), *rev'd on other grds*., *Repub. Nat'l Comm. v. Wetzel*, 120 F.4th 200 (5th Cir. 2024) (distinguishing organizational standing based on a political party's economic injury from standing

based on diversion of its resources); *id*. at *16 (finding concrete injuries to political party both "in the form of economic loss and diversion of resources").

Defendants cite *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 24 C 1867, 2024 U.S. Dist. LEXIS 203147 (N.D. Ill. Oct. 28, 2024) (*see* ECF 13 at 20-21.) That court ruled, on the complaint before it, that two 501(c)(4) political organizations had neither alleged "'concrete and specific adverse consequences,'" nor "satisf[ied] the infringement on [core] business standard" found in *Havens Reality*, "because their assertion that the Board's failure to comply with the NVRA makes it more difficult for them to contact Illinois voters falls short of showing that it 'perceptibly impaired' their advocacy interests." *Id*. at *20-21 (citing *Havens Realty*, 455 U.S. at 379). These claims failed, in short, for lack of supporting detail. The complaint was dismissed but plaintiffs were given leave to amend, and they did so, expanding their allegations regarding the organizational standing of the two political entities from five paragraphs to 42 paragraphs. *Compare* Complaint, *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 24 C 1867 (Mar. 5, 2024), ECF 1, ¶¶ 93-97, *with* First Amended Complaint, *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 24 C 1867 (Nov. 29, 2024), ECF 70, ¶¶ 83-124. This amended complaint has yet to be litigated.

A similar dismissal with leave to replead occurred in *Jud. Watch, Inc. v. Weber*, Case No. 2:24-cv-3750 (C.D. Cal. Feb. 11, 2025), ECF 34 (attached as Ex. 2 to Popper Decl.), issued after Defendants filed their motion here. The relevant claim for organizational standing by the Libertarian Party of California was set forth in a few short paragraphs, which alleged that "Defendants' dereliction of their NVRA obligations makes outreach 'more difficult' and causes it 'to waste significant time, effort, and money.'" *Id*. at 6. The court found that "the Libertarian Party's case for a constitutional injury presents a closer question given the nexus between voter outreach and a political party's core functions," but dismissed the claim as it was pleaded as "just

'a diversion-of-resources theory by another name.'" *Id*. (citing, *inter alia*, *Ariz. Alliance*, 117 F.4th at 1180). The court granted leave to amend, and the plaintiffs will do so by March 26, 2025.

The plaintiffs in the other cases Defendants cite all made indirect claims of harm that contrast with CPO's allegations of out-of-pocket economic losses affecting its core activities and a direct threat to its legal status. The organizational plaintiffs in *Mussi v. Fontes*, No. CV-24-1310, 2024 U.S. Dist. LEXIS 220142 (D. Ariz. Dec. 5, 2024) (*see* ECF 13 at 23) alleged "time and resources" lost "on various educational, voter mobilization, and monitoring efforts, resulting in a 'diversion of resources.'" *Id*. at *30. The court noted that this claim of organizational standing was "difficult to reconcile with the fact that there are no organizational plaintiffs named as parties." *Id*. (cleaned up). It also found the diversion claim foreclosed by *Ariz. Alliance*. In *Repub. Nat'l Comm. v. Aguilar*, No. 24-CV-518, 2024 U.S. Dist. LEXIS 189613 (D. Nev. Oct. 18, 2024) (*see* ECF 13 at 22-23), the RNC alleged it had to "divert resources" away from "voter registration and get-out-the-vote efforts" and towards "ensur[ing] it is chasing mail ballots of eligible voters," and had to spend resources monitoring "for fraud and abuse, mobilizing voters to counteract it, educating the public about election-integrity issues, and persuading elected officials to improve list maintenance." *Id*. at *24. As the court summarized their allegations, they "relate to the RNC's public education function, a frustrated mission, and diversion of resources," and thus were barred under *Ariz. Alliance*. *Id*. at *25. In *Repub. Nat'l Comm. v. Benson*, No. 1:24-cv-262, 2024 U.S. Dist. LEXIS 192714 (W.D. Mich. Oct. 22, 2024) (*see* ECF 13 at 23), the RNC alleged it "monitors compliance" with the NVRA and "relies on voter registration lists to determine its plans and budgets [and] estimate voter turnout, which informs" its staffing decisions; and that it "may" spend or misallocate resources if voter lists are inaccurate, which "alleges only the *potential* of a

diversion of resources." *Id*. at *34-35. None of these cases involved the same kind of direct, tangible, and traditional injuries as those pleaded by CPO.

c. CPO's Injuries Are Within the Zone of Interests Protected or Regulated by the NVRA.

Courts require "that a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Bennett*, 520 U.S. at 162 (citations omitted). To resolve this inquiry, courts "determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118, 127 (2014) (citations omitted).

The NVRA is an election-related statute passed pursuant to Congress' authority under the Elections Clause. *See Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). Its stated purposes are:

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
> (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
> (3) to protect the integrity of the electoral process; and
> (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501(b). The NVRA provides a private right of action to "[a] person who is aggrieved by a violation of this chapter," with no other restriction beyond the requirement to send a notice letter. 52 U.S.C. § 20510(b)(1). In the event a plaintiff is successful, the NVRA authorizes an award of attorney's fees, litigation expenses, and costs. *Id*. § 20510(c).

Statutes that use formulations that refer generally to "person(s)" who are "aggrieved" by a statutory violation have been held to have wide zones of interest. As the Supreme Court observed, "[h]istory associates the word 'aggrieved' with a congressional intent to cast the standing net

broadly—beyond the common-law interests and substantive statutory rights upon which 'prudential' standing traditionally rested.'" *FEC v. Akins*, 524 U.S. 11, 19 (1998) (citations omitted); *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153-54 (1970) (Administrative Procedures Act's grant of "standing to a person 'aggrieved by agency action within the meaning of a relevant statute,'" covers all interests—"'aesthetic, conservational, and recreational' as well as economic"—"arguably within the zone of interests to be protected") (citations omitted); *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 197 (2017) ("This Court has repeatedly written that the [Fair Housing Act's] definition of person 'aggrieved' reflects a congressional intent to confer standing broadly."); *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 175, 177-178 (2011) (Title VII's reference to persons "claiming to be aggrieved" by an unlawful employment practice enables "suit by any plaintiff with an interest 'arguably [sought] to be protected by the statute'") (citations omitted); *see also Ozonoff v. Berzak*, 744 F.2d 224, 228 (1st Cir. 1984) (Breyer, J.) ("Prudential requirements are typically excused only in unusual circumstances, such as where Congress has enacted a special 'person aggrieved' statute, allowing a plaintiff to act as a 'private attorney general.'") (citation omitted).

The NVRA is thus one of those statutes that encompasses a broad zone of interests, as the Fifth Circuit squarely held in *Association of Community Orgs. for Reform Now (ACORN) v. Fowler*, 178 F.3d 350, 363 (5th Cir. 1999) (citing *Akins*). The nonprofit in that case claimed an interest in registering voters and sued to enforce the NVRA's requirement that states establish certain procedures regarding registration. *Id*. at 354. Aside from the statute's use of the term "aggrieved," the court found support for a broad reading of the NVRA's zone of interests in the fact that it authorizes an award of attorney's fees, which provision is "designed to encourage enforcement by so-called private attorneys general." *Id*. at 364 (citing *Bennett*, 520 U.S. at 165

(cleaned up)); 52 U.S.C. § 20510(c); *see id*. at 365 (basing prudential standing on "the NVRA's legislative history, judicial interpretations of the specific language Congress used in the NVRA's private right of action, and the inclusion of a provision for attorneys' fees"). Defendants' only response to *ACORN* is to point out that, while the Fifth Circuit suggested that Congress "intended to extend standing under the [NVRA] to the maximum allowable under the Constitution" (178 F.3d at 363), the Supreme Court has not adopted that expansive interpretation. ECF 13 at 29 n.11. But that fact alone does not contravene the point made in *Akins* and several other cases, and followed in *ACORN*, that Congress' use of the term "aggrieved" implies a broad zone of interests, nor the point made in *Bennett* and followed in *ACORN* that the availability of an award of attorney's fees also suggests a broad reading of the zone of interests. *See Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259 (D. Colo. 2010) (nonprofits engaged in voter registration were within zone of interest of an NVRA Section 8 challenge to state law).

The court in *Pub. Int. Legal Found. v. Boockvar*, 370 F. Supp. 3d 449 (M.D. Pa. 2019), also adopted a broad reading of the NVRA's zone of interests. In that case, a nonprofit foundation "dedicated to 'promot[ing] the integrity of elections nationwide'" sought, and was denied, records pursuant to Section 8(i) concerning ineligible registrants. *Id*. at 452. The court held that the foundation was a person "aggrieved by a violation" of the NVRA (*see* 52 U.S.C. § 20510(b)) because its interest fell within the zone of interests protected by the public records provisions of Section 8(i). *Id*. at 456. The court particularly noted that the foundation's mission was consistent with two of the NVRA's stated purposes, *viz*., "protect[ing] the integrity of the electoral process," and "ensur[ing] that accurate and current voter registration rolls are maintained." *Id*. (citing 52 U.S.C. § 20501(b)(3)-(4)).

Plaintiff CPO is a political party pursuing electoral success in Oregon. It is all but certain

that political parties are the primary private users of voter lists, given that soliciting voters is essential to what they do. Congress's members, all of whom belonged to political parties, knew this when they passed the NVRA. If the nonprofit foundations claiming an interest in voter registration or election integrity in *ACORN*, *Buescher*, and *Boockvar* were within the NVRA's zone of interest, then it is even more certain that a political party like CPO, whose primary purpose and very existence depend on its reaching enough voters, is within that zone as well. Indeed, CPO's goals are consistent with every one of the NVRA's stated purposes. CPO's efforts to find and register voters show it is dedicated to "increas[ing] the number of eligible citizens who register to vote in elections for Federal office" and "enhanc[ing] the participation of [those] eligible citizens." 52 U.S.C. § 20501(b)(1), (2). And CPO's need to contact voters demonstrates its vital interest in "protect[ing] the integrity of the electoral process" and "ensur[ing] that accurate and current voter registration rolls are maintained." *Id*. § 20501(b)(3), (4). There can be no doubt that a grievance like that asserted by CPO—that Oregon's failure to maintain its voter rolls impairs its ability to contact and register voters—"arguably fall[s] within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Bennett*, 520 U.S. at 162 (citations omitted).

This was evident to Cong. Al Swift, the author and House sponsor of the NVRA.[10] Discussing a predecessor bill, the National Voter Registration Act of 1989, he commented that it "provides for the maintenance of accurate and up-to-date registration lists. Inaccurate registration lists are the bane of every election official, can lead to fraud *and are extremely costly to* the states, *political parties, candidates and others who depend upon them for effective voter contact.*" Popper Decl, Ex. 3 (136 Cong. Rec. at 1243 (Feb. 6, 1990)). Thus, the congressional drafter of the NVRA

[10] See https://www.congress.gov/bill/103rd-congress/house-bill/2.

justified the need for more accurate registration lists in part by referring to the high costs incurred by political parties and candidates who try to contact voters using inaccurate lists. This shows that the mitigation of these high costs was intended by the statute and lies within its zone of interests.

Plaintiffs respectfully submit, in sum, that the case for concluding that CPO's injuries fall within the NVRA's zone of interests is overwhelming. In their motion, Defendants fail to cite a single case dismissing an NVRA claim as outside the zone of interests.[11] Instead, they narrowly characterize CPO's injuries and then suggest that, because the goal of preventing them is not stated verbatim as a purpose of the NVRA, they are not within its zone of interests. *See, e.g.*, ECF 13 at 28 (NVRA's "purposes do not include supporting political parties in voter outreach efforts to help political parties elect their candidates, promote their platform, or maintain party status"; zone of interests does not include "facilitating the efficiency of a political party's voter outreach efforts"; CPO's injury "is limited to having to spend more resources on voter outreach and having to register additional voters as party members," while the "zone of interests protected by the NVRA is limited to voter registration, election integrity, and voter roll maintenance"). This is a transparent word game. CPO's injuries *were caused by* Defendants' failure to ensure election integrity and conduct voter roll maintenance. And the ability of political parties like CPO to contact voters was within the contemplation of those who drafted the NVRA, as a matter of logic and, as it happened, as a matter of record. The NVRA's language and its attorney's fee provision counsel a broad reading of its zone of interest. And CPO's injuries need only "arguably" come within that zone. *Bennett*,

[11] Defendants do not argue that injuries to Plaintiffs Judicial Watch, Suni Danforth, or Hannah Shipman falls outside the NVRA's zone of interests. "Because the zone-of-interests inquiry is not jurisdictional, it can be waived." *Garrett Dev., LLC v. Deer Creek Water Corp.*, No. 21-6105, 2022 U.S. App. LEXIS 29346, at *34 (10th Cir. Oct. 21, 2022) (citation omitted); *see Lexmark*, 572 U.S. at 128 n.4. Defendants have thus waived this argument with respect to any claim concerning these Plaintiffs.

520 U.S. at 162. For all of these reasons, CPO's injuries clearly fall within the NVRA's zone of interest. Indeed, it would make no sense if the interests of the nonprofits in the cases cited above fall within the NVRA's zone of interest while a political party's interest in real-world political success—and even in its own continued existence—does not.

d. CPO's Standing is Sufficient to Establish Jurisdiction.

"The presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc*., 547 U.S. 47, 52 n.2 (2006) (citations omitted); *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993) ("The general rule applicable to federal court suits with multiple plaintiffs is that once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others." (citation omitted)). Thus, CPO's standing makes it unnecessary for the Court to determine the other standing arguments addressed below.

2. Plaintiffs Judicial Watch, CPO, Danforth, and Shipman Have Associational and Individual Standing Based on Their Undermined Confidence in the Integrity of Elections.

Plaintiffs Suni Danforth and Hannah Shipman, and Plaintiffs Judicial Watch and CPO, on behalf of these and all other individual members who are Oregon voters, independently have standing based on the allegations that the Defendants' failure to comply with the NVRA undermines their confidence in the integrity of the electoral process and discourages their participation.[12] ECF 12 ¶¶ 82, 83.

In *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), the Supreme Court observed that

[12] An organization may sue on behalf of its own members if "'(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to [its] purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Home Care Ass'n of Am. v. Bonta*, No. 21-15617, 2022 U.S. App. LEXIS 3954, at *3-4 (9th Cir. Feb. 14, 2022) (citation omitted).

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Consistent with this insight, in upholding Indiana's voter ID laws in *Crawford v. Marion County Election Bd*., 553 U.S. 181, 196 (2008) the Supreme Court credited the State's legitimate "interest in counting only the votes of eligible voters." But it further noted that, while "closely related to the State's interest in preventing voter fraud, *public confidence in the integrity of the electoral process has independent significance*, because it encourages citizen participation in the democratic process." *Id.* at 197 (emphasis added).

In the NVRA context, courts have found that undermined electoral confidence as a result of ineligible registrations remaining on the voter lists is not a speculative injury. In *Jud. Watch, Inc. v. King*, 993 F. Supp. 2d 919, 920 (S.D. Ind. 2012), the plaintiffs sued Indiana for failing to conduct list maintenance required by the Act. Judicial Watch alleged that its members were injured by "Indiana's failure to comply with the NVRA list maintenance requirements because that failure 'undermin[es] their confidence in the legitimacy of the elections … and thereby burden[s] their right to vote.'" *Id.* at 924. In rejecting defendant's argument that such an injury was "speculative," the court found "that a plaintiff who alleges that his right to vote has been burdened by state action has standing" since "a voter who alleges that such harm has befallen him or her has standing to redress the cause of that harm." *Id.*; *see id*. at 924 n.6 (finding that Judicial Watch had "associational standing to pursue its claim on behalf of its members who are registered to vote in Indiana" who otherwise had individual standing to sue). Likewise, the court in *Griswold*, 554 F. Supp. 3d at 1104, found that undermined confidence due to ineligible registrations was not a "speculative or hypothetical" injury since the "individual plaintiffs are not worried that their

confidence *could* be undermined at some point in the future; their confidence is undermined now." It noted that, unlike in *Clapper v. Amnesty Int'l*, 568 U.S. 398, 409 (2013), the "injury that the individual plaintiffs have alleged already exists, and the Supreme Court has recognized the 'independent significance' of public confidence in the electoral process because it 'encourages citizen participation in the democratic process.'" *Id.* (quoting *Crawford*, 553 U.S. at 197). *See also Green*, No. 3:21-cv-00493, 2023 U.S. Dist. LEXIS 45989, at *11 (plaintiffs' "electoral confidence is currently being undermined" as a result of North Carolina's failure to remove ineligible registrations).

Note that this kind of standing does not depend on making or proving either an allegation of vote dilution or of actual voter fraud. Thus, all of the cases Defendants cites regarding standing based on dilution or fraud are inapposite. For example, *Lake v. Fontes*, 83 F.4th 1199, 1204 (9th Cir. 2024) (per curiam) (see ECF 13 at 16) involved allegations relating to Arizona's "safeguards" for "electronic tabulation systems" that were, according to the plaintiffs, "particularly susceptible to hacking by non-governmental actors who intend to influence election results." 83 F.4th at 1201-02. The Ninth Circuit noted that the "complaint relie[d] on a 'long chain of hypothetical contingencies'" that have "never occurred in Arizona." *Id.* at 1204.[13]

Plaintiffs' undermined confidence injury does not depend on a "long chain of hypothetical contingencies." As the court observed in *Griswold*, "their confidence is undermined now." 554 F. Supp. 3d at 1104. It is actually occurring, as a result of Oregon's failure to timely remove ineligible

[13] Defendants' reliance on *Election Integrity Project, Inc. v. Weber*, 113 F.4th 1072, 1098 (9th Cir. 2024) (ECF 13 at 20) is also misplaced. The Ninth Circuit discussed "vote dilution" as a legal claim under the Equal Protection Clause, noting that it "already held that the requirements of Article III [were] satisfied in this case based on [plaintiff's] organizational standing." *Id.* at 1089 n.13 (citing *Election Integrity Project Cal., Inc. v. Weber*, No. 21-56061, 2022 U.S. App. LEXIS 30549 (9th Cir. Nov. 3, 2022)).

registrations from the voter lists. This is far from the "long chain of hypothetical contingencies," alleged in *Lake*, such as "manipulat[ing] vote totals" to "change the outcome of the election" that had never actually occurred in Arizona. 83 F.4th at 1204.

Defendants argue these allegations "are not specific to Plaintiffs" and are grievances that "any member of the public could raise." ECF 13 at 18 (citing *Lance v. Coffman*, 549 U.S. 437, 439 (2007)). But this is simply incorrect. Not all members of the public have concerns about the integrity of the electoral process due to inflated registration rolls. Plaintiffs alleged that *their* concerns about the integrity of the electoral process undermined *their* confidence and discouraged *their* participation in the democratic process. While vote dilution injury may be categorized as generalized grievance, since a "fraudulent vote cast in an election would diminish the value of each honest vote equally," discouraged participation is unique and particular to Plaintiffs as "discouraged participation" is not "common to all members of the public." *Griswold*, 554 F. Supp. 3d at 1103-04 (citing *Lance*, 549 U.S. at 440-41).

Defendants are correct that a number of district courts have rejected voters' undermined confidence and discouraged participation as an injury conferring standing in the context of an NVRA lawsuit. *See* ECF 13 at 19; *Aguilar*, No. 24-CV-00518-CDS-MDC, 2024 U.S. Dist. LEXIS 189613, at *4; *Benson*, No. 1:24-cv-262, 2024 U.S. Dist. LEXIS 192714, at *9; *Ill. State Bd. of Elections*, No. 24 C 1867, 2024 U.S. Dist. LEXIS 203147, at *5; *Martinez-Rivera*, 166 F. Supp. 3d at 789.

But Plaintiffs respectfully submit that when it comes to voting rights, our courts have long taken an expansive view of the kinds of harm that give rise to justiciable claims. For example, under the tests set forth in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), scrutiny of an administrative burden on voting "is required even …

when the burden imposed may appear slight." *Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020). This means that voters enduring even a "slight" burden will have standing to challenge state election laws. *See, e.g., Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009) ("Even if [individual plaintiffs] possessed an acceptable form of photo identification, they would still have standing to challenge the statute that required them to produce [it] to cast an in-person ballot."). Given this tradition, and given what the Supreme Court has said about the "independent significance" of voter confidence in the integrity of elections (*Crawford*, 553 U.S. at 197), the court should determine that Plaintiffs have standing.

B. Statutory Notice Was Not Required for Plaintiffs' Public Disclosure Claim Under Section 8(i).

The NVRA states that if a "violation occurred within 30 days before" a federal election, an aggrieved person "need not provide notice … before bringing a civil action." 52 U.S.C. § 20510(b)(3). Notwithstanding this plain language, and the fact that Plaintiffs sued 13 days before the most recent general federal election, Defendants argue that the NVRA should be read to exclude public records violations, since such violations supposedly require some additional deliberation between the parties after the initial violation occurs. ECF 13 at 30-31. But this argument was rejected by the Ninth Circuit.

In *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032 (9th Cir. 2015), *overruled on other grds.*, *Arizona All.*, 117 F.4th at 1178, the Ninth Circuit rejected an argument like the one Defendants make here. The plaintiffs there took advantage of both the NVRA's 20 day short-notice and the no-notice periods and filed a complaint the day before an election, alleging that Nevada failed to register voters at public assistance offices. *Id.* at 1035-36. Nevada argued "it would frustrate the purpose of the notice provision" to permit complaints within the short- or no-notice periods if plaintiffs "knew about the violations earlier." *Id.* at 1044. The Ninth Circuit conceded

that a plaintiff might seek "the short-term benefit of the publicity obtained from filing suit the day before voters go to the polls," but concluded that "we cannot rewrite the statute to avoid this consequence, for the statute expressly permits it." *Id.* at 1045 (citations omitted). A plaintiff need only "plausibly alleg[e] that [an] ongoing, systematic violation is occurring … when the complaint is filed within 30 days of a federal election." *Id.* at 1044.

Defendants argue this statutory exception does not apply "where Plaintiffs allege a discrete NVRA violation based on the Secretary's August 2023 communication." But this again was rejected by *Cegavske*. To satisfy the NVRA's notice exception within the 30-day window of a federal election, "it is enough that the notice letter and the complaint plausibly allege the existence of an ongoing violation within the appropriate time period, whether or not it was 'discrete' during the period." *Id.* (citing *Scott v. Schedler*, 771 F.3d 831, 834, 840 (5th Cir. 2014)). Plaintiffs plausibly alleged such an ongoing violation here. Plaintiff's August 4, 2023 inquiry letter requested seven categories of public records pursuant to Section 8(i) of the NVRA, including the statutorily mandated Section 8(i)(2) list "of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) [i.e., Confirmation Notices] were sent, and information concerning whether or not each such person responded to the notice." ECF 12 ¶ 73. Defendants failed to provide the requested records in response. *Id.* ¶ 75. Instead, in a letter dated September 15, 2023, Defendants claimed that each county had "slightly different processes" for retrieving the records, requiring significant research, consultation, and data review by the Secretary's office. *Id.* ¶ 74. This would require "approximately 5,000 hours" and "significant labor cost" "to complete due to the level of customization required for each of the 36 counties in Oregon" *Id.* A disclosure violation occurred when Defendants failed to provide the requested records in response, and it was *ongoing* given that Plaintiffs had not received the records requested as of the filing of this action. *Id.* ¶ 134.

Finally, Defendants' citation to *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 408-10 (M.D. Pa. 2021) is inapposite. The plaintiffs there filed suit outside the period where no notice was required. The issue, moreover, concerned whether a request for documents that also stated a lawsuit would be commenced if it was not complied with within a fixed period of time could serve as an NVRA notice letter. *Id*. at 410.[14]

As set forth above, no notice was required for Plaintiffs' Section 8(i) claim.

IV. CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss should be denied.

Respectfully submitted,

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By: s/ *Stephen Joncus*

Stephen Joncus
JONCUS LAW PC
13203 SE 172nd Ave Ste 166 #344
Happy Valley, Oregon 97086
(917) 236-1200
steve@joncus.net

T. Russell Nobile*
JUDICIAL WATCH, INC.
Post Office Box 6592
Gulfport, Mississippi 39506
Phone: (202) 527-9866
rnobile@judicialwatch.org

Robert D. Popper*
Eric W. Lee
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
Phone: (202) 646-5172
rpopper@judicialwatch.org

* *Application for admission pro hac vice forthcoming*

[14] Notwithstanding Defendants' poor choice of words, Judicial Watch was not "admonished" in that case. ECF 13 at 31.