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 DAVID BECKER'S MOTION TO DISMISS

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INTRODUCTION

Plaintiffs filed a complaint perpetuating their theory that 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,[1] 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*. Nothing in the complaint is founded in fact and instead it simply "tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration in original) (citation omitted). It appears plaintiffs did virtually no research before filing this complaint. And rather than comply with Fed. R. Civ. P. 8(a)'s requirement that the grounds for relief, statement of the claim, and relief sought be set out in a "short and plain" manner, the complaint relies on ***155 paragraphs*** spread over ***33 pages*** of conjecture, bald conclusions, and hyperbole to lay out its case for a ***single claim*** of an alleged violation of the DPPA, rendering the document nearly indecipherable. *See* Fed. R. Civ. P. 8(a); *see also United States v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003) ("Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter.").

The complaint suffers from three fatal flaws, each of which requires the dismissal of the DPPA claim against Mr. Becker. ***First***, neither 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 Mr. Becker, as neither has alleged any cognizable injury. ***Second***, this Court lacks personal

[1] DOT, ERIC, and CEIR have all filed their own respective motions to dismiss. (Dkts. 14, 20, 10.) Plaintiffs voluntarily dismissed their claims against DOT and CEIR in response to those motions, and the Court has terminated both from the case pursuant to Fed. R. Civ. P. 15. ERIC and Mr. Becker are the only remaining defendants in this case.

jurisdiction over Mr. Becker because he never received any Wisconsin DMV data or otherwise purposefully directed any relevant conduct at the state of Wisconsin. ***Third***, the complaint fails to allege facts sufficient to establish that Mr. Becker (or any of the co-defendants) violated the DPPA.

As such, Mr. Becker brings this motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), (2) and (6) and seeks dismissal of all claims made against him.

PROCEDURAL POSTURE

In support of his jurisdictional challenges brought pursuant to Fed. R. Civ. P. 12(b)(1) and (2), Mr. Becker offers limited supplemental evidence, including his own declaration. As this evidence is not offered to support the portion of his motion pursuant to Fed. R. Civ. P. 12(b)(6), the inclusion of this limited evidence does not convert his 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).

FACTUAL BACKGROUND[2]

Mr. Becker founded CEIR, a Washington, D.C.-based, 501(c)(3) charity whose core mission is to restore trust in the American election system and promote election procedures that encourage participation while ensuring election integrity and security. *See* CEIR IRS Form 990, https://electioninnovation.org/wp-content/uploads/FY23-Tax-Return-Documents-The-Center-for-Election-Innovation-Research-PUBLIC-FILE-COPY.pdf (last visited Jan. 22, 2025).[3] Mr.

[2] Mr. Becker does not concede or admit any of plaintiffs' allegations. Mr. Becker 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 Mr. Becker has submitted in support of his motion to dismiss for lack of jurisdiction.

[3] Mr. Becker may cite to CEIR's Form 990 without converting his motion to dismiss to one for summary judgment because plaintiffs' complaint incorporated the document by reference. (Dkt. 1, ¶ 18.); *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (articulating the "incorporation-by-reference doctrine," which "provides that if a plaintiff mentions a document in his complaint, the defendant may then submit the document to the court without converting defendant's 12(b)(6) motion to a motion for summary judgment").

Becker, Executive Director of CEIR, is being sued in this matter in his "individual and official capacities." (Dkt. 1, ¶ 20.)

ERIC is a nonpartisan, non-profit organization founded in 2012 that was formed by chief election officials from seven states with assistance from The Pew Charitable Trusts. *See Frequently Asked Questions*, ericstates.org/faq (last visited Jan. 22, 2025).[4] ERIC comprises 24 states and the District of Columbia. *Id.* It assists states in improving the accuracy of their voter rolls by using information from each member state's driver license and voter registration systems to provide member states with reports that identify individuals who have moved to a different state or within the state, registrants who have died, voters with duplicate registrations, and possible cases of illegal voting. *Id*. Additionally, ERIC generates Eligible but Unregistered Reports—what the parties call "EBUs"— which 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, at *1 (D. Minn. Feb. 20, 2024) (providing summary of ERIC's activities), *on appeal*, 24-1410 (8th Cir. Feb. 28, 2024).

Plaintiffs are Wisconsin-registered voter Jennifer McKinney and Citizen AG, a Florida-based nonprofit organization "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.[5] Although their complaint alleges a variety of implausible and irrelevant nefarious activities, including, but not limited to,

[4] Plaintiffs likewise rely on and incorporate by reference https://ericstates.org. (Dkt. 1 at 2); *see supra* n.3.

[5] Plaintiffs make a single claim based on the DPPA but then make a cursory mention of the National Voter Registration Act ("NVRA") and "vote dilution," which is generally brought under Section 2 of the Voting Rights Act of 1965 ("VRA"). (Dkt. 1, ¶¶ 3, 7-8); *see, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 292 (2017). The complaint does not address

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

Because plaintiffs brought this suit in the Western District of Wisconsin, they must show that this Court has personal jurisdiction over Mr. Becker. Mr. Becker has never lived in Wisconsin and was not served in Wisconsin. (Declaration of David Becker in Support of Motion to Dismiss ("Becker Decl.") ¶ 8.) As the Executive Director of CEIR, Mr. Becker has had limited contacts with Wisconsin. (*Id.*) Mr. Becker occasionally makes short trips to Wisconsin for work and has made a recent personal trip to the state. (*Id.*) From October 2023 through 2024, Mr. Becker made one trip to Wisconsin to speak at an ABA conference, and he did not stay overnight. *Id*. None of these trips related to accessing DMV data. (*Id.*) The only time CEIR has ever received ERIC data from ERIC member states was in connection with CEIR's 2018 and 2020 research studies assessing whether outreach to EBU individuals would increase voter registration. (*Id*. ¶ 6.) Wisconsin did not participate in those studies, but regardless, Mr. Becker did not receive or access

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either the NVRA or the VRA in any meaningful way. As such, this Court should consider any later invocation of either the NVRA or VRA by plaintiffs as waived.

Regardless, the cursory mention of relief under the NVRA or VRA is insufficiently pled under Fed. R. Civ. P. 8 and 12(b)(6). Additionally, both claims would likewise suffer from the same jurisdictional defects alleged in this motion brought pursuant to Fed. R. Civ. P. 12(b)(1) and (2). 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 or violation of the NVRA. *See* 18 U.S.C. § 2724 (allowing only suits arising from the use or disclosure of personal information derived from motor vehicle records). Finally, Mr. Becker is not a governmental actor, and therefore not properly sued under either the NVRA or VRA.

the data used in the studies. (*Id*. ¶¶ 6, 7.) Mr. Becker has never received, viewed, or accessed any Wisconsin DMV data from ERIC, or any other source. (*Id*. ¶ 7.)

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 Mr. Becker. 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 Env't Servs. (TOC), Inc., 528 U.S. 167, 180–81 (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; *Remijas v. Neiman Marcus Grp., LLC*, 794 F.3d 688, 691-92 (7th Cir. 2015)).

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 Digit., 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*. (emphasis in original) (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). In determining whether it has subject matter jurisdiction, the Court may consider evidence presented as part of Mr. Becker'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 citation omitted).

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

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

Plaintiffs lack standing to bring their claim even when their factual allegations are taken as true and construed in their favor (facial challenge to subject matter jurisdiction) and certainly when Mr. Becker's evidence 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.

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.) But Mr. Becker is a private individual who does not live in Wisconsin. He does not use and does not have access to Ms. McKinney's tax dollars. Therefore, she does not and cannot assert taxpayer standing in order to sue him.

Her citation to § 5.06(1) does not save her claim and is, at best, perplexing, as § 5.06 creates a cause of action against ***election officials***, not private individuals. *See Teigen v. Wis. Elections Comm'n*, ¶ 47, 403 Wis. 2d 607, 976 N.W.2d 519 (2022) (holding that Wis. Stat. § 5.06 allows

complaints only against elections officials), *overruled on other grounds*, *Priorities USA v. Wis. Elections Comm'n.*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429 (2024).

Wis. Stat. § 5.06(1) allows Wisconsin electors to bring a complaint before the Wisconsin Elections Commission ("WEC") 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 with respect to any such matter . . . [.]

Wis. Stat. § 5.06(1). The law provides a would-be plaintiff with an administrative process to file a complaint with the WEC and an appeals process to a Wisconsin state court. Wis. Stat. § 5.06(2)-(3), (8). Ms. McKinney would need to exhaust her administrative remedies under § 5.06 before bringing suit in court. *See Wis. Voter All. v. Millis*, 720 F. Supp. 3d 703, 709 (E.D. Wis. 2024). Nowhere in her complaint does she allege she pursued an administrative remedy, much less that she exhausted those remedies.

To the extent Ms. McKinney relies on taxpayer standing, that too is inapposite. Again, Mr. Becker is a private citizen—not a public official who dictates government expenditures of taxpayer funds. Even if he were, Ms. McKinney's status as a taxpayer would not be basis for standing "[a]bsent special circumstances." *Ariz. 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.* (emphasis in original) (citing *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 599 (2007) (plurality opinion)).

The only exception to this rule is where the plaintiff can show both (1) a "logical link" between her taxpayer status "and the type of legislative enactment attacked" and (2) 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 alleges nothing of the sort; 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 explained, such "generalized grievances about the conduct of government" are not appropriate for a federal court. *Flast*, 392 U.S. at 106. And, again, Mr. Becker is not the government.

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 Mr. Becker under the DPPA for another reason: she has not alleged an injury arising out of Mr. Becker's alleged disclosure or use of her driver's license information. *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"). But even assuming disclosure alone was sufficient—and it is not—Ms. McKinney cannot survive a factual challenge to her standing, because the evidence shows that Mr. Becker never received her (or any other Wisconsin resident's) driver's license information.

First, even assuming it is true that Mr. Becker used or had access to Ms. McKinney's driver's license information, that is not sufficient to make a claim under the DPPA. 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 Mr. Becker's alleged disclosure of her driver's license information. 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, at *2 (W.D. Wis. Aug. 31, 2023) (Conley, J.) (observing that the Court had previously held 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 ***were*** enough to establish a concrete injury, that alleged disclosure simply ***did not occur***. Where, as here, a defendant raises a factual challenge to subject matter jurisdiction, a plaintiff cannot rest on mere allegations. *See Apex Digital*, 572 F.3d at 444 (explaining that once evidence is proffered calling into question plaintiff's standing, "plaintiff bears the burden of coming forward with competent proof that standing exists"); *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.").

As stated above, the only time CEIR has ever received ERIC data from ERIC member states was in connection with CEIR's 2018 and 2020 research studies assessing whether outreach to EBU individuals would increase voter registration. (Becker Decl. ¶ 6.) Wisconsin did not participate in either study, neither CEIR nor its director, Mr. Becker, received any Wisconsin DMV data (including Ms. McKinney's), and, therefore, neither CEIR nor Mr. Becker could have disclosed or used her information. (*Id.* ¶¶ 5-7.)

And to the extent Ms. McKinney's claim rests on ERIC's access to Wisconsin data, she still fails to allege any injury sufficient to confer standing. Specifically, plaintiffs allege no plausible facts on which to conclude that Mr. Becker, as a non-voting board member of ERIC, had access to individual driver's license data.

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, 391-92 (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's license information to disclose and is 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.

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

The complaint also does not 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 these requirements.

First and foremost, Citizen AG lacks associational standing because none of its alleged Wisconsin members have individual standing. As explained in Section I(B)(1), any claim under the DPPA requires an alleged injury beyond the threshold disclosure, and allegations pertaining to Citizen AG omit this threshold injury requirement.

Second, because Wisconsin did not participate in either of CEIR's EBU studies, Mr. Becker as its director likewise could not have received any Wisconsin DMV data. (Becker Decl. ¶ 6.) Nor did Mr. Becker ever have access to any Wisconsin DMV data from ERIC or any other source. (*Id*. ¶ 7.) Therefore, none of Citizen AG's Wisconsin members could have suffered an injury in fact that is traceable to any conduct of Mr. Becker.

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 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 . . . a State or agency thereof"); *id.* § 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.

c. Citizen AG does not have organizational standing.

Even if the DPPA were to confer standing on organizations in addition to individuals, Citizen AG could not 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*. at 379. The injury must be more substantial than "simply a setback to the organization's abstract social interests." *Id.* 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 Ind. v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (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."[6] (Dkt. 1, ¶ 173.) But all Citizen AG has essentially done is submit public records requests in order to file a lawsuit and then file that suit. By that logic, any would-be plaintiff could manufacture standing any time they wished. *Cf. 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 includes some factual investigation. *See* Fed. R. Civ. P. 11(b)(3). In short, Citizen AG alleges as its injury that it 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

[6] 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 citizen like Mr. Becker.

allocated to functions it already performs in furtherance of its mission. *See Legal Aid Chi. v. Hunter Prop., Inc.*, No. 23-cv-4809, 2024 WL 4346615, at *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 Wis. v. Vos*, 966 F.3d 581, 586-87 (7th Cir. 2020) (holding that the Democratic Party lacked standing to challenge a Republican-backed law, in part, 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 election").

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) (citing *Common Cause*, 937 F.3d at 956 for the proposition that the Seventh Circuit in that case 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 pleaded.

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 warrants dismissal.

II. This Court lacks personal jurisdiction over Mr. Becker.

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 Rsch. 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 Chi., LLC v. Anesthesia Assocs. Hous.*, 623 F.3d 440, 443 (7th Cir. 2010). Because the DPPA does not authorize nationwide service, plaintiffs must show that Mr. Becker 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 and internal quotation marks 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. *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 268 (2017) (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)). 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 wh[ich] a state court exercises jurisdiction." *Rush*, 444 U.S. at 331–32 (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 Mr. Becker 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. Mr. Becker 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) (citation omitted). 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)). Whether a defendant has "engaged in substantial and not isolated activities" in Wisconsin is measured at the time the lawsuit is commenced. *FL Hunts, LLC v. Wheeler*, ¶ 11, 322 Wis. 2d 738, 780 N.W.2d 529 (Wis Ct. App. 2009) (citing Wis. Stat. § 801.05(1)(d)).

For an individual, general jurisdiction exists in the state where the person resides or where he has substantial and continuous contacts. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); *Goodyear Dunlop Tires Ops., S.A.*, 564 U.S. at 919. Mr. Becker does not reside in Wisconsin, was not served in Wisconsin, and he has neither substantial nor continuous contacts with Wisconsin; he has had limited travel to the state and in the year preceding the filing of the complaint, he made a single trip to Wisconsin and stayed for less than a day. (Becker Decl. ¶ 8.) And plaintiffs do not allege otherwise.

In fact, the sole basis for jurisdiction appears based on his alleged roles at CEIR and ERIC. (Dkt. 1, ¶ 20.) But Mr. Becker is and was the Executive Director of CEIR, which is not a Wisconsin corporation. And even if Mr. Becker had accessed Wisconsin voter data—which he did not—he would have done so in Washington, D.C., and such access would not constitute "substantial activities" in Wisconsin that could give rise to general jurisdiction. Accordingly, Mr. Becker is not subject to general jurisdiction in Wisconsin.

2. Mr. Becker 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 (citation and internal quotation marks omitted). "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 Mr. Becker "purposefully directed" allegedly wrongful conduct at Wisconsin, which, in turn, requires showing (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.3d at 674-75.

Here, plaintiffs' DPPA claim against Mr. Becker arises out of Mr. Becker's alleged improper acquisition of Wisconsin DMV data via ERIC. (*See* Dkt. 1, ¶¶ 168-72.) But again, ***Mr. Becker never received or had access to any Wisconsin DMV data***. (Becker Decl. ¶¶ 6-7.) As such, Mr. Becker could not have expressly aimed any conduct involving a purported acquisition of DMV data at Wisconsin and certainly could not have had knowledge that such conduct would result in any injury that would be felt in Wisconsin. Simply put, Mr. Becker does not have minimum

contacts with Wisconsin necessary to be hauled into court on plaintiffs' DPPA claim. Indeed, he does not have any relevant contacts with Wisconsin ***at all***.

For the same reasons, the complaint also fails to establish that plaintiffs' alleged injuries arose out of Mr. Becker's "forum-related activities." *See Lexington*, 938 F.3d at 878. Because Mr. Becker never received or accessed any Wisconsin DMV data, any injury that plaintiffs claim resulted from the improper disclosure or use of such data cannot be traced to any "forum-related activities" attributable to Mr. Becker.

Finally, this Court's exercise of personal jurisdiction over Mr. Becker "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, Mr. Becker would be burdened by having to litigate in a state with which he has no connection. And because Mr. Becker never obtained or accessed any Wisconsin DMV data, Wisconsin has no interest in adjudicating this dispute. There is no discernable policy argument—relating to the interests of the interstate judicial system or of other states—for requiring Mr. Becker to litigate this case in Wisconsin. And to the extent plaintiffs wish to inconvenience Mr. Becker with frivolous litigation, that is not an interest in obtaining "convenient and effective relief." *Felland*, 682 F.3d at 677.

In short, because Mr. Becker never obtained or accessed any Wisconsin DMV data, there is no basis for this Court to assert personal jurisdiction over him in connection with plaintiffs' DPPA claim. The claim against Mr. Becker must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

III. Plaintiffs have failed to state a claim for relief under the DPPA.

Even if this Court had subject matter jurisdiction over plaintiffs' DPPA claim and personal jurisdiction over Mr. Becker, plaintiffs' complaint would still fail to state a claim under the DPPA. Entirely absent from plaintiffs' pleadings is the "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Plaintiffs' complaint—which is replete with summarily lodged accusations against the defendants—makes only bare conclusions without the necessary relevant supporting facts. What remains are irrelevant, disjointed, and unintelligible allegations which, even taken as true, have no bearing on the DPPA issues and necessitate dismissal for three reasons. ***First***, as to Plaintiff McKinney, plaintiffs have failed to allege sufficient facts for a court to reasonably infer that the purported disclosed data is the type of data protected by the DPPA. ***Second***, as to both plaintiffs and taking all allegations as true, plaintiffs' claim fails to sufficiently allege facts that the disclosure was for an impermissible use under the DPPA. ***Third***, as to both plaintiffs, the pleadings are so unintelligible that they fail to provide Mr. Becker with sufficient notice to determine the facts that constitute the alleged wrongful conduct.

A. Legal Standard – Fed. R. Civ. P. 12(b)(6)

"To survive a motion to dismiss" under Rule 12(b)(6),

> a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Iqbal, 556 U.S. at 678 (citation omitted). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (alterations in original) (internal citations omitted) (quoting *Twombly*, 550 U.S. at 555, 557).

Although a party need not plead "detailed factual allegations" to survive a motion to dismiss, it is required to plead "sufficient factual matter" to state a claim that is "plausible on its face." *Twombly*, 550 U.S. at 555.

B. The complaint fails to state a claim as to Plaintiff McKinney because plaintiffs rely exclusively on conclusory statements—*i.e.*, not facts—in support of her DPPA claim.

Ms. McKinney has pleaded almost no facts, including the necessary fact that the disclosed data as to Ms. McKinney was of a nature or quality protected by the DPPA, and consequently, that she was injured in any way. Instead, the complaint is built on unsupported theory and conjecture, which fails to meet even minimal pleading standards.

At bottom, the complaint rests its DPAA claim on the following theory: (1) Wisconsin DOT disclosed data to ERIC; (2) ERIC disclosed that data to CEIR; and (3) Mr. Becker accessed the data. But upon close inspection, plaintiff's theories are nothing more than elemental conclusions which overlook the principle that "courts should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements." *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009).

For example, plaintiffs allege "Defendants knowingly obtained and disclosed Ms. McKinney's personal information or highly restricted information without authorization"; Mr. Becker "knowingly obtained personal information that was sourced from motor vehicle records"; and Mr. Becker "used that information for one of more purpose(s) not permitted by the statute."

(Dkt. 1, ¶¶ 165, 166, 167.) Yet Ms. McKinney's name does not appear in the factual background section of the complaint other than to introduce her as a party and to assert that she has standing (which she does not). Plaintiffs' assertions as to Ms. McKinney simply track the language of 18 U.S.C. § 2724(a).

Plaintiffs also fail to allege facts that could allow the Court to conclude that the DMV information concerning Ms. McKinney that Mr. Becker allegedly accessed is of the type covered by the DPPA. The DPPA only creates a cause of action for the disclosure of "personal information[] from a motor vehicle records," 18 U.S.C. § 2724(a), and further defines "personal information" as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information[.]" 18 U.S.C. 2725(3).

The Seventh Circuit in *Lake v. Neal*, 585 F.3d 1059, 1061 (7th Cir. 2009), held that a voter registration form filled out at the DMV is not a motor vehicle record under the DPPA. In that case, a registered voter in Illinois brought an action under the DPPA because the Chicago Board of Election Commissioners disclosed personal information it obtained from voter registration records from the DMV. *Id.* at 1060-61. The records contained plaintiff's "name, date of birth, sex, address, former address, phone number, and social security number." *Id*. at 1061.[7] The Seventh Circuit held that although the elections board obtained the registration form from the DMV, the record was not a DMV record for purposes of the DPPA because the board "receives voter registration forms from a variety of sources." *Id.* at 1061. If it were, "the [elections board would] violate[] federal law when it discloses the personal information it receives from the DMV pursuant to the [NVRA] but

[7] The Seventh Circuit included this footnote: "Although we are required to accept as true the facts as pled, we have a hard time believing that the Board, in this day and age, would intentionally release a registered voter's social security number." *Id*. at 1060 n.3.

[would] not violate federal law when it discloses the same personal information it receives from other sources." *Id.*

Here, the complaint contains no factual allegations about what information plaintiffs believe ERIC received about anyone, let alone Ms. McKinney. The only factual allegation plaintiffs have made as to Ms. McKinney that relates to a claim under the DPPA is that ERIC obtained Wisconsin DMV information at some point. (Dkt. 1, ¶ 155.) This is not sufficient for this Court to conclude that (1) ERIC obtained any information related specifically to Ms. McKinney and (2) that the information she contends was shared and used was derived from DMV records and not from voter registration records or some other record form not covered by the DPPA. And without this threshold information, Plaintiffs could not possibly articulate a cognizable injury.[8]

While this Court must take plaintiffs' factual allegations as true, it is not required to extrapolate plaintiffs' proffered conclusions from the barest of allegations. Plaintiffs have failed to state a claim under Rule 12(b)(6) for failure to plead "sufficient factual matter" to state a claim that is "plausible on its face." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" (alterations in original) (internal citations omitted) (quoting *Twombly*, 550 U.S. at 555, 557)).

[8] This is not to say that ERIC does not properly obtain DPPA-covered data, or that CEIR did not properly obtain DPPA-covered data in performing the 2018 and 2020 research studies described above. But Plaintiff McKinney has not identified any information relevant to ***her*** that her information has been improperly disseminated or disclosed, let alone that the is covered by the DPPA.

C. The complaint fails to establish a cause of action under the DPPA because, even taken as true, the allegations demonstrate a permissible use under the DPPA.

Plaintiffs' claims related to disclosure by Wisconsin DOT to ERIC—and, impliedly, to Mr. Becker—also fail because the complaint fails to allege, beyond a conclusory statement, that disclosure was for an impermissible use.

The DPPA allows for 14 permissible uses and allows authorized recipients of motor vehicle data and information to disclose the information for those purposes. 18 U.S.C. § 2721(b). One such permitted disclosure is "[f]or use by any government agency . . . in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions." *Id.* § 2721(b)(1).

Plaintiffs allege, "Defendants' use of Wisconsin DMV data for voter registration and outreach activities is not authorized by any of the permissible uses specified in the statute." (Dkt. 1, ¶ 163.) But the complaint makes clear, even taking all allegations as true, that any disclosure ***was*** for a permissible use. *See* 18 U.S.C. § 2721(b)(1). By law, Wisconsin transmits data to ERIC "for the purpose of maintaining the official registration list under [Wis. Stat. § 6.37]," as mandated by the statute that requires Wisconsin to be a part of ERIC. Wis. Stat. § 6.36(ae)(1). Any data transferred pursuant to this provision is a permissible use under the DPPA, and ERIC's receipt of the driver license data was permitted by statute. And to the extent that plaintiffs' claim against Mr. Becker rests on his alleged role at ERIC, it likewise fails because the disclosure would fall within the same exception to the DPPA. *See* 18 U.S.C. § 2721(b)(1) ("[O]r ***any private person*** or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.") (emphasis added).

The separate allegation related to CEIR does not save plaintiffs. Plaintiffs' allegation that ERIC shared data with CEIR is based on a single email from September 4, 2020, email. (Dkt. 1,

¶ 123.) If a disclosure occurred at the time, it would fall outside the statute of limitations. The DPPA does not contain its own statute of limitations, so the four-year limitations period in 28 U.S.C. § 1658 applies. *See Eggen v. WESTconsin Credit Union*, No. 14-cv-873-BBC, 2016 WL 797614, at *1 (W.D. Wis. Feb. 26, 2016) (concluding that 28 U.S.C. § 1658 applies to claims brought under the DPPA because the statute does not contain its own limitations period). Plaintiffs filed their complaint on October 28, 2024, so any claims arising before October 28, 2020, are barred.

D. Plaintiffs' complaint should be dismissed because it is so verbose and overstuffed that it is impossible for Defendants to determine the facts that underly plaintiffs' single DPPA claim.

Under Rule 8 of the Federal Rules of Civil Procedure, a plaintiff's articulated grounds for jurisdiction, statement of the claim, and relief must be "plain and concise." Fed. R. Civ. P. 8(a). "[U]nintelligibility is certainly a legitimate reason for [rejecting a complaint]. Again, the issue is notice; where the lack of organization and basic coherence renders a complaint too confusing to determine the facts that constitute the alleged wrongful conduct, dismissal is an appropriate remedy." *Stanard v. Nygren*, 658 F.3d 792, 797–98 (7th Cir. 2011). "[I]t is the *Plaintiffs'* job to connect the dots between the allegations and the relevant defendants." *Knowlton v. City of Wauwatosa*, No. 20-CV-1660, 2022 WL 298797, at *4 (E.D. Wis. Feb. 1, 2022) (emphasis in original); *see also Lockheed-Martin Corp.*, 328 F.3d at 379 (affirming dismissal of a complaint of "400 paragraphs covering 155 pages, and followed by 99 attachments").

Here, plaintiffs have submitted ***155 paragraphs*** spread over ***33 pages*** in support of a single DPPA claim. This is indicative of the fact that their complaint is nothing more than hyperbole and conspiracy theories—the vast majority irrelevant and inflammatory—and not at all relevant to its actual DPPA claim.

Plaintiffs' complaint alleges a variety of apparently nefarious conduct: that CEIR provided DMV information to states other than Wisconsin in order to target non-citizens to vote, to "bloat" voter rolls, to add non-citizens to voter rolls, and to solicit donations (Dkt. 1, ¶ 171); that CEIR distributed $64 million in grant funds to 23 states to apparently influence the 2020 election in favor of President Joe Biden (*id*. ¶¶ 67-82); and that CEIR somehow (the complaint does not specify how) coordinated with the Center for Technology and Civic Life to provide $8.8 million to pay for "illegal drop boxes" and engage in "election bribery" in 2020 (*id*. ¶¶ 88-90).

None of these allegations are true and, as relevant to the instant motion, these allegations have ***nothing*** to do with the DPPA.

> Under Rule 8, a complaint must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is. . . . A complaint that is prolix and/or confusing makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation.

Vicom, Inc. v. Harbridge Merchant Servs., 20 F.3d 771, 775-776 (7th Cir. 1994) (internal citations and quotation marks omitted). "Thus, courts should not allow plaintiffs to 'plead[] by means of obfuscation.'" *Id.* at 776 (citing *Jennings v. Emry*, 910 F.2d 1434, 1436 (7th Cir. 1990)).

"Dismissal pursuant to Rule 8(a) is appropriate when 'a complaint that is prolix and/or confusing makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation.'" *Ind. Land Tr. #3082 v. Hammond Redevelopment Comm'n*, No. 2:21-CV-201-JEM, 2022 WL 13968923, at *1 (N.D. Ind. Oct. 24, 2022) (quoting *Vicom, Inc.*, 20 F.3d at 775-76). Plaintiffs have endeavored to obfuscate their lack of sufficient facts for the DPPA claim with pages of irrelevant and unsupported accusations. Therefore, if this Court does not dismiss plaintiffs' claim for the defects noted above, it should dismiss the complaint for violating Rule 8's requirements.

IV. The DPPA does not permit declaratory relief.

Finally, 18 U.S.C. § 2724 does not allow for declaratory relief by its express terms—it provides only for actual damages, punitive damages, attorney fees and costs, and preliminary and equitable relief. 18 U.S.C. § 2724 (b). Therefore, should the Court decline to dismiss the complaint outright, it should nonetheless strike plaintiffs' requests for declaratory relief (Dkt. 1 at 37, Prayer for Relief, ¶¶ (A), (B).) because the DPPA does not provide for such relief. *See* Fed. R. Civ. P. 12(f).

CONCLUSION

For the foregoing reasons, this Court should dismiss plaintiffs' complaint in its entirety for lack personal jurisdiction, lack of subject matter jurisdiction, and for failing to state a claim.

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Respectfully submitted,

s/ Amy E. Potter

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