

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.

ELECTRONIC REGISTRATION
INFORMATION CENTER, CENTER
FOR ELECTION INNOVATION AND
RESEARCH, DAVID J. BECKER in his
individual and official capacities, and
the WISCONSIN DEPARTMENT OF
TRANSPORTATION

Defendants.

Case No. 3:24-cv-00755-wmc

BRIEF IN SUPPORT OF
DEFENDANT ELECTRONIC REGISTRATION INFORMATION CENTER, INC.'S
MOTION FOR SANCTIONS UNDER FED. R. CIV. P. 11

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I. INTRODUCTION

The Electronic Registration Information Center (“ERIC”) is a non-profit, non-partisan membership organization governed and funded by its members, which comprise 24 of the 50 states and the District of Columbia. Its Board of Directors consists of member representatives (typically state election directors) appointed by each member’s chief election official. ERIC’s mission is to provide its members with information that can help them maintain more accurate voter rolls, reach out to potentially eligible but unregistered voters, and detect possible illegal voting.

ERIC was founded in 2012. For many years, it was not an object of political attention, let alone controversy. Its operations were viewed – accurately – as a matter of dry and technical data-processing. Recently, however, ERIC has become a target of disinformation campaigns that, following the 2020 election, have sought to undermine trust in many routine aspects of election administration.

A common theme of these campaigns is a dislike of voter-registration efforts. ERIC does not begrudge the opinions of those who believe that government should not make any efforts to encourage voter registration—even if increasing the number of registered citizens is a goal enshrined in federal law.¹ But the disinformation campaigns targeting ERIC do not make a policy-based case against its *actual* activities. Instead, they fabricate malicious fictions that gain currency in online echo chambers.

¹ See 52 U.S.C. § 20501(b) (purposes of the National Voter Registration Act include “increas[ing] the number of eligible citizens who register to vote in elections for Federal office”).

According to the most common of these narratives, ERIC is not a means for states to compare and analyze data in the name of improving election administration; it is a front for left-wing interest groups scheming to steal elections by registering non-citizens *en masse*.

That storyline is utterly divorced from reality. Which is, no doubt, why no one has had the temerity to submit it to a court – until now.

Nonetheless, Plaintiffs' Complaint is not entirely unprecedented; it shares a family resemblance with other recent lawsuits parroting election-related conspiracy theories – lawsuits that have been sternly rebuked and sanctioned by the federal courts.² To wit, Plaintiffs allege that ERIC intentionally targets non-citizens for voter registration efforts. They insist that ERIC is not an independent non-profit organization governed by its members, but is instead controlled exclusively by one person, the grand puppeteer in Plaintiffs' tale of villainy, who has supposedly used ERIC to gain "control over the voter registration lists that dictate 65.8% of all votes cast in the United States of America." Compl. ¶ 48 (emphasis omitted). Plaintiffs further contend that ERIC has been disclosing, on an ongoing, secretive basis, all the data it receives from its members to another organization, the Center for Election Innovation and Research ("CEIR"), which purportedly utilizes that data for nefarious left-wing purposes.

² See, e.g., *King v. Whitmer*, 71 F.4th 511 (6th Cir. 2023); *O'Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168 (D. Colo. 2021); *Lake v. Hobbs*, 643 F. Supp. 3d 989 (D. Ariz. 2022).

The dockets of the federal courts are not the unruly corners of the internet; judicial filings are subject to higher standards than social media posts. Federal Rule of Civil Procedure 11 enforces that distinction. The Rule provides that, before filing a complaint, plaintiffs and their attorneys must conduct a reasonable inquiry to ensure that their legal arguments are not frivolous, and that their factual contentions have evidentiary support. As detailed below, Plaintiffs' Complaint is riddled with allegations that violate Rule 11. Indeed, this lawsuit is built on a legal argument – that Wisconsin is not actually a member of ERIC, and the two parties have been operating under some sort of false legal consciousness for the past 8 years – that contravenes controlling statutory law and turns common-law principles on their head. And Plaintiffs' key factual allegations are not only unsupported by any evidence; they are directly belied by copious publicly available information.

In accordance with Rule 11's "safe harbor" provision, Plaintiffs have been given detailed notice of these violations and ample opportunity to correct them. On December 30, 2024, ERIC served Plaintiffs with a 31-page motion specifically identifying the offending allegations and explaining at length why each violated Rule 11. (*See* Dkt. 40.) ERIC also attached dozens of exhibits identifying public information contradicting the Complaint's factual averments. (*See* Dkts. 40-1 to -8, 41-1 to -30.) Plaintiffs chose neither to withdraw nor even amend their pleading.

ERIC therefore now files its motion for Rule 11 sanctions, supported by this brief.

II. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. ERIC and Its Reports

ERIC was founded in 2012 by a bipartisan group of chief elections officials from seven states,³ to provide a mechanism by which states could easily share and compare voter-registration and motor-vehicle-department (“MVD”) data among themselves.

Declaration of Shane Hamlin (“Hamlin Decl.”) ¶ 9 (Dkt. 41). Since its founding, ERIC has grown considerably. It currently has 25 members, including 24 states and the District of Columbia. Hamlin Decl. ¶ 12.

ERIC is funded and governed exclusively by its members, in accordance with its Bylaws and Membership Agreement; all members are subject to the same Membership Agreement terms. *Id.* ¶¶ 15–16, 24–26 & Ex. G. ERIC’s Board of Directors comprises member representatives appointed by each member’s chief election official. *Id.* ¶ 17. In addition, ERIC has an Executive Director, who serves as its chief executive officer, is charged with day-to-day responsibility for the management of ERIC staff and programs, and reports to the Chair of the Board of Directors (currently the Director of Elections in Georgia). *Id.* ¶¶ 18–19. Since June 2017, ERIC’s Executive Director has been Shane Hamlin. *Id.* ¶ 2. ERIC’s staff – it has only three full-time employees, including the Executive Director – and budget are commensurate with its limited operations, i.e., the secure comparison and analysis of data and the furnishing of reports to its members. *Id.* ¶¶ 20, 22–23, 26.

³ ERIC’s original seven members were Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington. Declaration of Shane Hamlin ¶ 11 (Dkt. 41).

To effectuate its mission, ERIC compares data provided by its members and data obtained from federal sources to produce certain reports, which members receive at their request. ERIC's members can use these reports to (a) update their voter rolls, (b) reach out to potentially eligible but unregistered individuals, and (c) identify possible illegal voting. There are four "list maintenance" reports, which respectively identify voters who appear to have (1) moved from one member jurisdiction to another, (2) moved within a jurisdiction or updated their contact information, (3) duplicated registrations in the same jurisdiction, and (4) died. *Id.* ¶ 31. ERIC also offers reports that respectively identify (5) individuals who appear to be eligible but are not yet registered ("EBU reports"), (6) voters who have moved according to data from the U.S. Postal Service, and (7) potential illegal voting activity, *e.g.*, voters who may have cast multiple ballots in the same election ("participation reports"). *Id.* ¶¶ 34, 36-37.

When an ERIC member receives an EBU report, *the member* (not ERIC) proceeds "to initiate contact" with the identified EBU individuals "and inform[s] them how to register to vote." *Id.* ¶ 45 & Ex. G, Membership Agreement, at 20. Members are "not ... required to contact any individual who has affirmatively confirmed their desire not to be contacted for purpose of voter registration *or is otherwise ineligible to vote in the Member's jurisdiction.*" *Id.* (emphasis added).

Importantly, ERIC does not in any way perform any member's list maintenance activities. *Id.* ¶ 35. ERIC does not have access to any member's voter database. *Id.* ERIC does not—and, indeed, cannot—remove or add any names to members' voter rolls or otherwise make any changes to those rolls. *Id.* It is up to each member to

decide, based on its own investigation and all of the information it reviews, whether to take any specific action regarding individuals who appear in an ERIC report. *Id.*

B. ERIC's Transparency and Focus on Data Security

Plaintiffs' Complaint suggests ERIC is some sort of shadowy organization. In fact, ERIC publicly discloses significant information about itself, both on its website and through other sources. Hamlin Decl. ¶ 38. ERIC publishes the current versions of its governing documents—its Bylaws and Membership Agreement—on its website. *Id.* ¶¶ 16, 45 & Ex. G. As a 501(c)(3) non-profit organization, which cannot engage in partisan activities, ERIC files each year with the IRS a Form 990 with detailed information about, among other things, its officers, directors, employees, income, and expenditures. All these Forms 990, dating back to Fiscal Year 2013, are publicly accessible online. *Id.* ¶ 46 & Exs. H-R. ERIC's website also includes copies of the meeting minutes of each meeting of ERIC's Board of Directors since February 19, 2023. *Id.* ¶ 47 & Exs. S-CC. And ERIC's website contains copious information about its mission, operations, governance, funding, technology, and commitment to data-security. *Id.* ¶¶ 39-44 & Exs. B-F. Indeed, as detailed below, the published information directly debunks much of the disinformation that infuses Plaintiffs' Complaint.

This publicly available information identifies multiple steps ERIC takes to keep its members' data secure. The Membership Agreement notes that the motor-vehicle data transmitted to ERIC is subject to the disclosure restrictions of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§ 2721-2725, and both ERIC and its members commit not to engage in any unauthorized disclosures. Hamlin Decl. ¶ 45 & Ex. G at

16–18. Moreover, ERIC’s members apply a “cryptographic one-way hash” to dates of birth, driver’s license numbers, and the last four digits of social security numbers *before* sending data to ERIC. *Id.* ¶ 40 & Ex. B at 4; *id.* ¶ 43 & Ex. E at 2. Using the hashed values, ERIC can determine whether information in a record from one dataset matches information in a record from another dataset (for example, a record from a different state). But ERIC expressly directs its members *not* to provide ERIC with the non-hashed dates or other numbers at issue. *Id.* ¶ 40 & Ex. B at 4; *id.* ¶ 43 & Ex. E at 2. Needless to say, if ERIC does not receive this information, it cannot possibly disclose it to others.

C. Research Regarding the Effectiveness of Reaching Out to Eligible but Unregistered Individuals

Central to Plaintiffs’ Complaint is the allegation that ERIC is engaged in an ongoing disclosure of members’ data to CEIR for partisan purposes. That allegation rests primarily on a document reproduced (in truncated form) in the Complaint, which is a 2020 email from CEIR to certain ERIC members. Compl. ¶ 124. Here again, Plaintiffs had access to public information puncturing their conspiratorial fantasies.

ERIC’s website makes clear that it has never shared data with third parties for partisan purposes. Hamlin Decl. ¶ 40 & Ex. B at 6. It further explains that “[i]n 2018 and 2020 individual members voluntarily participated in third-party research projects to evaluate the effectiveness of the members’ eligible but unregistered [EBU] mailings.” *Id.* Those projects “were conducted in compliance with applicable federal data handling laws,” and “ERIC acted as a secure pass-through for the data used in these

projects, facilitating the secure transit of members' data *at the members' request.*" *Id.* (emphasis added).

CEIR's website contains a detailed report on this research, published in 2022. *See* CEIR, Does State Outreach to People Who Are Eligible but Unregistered to Vote Increase Registration? (February 2022), <https://electioninnovation.org/wp-content/uploads/State-EBU-Outreach-Study-February-2022.pdf>, attached as Ex. 1 to Kipp Decl. in Supp. of CEIR's Mot. to Dismiss (Dkt. 12-1). That report further underscores that CEIR's receipt of EBU data from certain members was a discrete event for purposes of a research study in which certain ERIC members voluntarily participated – and that Wisconsin was not a participant. *See id.*

D. Procedural History

Plaintiffs first brought their current allegations in a lawsuit filed on October 25, 2024, against ERIC, CEIR, David Becker (CEIR's Executive Director), and the Wisconsin Election Commission. *See McKinney v. Electronic Registration Information Center*, No. 3:24-cv-00751 (W.D. Wis.). Their complaint was replete with both substantive falsehoods and typographical errors. Plaintiffs voluntarily dismissed that action two days later, on October 27, 2024, purportedly to correct "inadvertent administrative error." Notice of Voluntary Dismissal Without Prejudice, No. 3:24-cv-00751 (Oct. 27, 2024).

On October 28, 2024, Plaintiffs commenced the present lawsuit advancing essentially the same allegations and naming the same defendants, except that Plaintiffs substituted the Wisconsin Department of Transportation ("DOT") for the Election

Commission. *See* Compl. (Dkt. 1). The Complaint is disjointed and sprawling, but Plaintiffs principally contend that Defendants have violated the DPPA through (1) Wisconsin's disclosure of motor-vehicle data to ERIC and (2) ERIC's alleged ongoing disclosure of such data to CEIR as part of an alleged scheme to register non-citizens to vote. *See id.*

CEIR, Wisconsin DOT, and ERIC filed motions to dismiss the Complaint on December 5, 11, and 23, 2024, respectively. (Dkts. 10, 14, 20.) David Becker filed a motion to dismiss the Complaint on January 23, 2025. (Dkt. 35.)

Plaintiffs' response to CEIR's motion was due on December 26, 2024. On December 27, 2024, Plaintiffs voluntarily dismissed all claims against CEIR. (Dkt. 26.) Next, Plaintiffs' response to Wisconsin DOT's motion was due on January 2, 2025. On January 3, 2025, Plaintiffs voluntarily dismissed all claims against Wisconsin DOT. (Dkt. 27.)

On December 30, 2024, ERIC served Plaintiffs, by email and first-class mail, with its 31-page motion seeking Rule 11 sanctions ("Rule 11 Motion"). (Dkt. 40.) Accompanying the motion was a Declaration from ERIC's Executive Director attaching 30 exhibits containing information that was publicly available to Plaintiffs during the weeks and months prior to their filing of the Complaint, as well as 8 additional exhibits containing information publicly available from sources other than ERIC. (Dkts. 40-1 to -8, 41.) ERIC informed Plaintiffs that, if they did not withdraw the Complaint within 21 days of the motion's service, ERIC would submit the motion to the Court. *See* Letter

from R. Wiygul to R. Dreher (Dec. 30, 2024), attached as Exhibit 1 hereto. Plaintiffs have not even acknowledged this correspondence.

On January 13, 2025, Plaintiffs filed an opposition to ERIC's motion to dismiss, which doubled down on the Complaint's allegations. (Dkt. 29.) ERIC filed a timely reply on January 23, 2025. (Dkt. 34.)

III. LEGAL STANDARDS GOVERNING RULE 11 MOTIONS

Under Federal Rule of Civil Procedure 11,

[b]y presenting to the court a pleading, written motion, or other paper[,] . . . an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for an improper purpose . . . ;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Fed. R. Civ. P. 11(b). If the court determines that Rule 11(b) has been violated,⁴ it may "impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1).

⁴ A Rule 11 motion cannot be filed earlier than 21 days after it was served, to give the party in violation a "safe harbor" within which they may "withdraw[] or appropriately correct[]" the challenged paper. Fed. R. Civ. P. 11(c)(2). As noted above, Plaintiffs chose not to avail themselves of the safe harbor here, but instead doubled down on their violative allegations.

“The duties imposed in Rule 11 – coupled with the available sanctions – ensure that the ‘powerful, intimidating, and often expensive’ machinery of the federal judicial ‘is engaged only to address claims and defenses that have a reasonable basis in fact and law and that are asserted only for a proper purpose.’” *Novoselsky v. Zvunca*, 324 F.R.D. 197, 202 (E.D. Wis. 2017) (quoting *N. Ill. Telecom, Inc. v. PNC Bank, N.A.*, 850 F.3d 880, 883 (7th Cir. 2017)) (cleaned up). The Rule “reminds attorneys that their role as advocates does not supersede their role as officers of the court.” 5A Federal Practice & Procedure Civ. § 1334 (4th ed. June 2024 update).

As the Rule’s text makes clear, its requirements apply to both legal and factual contentions. “A legal contention is not warranted by existing law if it is based on legal theories that are plainly foreclosed by well-established legal principles and authoritative precedent, unless the advocate plainly states that he or she is arguing for a reversal or change of law and presents a nonfrivolous argument in support of that position.” 2 Moore’s Federal Practice – Civil § 11.11[7][a] (2024). Accordingly, “[f]rivolous or legally unreasonable arguments” – including, for example, unreasonable constructions of contractual agreements – “may incur a Rule 11 penalty.” *Royce v. Michael R. Needle P.C.*, 950 F.3d 939, 957–58 (7th Cir. 2020) (cleaned up). An attorney may not “eschew[] [the pertinent] authorities in favor of his own beliefs about what the law is.” *Novoselsky*, 324 F.R.D. at 207.

With respect to factual contentions, “[c]ounsel may not drop papers into the hopper and insist that the court or opposing counsel undertake bothersome factual ... investigation.” *Retired Chi. Police Ass’n v. Firemen’s Annuity & Benefit Fund of Chi.*, 145

F.3d 929, 934 (7th Cir. 1998) (internal quotation marks omitted). The Rule requires attorneys “to investigate to determine whether the allegations in a complaint are well-grounded in fact” *before* filing a federal lawsuit. *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1201 (D. Colo. 2021). Where, as here, there were no particular time constraints on Plaintiffs’ preparation of the Complaint (indeed, Plaintiffs’ claims are based on conduct that the Defendants have allegedly been engaging in for many years), “[a]ll available documents that are relevant to the case should be examined,” and “[c]ounsel for plaintiffs should also check any available public records to verify facts.” 2 Moore’s Federal Practice – Civil § 11.11 (2024).

Notably, the Court “need not draw conclusions about the truth of the factual allegations in the Complaint . . . to impose sanctions based on inadequate inquiry.” *O’Rourke*, 552 F. Supp. 3d at 1201. Rather, Rule 11 requires courts to “assess and make findings about the scope and reasonableness of Plaintiffs’ counsel’s inquiry and investigation to determine whether it was proper, under the circumstances, for a lawyer to have ever made the allegations in a public court filing in the first place.” *Id.*

The responsibility to conduct such an investigation “can[not] be delegated.” *Id.* Nor can an attorney simply disregard available evidence and explanations that contradict the factual allegations at issue. Rather, a “reasonable prefiling inquiry” must include “review of [those] explanation[s] and a reasoned assessment as to whether th[e] allegations remain[] plausible.” *King v. Whitmer*, 71 F.4th 511, 525 (6th Cir. 2023), *cert. denied sub nom. Powell v. Whitmer*, 144 S. Ct. 1003 (2004), and *Wood v. Whitmer*, 144 S. Ct. 1004 (2024); *see also Lake v. Hobbs*, 643 F. Supp. 3d 989, 1008 (D. Ariz. 2022) (“While there

are many arenas—including print, television, and social media—where protestations, conjecture, and speculation may be advanced, such expressions are neither permitted nor welcomed in a court of law.” (quoting *King v. Whitmer*, 556 3d 680, 689 (E.D. Mich. 2021), *aff’d in part and rev’d in part on other grounds*, 71 F.4th 511 (6th Cir. 2023))).

Two last points deserve mention. First, the standards imposed by Rule 11 are objective ones. “An empty head but a pure heart is no defense An attorney cannot avoid sanctions by claiming subjective good faith if a reasonable inquiry into the facts and law would have revealed the frivolity of the position.” *McGreal v. Vill. of Orland Park*, 928 F.3d 556, 560 (7th Cir. 2019) (internal quotation marks omitted). Second, “in [the Rule 11] context, a bad claim spoils the bunch; one cannot avoid sanctions for frivolous claims simply because they were included with one or more non-frivolous claims.” *Novoselsky*, 324 F.R.D. at 202 (citing *Reed v. Great Lakes Cos.*, 330 F.3d 931, 936 (7th Cir. 2003)). “To conclude otherwise would allow a party with one or more patently meritorious claims to pepper his complaint with one or more highly advantageous, yet wholly frivolous claims. . . .” *Retired Chi. Police Ass’n*, 145 F.3d at 936 (internal quotation marks omitted).

IV. ARGUMENT

Here, the Rule-violative allegations are not merely isolated offenses that spoil the bunch. Rather, they pervade—and are central to—the Complaint. Indeed, Plaintiffs’ whole theory of the case seems to turn on four propositions, each of which is entirely frivolous and sanctionable: (a) that ERIC lacks a contractual relationship with Wisconsin; (b) that ERIC targets non-citizens for voter registration efforts; (c) that ERIC

discloses motor-vehicle data to CEIR on an ongoing basis; and (d) that ERIC has the ability to – and does – add names directly to member jurisdiction voter rolls.

Accordingly, this Court should impose Rule 11 sanctions on Plaintiffs and their attorneys.

A. The Complaint Makes Legally Frivolous Allegations That Wisconsin Lacks a Contractual Relationship with ERIC

Plaintiffs' Complaint repeatedly asserts that Wisconsin lacks a contractual relationship with ERIC, meaning that Wisconsin is not currently an ERIC member. In Plaintiffs' own words, this allegation is a "cornerstone" of their DPPA theory, Pls.' Oppo. to ERIC's Mot. to Dismiss at 3 (Jan. 23, 2025) (Dkt. 30); *see* Rule 11 Motion ¶¶ 7–8, because it supposedly demonstrates that ERIC is not acting on Wisconsin's behalf – an essential element of the claimed DPPA violation, *see* 18 U.S.C. § 2721(b)(1).

According to Plaintiffs' legal theory, the only counterparty to ERIC's 2016 Membership Agreement with Wisconsin was the Wisconsin Government Accountability Board ("GAB"), a state agency that was dissolved by statute as of June 30, 2016, and reorganized into a new agency, the Wisconsin Election Commission ("WEC"). Compl. ¶¶ 146, 147, 150 & n.29. But, according to Plaintiffs, WEC neither assumed GAB's obligations under the ERIC Membership Agreement nor entered into a new contract with ERIC. *Id.* ¶¶ 151, 152. Therefore, Plaintiffs claim, Wisconsin's contract with ERIC, along with Wisconsin's membership in ERIC, terminated on June 30, 2016. *Id.* ¶¶ 153, 154, 155, 161.

For at least three independent reasons, Plaintiffs' spurious argument easily meets the bar for legal frivolity. *See* Rule 11 Motion ¶¶ 9–15. **First**, state law expressly provides that all of GAB's contracts remained in effect after GAB's termination, with its contractual obligations simply transferred to WEC. Section 266(5), 2015 Wis. Act 118 (2015 A.B. 388) (enacted Dec. 16, 2015). The legislation could not be clearer: "*All* contracts entered into by the government accountability board that are in effect on the effective date of this subsection shall remain in effect and are transferred to the elections commission" Section 266(5), 2015 Wis. Act 118 (2015 A.B. 388) (enacted Dec. 16, 2015) (emphasis added). The "effective date of this subsection" was June 30, 2016, *see* Section 288, 2015 Wis. Act 118. Because ERIC's Membership Agreement with Wisconsin was already in effect as of that date (i.e., the Membership Agreement had been entered into on May 17, 2016, *see* Compl. Ex. 1), that contract transferred from GAB to WEC by operation of this legislation.

This legislation, moreover, is 2015 Wisconsin Act 118 – the very same law that reorganized GAB into WEC. Plaintiffs were plainly aware of this legislation; the Complaint cites it for the proposition that GAB dissolved effective June 30, 2016. Compl. ¶ 150 & n.29. But, remarkably, Plaintiffs disregard (or failed to read) the part of the law that expressly provides that GAB's contracts, including ERIC's Membership Agreement with Wisconsin, "remain in effect." Section 266(5), 2015 Wis. Act 118; *see also King v. Whitmer*, 71 F.4th 511, 526–27 (6th Cir. 2023) (affirming imposition of Rule 11 sanctions where the plaintiffs "apparently did not read," or disregarded, "[t]he statute at issue").

Plaintiffs have no legally reasonable arguments to the contrary. In their response to ERIC's motion to dismiss, Plaintiffs attempt to give their theory a patina of credibility by citing Wisconsin common law about the ability of corporate promoters, pre-incorporation, to bind an entity that does not yet exist. Pls.' Oppo. to ERIC's Mot. to Dismiss at 15–17 (Dkt. 30). For all the reasons explained in ERIC's reply, however, this case law is not remotely on point. See ERIC's Reply in Supp. of Mot. to Dismiss at 7–9 (Dkt. 34). Even taken on their own terms, the common-law principles cited by Plaintiffs only confirm that the contract binds WEC. *See id.* But even more fundamentally, the question is not governed by state *common law* because there is a directly on-point Wisconsin *legislation* providing that the contract did not terminate on June 30, 2016. *See, e.g., Kensington Dev. Corp. v. Israel*, 139 Wis. 2d 159, 167–68, 407 N.W.2d 269, 273 (Ct. App. 1987) (“In cases of conflict between legislation and the common law, legislation will govern because it is the latest expression of the law.”), *aff'd*, 142 Wis. 2d 894, 419 N.W.2d 241 (1988). ERIC has repeatedly pointed Plaintiffs to the controlling legislative language, but Plaintiffs continue to pretend that it does not exist.

Second, the Membership Agreement itself, an exhibit to Plaintiffs' own Complaint, unmistakably demonstrates Wisconsin and ERIC's mutual intention that WEC—the successor agency to GAB—would assume the duties of ERIC membership upon GAB's dissolution. In other words, the Agreement itself provides that Wisconsin's ERIC membership would not terminate on June 30, 2016. Putting aside the fact that 2015 Wisconsin Act 118 provides for the same result, this manifest intent by the contracting parties is dispositive. *See, e.g., Town Bank v. City Real Estate Dev., LLC*, 2010

WI 134 ¶ 33, 330 Wis. 2d 340, 793 N.W.2d 476 (quoting *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990)) (“When construing contracts that were freely entered into, our goal ‘is to ascertain the true intentions of the parties as expressed by the contractual language.’”).

For at least three reasons, it is clear on the face of the Membership Agreement that Wisconsin’s ERIC membership was intended to survive the June 30, 2016 handover from GAB to WEC:

- (1) The Membership Agreement is signed by a Wisconsin government official on behalf of the “Wisconsin Government Accountability Board/Wisconsin Elections Commission.” Membership Agreement, Compl. Ex. 1 at 19. In other words, the Agreement goes out of its way to designate the signator as acting on behalf of both GAB and WEC. The manifest purpose of this language was to show that the parties intended WEC to continue performing the duties of ERIC membership on behalf of Wisconsin.
- (2) At the bottom of the signature page, the Membership Agreement reads: “Note: Effective June 30, 2016 the Wisconsin Government Accountability Board becomes the Wisconsin Elections Commission.” *Id.* Again, the only tenable reading of this language is that the parties intended the Agreement to continue in force through the June 30, 2016 GAB-WEC transition.
- (3) As further discussed below, the Membership Agreement is dated May 17, 2016, and it is a nonsensical interpretation of the agreement that Wisconsin

entered into it on that date with the knowledge and intention that it would expire just weeks later on June 30, 2016.

Although Plaintiffs attach the Membership Agreement to their Complaint, they conveniently fail to address or even acknowledge any of the directly-on-point language.

Moreover – if the above were not enough to irrefutably demonstrate the contracting parties’ intent – the statutory history surrounding Wisconsin’s ERIC membership further demonstrates that Wisconsin and ERIC intended Wisconsin’s membership to continue past June 30, 2016. As noted above, 2015 Wisconsin Act 118 – which both (a) dissolved GAB and reorganized it into WEC and (b) mandated that WEC would assume all of GAB’s contracts – was enacted in December 2015. Three months *after* that, the Wisconsin Legislature enacted another piece of legislation, 2015 Wisconsin Act 261, which requires Wisconsin to join ERIC. Section 55, 2015 Wis. Act 261 (2015 S.B. 295) (enacted Mar. 16, 2016) (codified at Wis. Stat. § 6.36(ae)(1)) (“The chief election officer shall enter into a membership agreement with Electronic Registration Information Center, Inc., for the purpose of maintaining the official registration list under this section.”). This statute – which remains in force, independently belying Plaintiffs’ theory that Wisconsin is not currently an ERIC member – is nowhere mentioned by Plaintiffs. And approximately two months after the statute’s enactment, on May 17, 2016, Wisconsin entered into its Membership Agreement with ERIC.

This timeline makes pellucidly clear that ERIC and Wisconsin, at the time of contracting, intended the Membership Agreement to continue indefinitely. The Wisconsin Legislature not only mandated that Wisconsin join ERIC, but it did so *after*

enacting the law that would shortly reorganize GAB into WEC, mandating that WEC assume and continue performing GAB's contracts. Accordingly, at the time of contracting, Wisconsin and ERIC were aware of *both* of these Acts – and the GAB-to-WEC transition that would occur just six weeks thereafter – and so they made clear, in the Agreement itself, that their contractual relationship would endure through this transition. Plaintiffs again have no non-frivolous argument to the contrary.

Third, in addition to all of the foregoing, Plaintiffs expressly admit that, during the entirety of the more-than-eight years that have passed since June 30, 2016, Wisconsin and ERIC have continued to perform their duties under the Membership Agreement, i.e., Wisconsin has paid dues and provided voter-registration and motor-vehicle data to ERIC, and in exchange has received reports from ERIC. *See, e.g.*, Compl. ¶¶ 154–155. Apparently, Plaintiffs' position is that, although Wisconsin and ERIC clearly intend to be – and believe they are – in an ongoing contractual relationship, they are somehow mutually deluded. To state that proposition is to refute it. Even putting aside the controlling legislation discussed above, it is a fundamental common-law principle that parties “may ... establish[] a contract through their actions.” *Associated Milk Producers, Inc. v. Meadow Gold Dairies, Inc.*, 27 F.3d 268, 271 (7th Cir. 1994) (citing Wis. Stat. § 402.204(1)); *see also Cal. Wine Ass'n v. Wis. Liquor Co. of Oshkosh*, 20 Wis. 2d 110, 122, 121 N.W.2d 308 (1963) (“The law is well settled in Wisconsin that by the conduct and words of the parties the court can imply a contract.”). It is frivolous to contend that two parties are not in a contractual relationship while conceding that the

parties intend to be in one, believe they are in one, and have been performing their obligations thereunder.

In sum, (1) a controlling Wisconsin law, enacted in December 2015, mandated that all GAB's contracts would continue in place after June 30, 2016, and be assumed by WEC; (2) another controlling Wisconsin statute, enacted in March 2016 and still in effect, *requires* Wisconsin to be a member of ERIC; (3) ERIC and Wisconsin intended their contract to continue through the GAB-WEC transition, as shown by the fact that the contract, entered into in May 2016, was signed on behalf of both GAB and WEC and indicated that the agreement would remain in place beyond June 30, 2016; and (4) in the eight years since June 30, 2016, ERIC and Wisconsin (through WEC and other state agencies) have continued to perform their respective obligations under the contract. Yet Plaintiffs insist that Wisconsin has not been a member of ERIC since 2016. That argument – though apparently a “cornerstone” of Plaintiffs’ case – is not merely meritless; it is absurd. The Court should impose Rule 11 sanctions. *See, e.g., Royce v. Michael R. Needle P.C.*, 950 F.3d 939, 957–58 (7th Cir. 2020) (affirming imposition of Rule 11 sanctions for “contract interpretation arguments [that] were ‘legally frivolous’”).

B. The Complaint Makes Factually Frivolous Allegations That ERIC Targets Non-Citizens for Voter Registration Efforts

Next, Plaintiffs make factually frivolous allegations that ERIC directs its member jurisdictions to transmit to ERIC the motor vehicle department records of persons known to be non-citizens of the United States, but only after altering those records to

delete the information indicating that the person is a non-citizen. *See* Compl. ¶¶ 97–103, 134, 169; Rule 11 Motion ¶¶ 16–17.

These allegations are based on a malicious misreading of ERIC’s Membership Agreement, which plainly says that ERIC members must *not* transmit to ERIC the motor vehicle record of a person indicated to be a non-citizen of the United States. That textual obstacle notwithstanding, Plaintiffs then spin these assertions into the conclusion that ERIC seeks such records as part of a deliberate plot to target non-citizens for voter registration efforts. *See* Rule 11 Motion ¶¶ 16–17; Compl. ¶ 101 (ERIC “add[s] illegal aliens to our nation’s voter rolls”); *id.* ¶ 103 (“ERIC want[s] data concerning illegal aliens.”); *id.* ¶ 169 (ERIC “target[s] non-citizens who are not registered to vote”). The Complaint goes so far as to accuse ERIC of willful criminal behavior in this regard. *See* Compl. ¶ 102, *see also id.* ¶ 101.

The version of ERIC’s Membership Agreement attached to the Complaint provides: “Under no circumstances shall the Member transmit an individual’s record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States.” Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13.⁵ This language means exactly what it says: Member jurisdictions

⁵ The current version of ERIC’s Membership Agreement – available on ERIC’s website – contains identical language. Membership Agreement ¶ 2(b), Hamlin Decl. Ex. G, <https://ericstates.org/wp-content/uploads/documents/ERIC-Bylaw-MA-FINAL.pdf>. The current version of the Membership Agreement, which governs ERIC’s relationship with all its member jurisdictions, is updated in other respects from the 2016 version attached to the Complaint. *See id.*

shall not transmit to ERIC the motor vehicle record of a person who is indicated in that record to be a non-citizen of the United States.

Plaintiffs, however, attempt to force a completely different meaning on that provision—one that is contrary to, and without any basis in, what the language actually says. According to Plaintiffs, this provision of the Membership Agreement tells member jurisdictions they *should* transmit to ERIC the motor vehicle record of persons indicated to be non-citizens of the United States, but only after deleting from the record the evidence that the person is a non-citizen. Compl. ¶ 100 (“In closely reading the aforesaid provision, it is clear that ERIC does not prohibit member states from sending it information about illegal aliens; it just requires the states to remove the evidence demonstrating that the names of all illegal aliens living in the member state is [sic] extracted prior to transmitting the data.”)

But Plaintiffs’ reading of the Membership Agreement is indefensible. The Membership Agreement’s mandate not to “transmit an individual’s record” plainly refers to the motor-vehicle-department record about a particular non-citizen individual. *See* Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13; Rule 11 Motion ¶¶ 19–20.

Nor does any other provision of the Membership Agreement support their counter-textual interpretation. Indeed, Plaintiffs cite no evidence at all apart from Paragraph 2(b). The context in which this provision appears, moreover, further undermines Plaintiffs’ reading of it. Exhibit B to the Membership Agreement, for example, lists the fields of motor-vehicle data that members were requested to include when sharing motor vehicle records with ERIC. Among those fields are “[a]ffirmative

documentation of citizenship” and “[t]he title/type of affirmative documentation of citizenship presented.” Exhibit B to Membership Agreement, Compl. Ex. 1 at 20. And the provision of the Membership Agreement detailing members’ obligations to contact persons who are eligible but unregistered to vote expressly cabins that obligation to eligible U.S. citizens. Membership Agreement ¶ 5(a), Compl. Ex. 1 at 15.

That Plaintiffs would advance such a baseless misreading of ERIC’s governing document is bad enough. But even more egregiously, on the basis of this single provision of the Membership Agreement, Plaintiffs allege a supposed plot by ERIC to “add[] illegal aliens to our nation’s voter rolls,” Compl. ¶ 101, “bloat[] voter rolls,” *id.* ¶ 169, and “target[] non-citizens” for voter registration efforts, *id.* These allegations are frivolous for the same reason as the preceding ones: they are utterly unsupported by any evidence. Indeed, the *only* evidentiary support Plaintiffs cite for these assertions is their misreading of the Membership Agreement.

Moreover, there is ample publicly available evidence – which a reasonable pre-filing investigation would have uncovered – that ERIC does not seek records about non-citizens from its member jurisdictions and does not target non-citizens for voter-registration efforts. Rule 11 Motion ¶ 22. ERIC’s website, for example, contains extensive information about the organization’s mission and activities. This evidence – which Plaintiffs ignore – further demonstrates that ERIC does not target non-citizens for voter registration. *See, e.g.*, ERIC Homepage, Hamlin Decl. Ex. A (stating that ERIC’s mission is “to help states improve the accuracy of America’s voter rolls, increase access to voter registration for all *eligible citizens*, reduce election costs, and increase efficiencies

in elections”) (emphasis added);⁶ Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(1) (similar).

ERIC’s website also contains information about ERIC’s Eligible but Unregistered (“EBU”) Report. This Report contains names of individuals in a particular member jurisdiction who are potentially eligible to register to vote. Under Paragraph 5(a) of the Membership Agreement, these are the individuals whom the states contact to inform them how to register to vote; and the Complaint’s allegations that ERIC targets ineligible voters seem to be saying that ERIC intentionally includes the names of persons ineligible to vote on these EBU Reports. But, again, a reasonable pre-filing investigation would have revealed facts contradicting these baseless claims.

For example, the “How Does It Work” page on ERIC’s website explains that the member jurisdiction contacts the individuals appearing in an EBU report by mailer “to provide basic voter registration information . . . *including the legal requirements to register.*” Hamlin Decl. Ex. D⁷ (emphasis added); *see also* Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(3) (explaining that the mailers sent by each member jurisdiction to potentially eligible voters “clearly identify the state’s voter eligibility requirements, as determined by law, including that the applicate [sic] must be a U.S. Citizen to register”). In other words, it is not the case that individuals appearing in an EBU Report are automatically added to the voter rolls by the member jurisdiction.

⁶ <https://ericstates.org>.

⁷ <https://eristates.org/how-does-it-work/>.

Moreover, the Frequently Asked Questions explains that, before even sending the mailer to the individuals listed in the EBU report, ERIC members are directed to “use other state data sources to filter out individuals they believe are not eligible to vote,” including “known noncitizens.” Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(3).⁸

Plaintiffs’ allegations that ERIC deliberately targets non-citizens for voter registration efforts are frivolous and pernicious – and they reflect Plaintiffs’ failure to investigate whether their allegations are well-grounded in fact. Rule 11 exists precisely to deter this kind of bad-faith conduct.

C. The Complaint Makes Factually Frivolous Allegations of an Ongoing Disclosure of Motor-Vehicle Data from ERIC to CEIR

The Complaint also makes factually frivolous allegations that ERIC discloses member jurisdiction motor-vehicle data to CEIR on an ongoing basis, supposedly as part of a continuing conspiracy between ERIC and CEIR to influence elections. Rule 11 Motion ¶¶ 23–24; *see* Compl. ¶¶ 45, 55, 121; *see also id.* ¶ 176. Doubling down on this fiction, Plaintiffs assert that this arrangement came about because one individual, David Becker, supposedly established both organizations to masquerade as distinct entities but, in reality, to secretly serve as alter-egos that he alone controlled. Compl. ¶¶ 54–55

⁸ The current version of the Frequently Asked Questions on ERIC’s website, <https://ericstates.org/faq/>, publicly posted on or about October 29, 2024, contains additional information about the EBU Report and further confirms that ERIC does not target non-citizens. *See generally* Frequently Asked Questions, Questions C(1)-C(10), Hamlin Decl. ¶ 48 & DD. This additional information was cited in ERIC’s Rule 11 Motion served on Plaintiffs on December 30, 2024. *See* Rule 11 Motion ¶ 21.e & nn.3, 6.

(stating that Becker created ERIC and CEIR to enable him to “use [member state] data to influence American elections.”); *id.* ¶ 121 (“Becker founded a second nonprofit, the CEIR, to bifurcate his political activities.”); *see also id.* ¶ 44 (“At its core, ERIC exists . . . [to] grant Becker access to sensitive, personal data and information that he could not have otherwise obtained . . .”).⁹

These allegations are, again, frivolous, as a reasonable pre-filing investigation would have revealed. Rule 11 Motion ¶ 25. In fact, CEIR only received data from ERIC on two occasions, in 2018 and 2020, *at the request of participating member jurisdictions* and pursuant to research studies assessing whether outreach to eligible-but-unregistered individuals would increase voter registration.¹⁰

⁹ *See also* Compl. Introduction at 3 (“in short, Becker, by and through ERIC, uses a trojan-horse-contract-veiled-as-a-membership-agreement to obtain personal information from the driving records stored in our nation’s statewide DMV databases. Once ERIC obtains this personal information, Becker then ‘switches hats’ and steps into the shoes of CEIR’s Executive Director, where he weaponizes the personal information unlawfully disclosed to him/ERIC by WisDOT.”); *id.* at 5 (stating that ERIC, CEIR, and Mr. Becker “engage in a coordinated effort to obtain, use, and disclose sensitive, protected personal information of Wisconsin residence [sic] from driving records obtained through the Wisconsin DMV in violation of federal law, and with the intent to compromise and undermine the right to vote of millions of Wisconsin voters.”).

¹⁰ Certain ERIC members – *not including* Wisconsin – voluntarily participated in these studies, and asked ERIC to securely pass through their data to CEIR, using ERIC’s established secure data-transmission protocols. *See generally* CEIR Report, Ex. 1 to Kipp Decl. in Supp. of CEIR’s Mot. to Dismiss (Dkt. 12-1); *see also* Frequently Asked Questions, Hamlin Decl. Ex. B, Question C(6).

That ERIC disclosed data to CEIR only at the request of particular member states, as part of discrete research projects in 2018 and 2020 into the effectiveness of those members’ outreach to eligible-but-unregistered voters, forecloses Plaintiffs’ DPPA claim for multiple independent reasons. Not only were such disclosures outside the statute of limitations for DPPA claims, *see* ERIC’s Br. in Supp. of Mot. to Dismiss at 21 (Dkt. 21), but the DPPA expressly permits the disclosure of motor-vehicle data for the purposes of

To begin with, Plaintiffs ignore the publicly available report prepared by CEIR about the 2020 research study. *See* Ex. 1 to Kipp Decl. in Supp. of CEIR's Mot. to Dismiss (Dkt. 12-1) (hereinafter "CEIR Report"), available at <https://electioninnovation.org/wp-content/uploads/State-EBU-Outreach-Study-February-2022.pdf>. Published in February 2022, this report makes clear that the data-sharing between ERIC and CEIR in connection with the 2020 research study was a discrete event and not part of an ongoing disclosure. *See id.* at 4. Contrary to the Complaint's allegations that Plaintiff Jennifer McKinney's data was shared with CEIR, Compl. ¶ 13, the report also makes clear that Wisconsin was *not* a participant in the study. *See* CEIR Report at 6, 11-15 (identifying participants as Colorado, Florida, Georgia, Kentucky, Michigan, Nevada, Rhode Island, and Utah).

Additionally, Plaintiffs ignore relevant information on ERIC's website, which confirms that the data-sharing occurred as part of two discrete research projects in 2018 and 2020 and belies any notion that these projects were part of a supposed effort "to influence American elections," Compl. ¶ 55. *See* Frequently Asked Questions, Hamlin Decl. Ex. B, Question C(6).

Moreover, to the extent the Complaint proffers any "evidence" in support of Plaintiffs' secretive-ongoing-disclosure theory, that evidence is fully consistent with the publicly available information described above; it undermines rather than supports Plaintiffs' theory. For example, the Complaint relies heavily on an email from Jenny

carrying out government functions and, independently, "research activities," 18 U.S.C. § 2721(b)(1), (5).

Lovell at CEIR to various state officials, with the subject line “EBU Randomization Complete.” Compl. ¶ 124. But this email is dated September 4, 2020 – consistent with the fact that a research project occurred in 2020 – and the email provides no support for the notion that there was any ongoing sharing of data between ERIC and CEIR.

Moreover, Ms. Lovell’s email plainly refers to a discrete research study, i.e., the 2020 study mentioned above, as the email describes the randomization of each state’s EBU list into a “treatment group” and a “control group.” This description tracks the one in CEIR’s publicly available report on the research study. *See, e.g.,* CEIR Report at 6 (“For each partner state, we randomly assigned EBUs to a treatment or control group . . .”).

Additionally, the “EBU General Timeline” cited in the Complaint, Compl. ¶ 128, also undermines rather than supports Plaintiffs’ notion of an ongoing data-sharing relationship because this document appears to be describing the procedures for the 2020 research study. Plaintiffs had a duty to consider all publicly available relevant evidence before filing their Complaint – not merely to parrot what little information could be spun to support their theory. *See* 2 Moore’s Federal Practice – Civil § 11.11 (2024); *see also Upchurch v. O’Brien*, No. 19-cv-165, 2021 WL 3617098, at *8 (W.D. Wis. Aug. 16, 2021) (imposing Rule 11 sanctions and noting that “publicly available information . . . calls into question the factual foundation of many of [the plaintiff’s] allegations”).

Accordingly, Plaintiffs’ allegations of an ongoing data-sharing relationship between ERIC and CEIR – let alone a secret ongoing disclosure of data, without the knowledge or authorization of ERIC’s members, in service of a malign effort to influence elections – are totally without basis. These allegations violate Rule 11.

D. The Complaint Makes Factually Frivolous Allegations that ERIC Adds Names to Member Jurisdiction Voter Rolls

Next, Plaintiffs repeatedly and baselessly assert that ERIC can and does add names to its member jurisdictions' voter rolls. These allegations – which underlie and often appear in conjunction with the above misrepresentations about ERIC targeting non-citizens or conspiring with CEIR to influence elections – include statements that ERIC “bloat[s] voter rolls,” Compl. ¶¶ 45, 169, “add[s] illegal aliens to our nation’s voter rolls,” *id.* ¶ 101, “add[s] non-citizens to voter rolls,” *id.* ¶ 169, and, purportedly via Mr. Becker, **“ha[s] control over the voter registration lists that dictate 65.8% of all votes cast in the United States of America,”** *id.* ¶ 48 (emphasis in original). *See* Rule 11 Motion ¶¶ 33, 35.

These allegations are frivolously false. Rule 11 Motion ¶ 35. First and foremost, they present a highly distorted picture of what ERIC is and does. Had Plaintiffs conducted a reasonable pre-filing investigation, they would have learned that ERIC’s primary activity is to generate list maintenance, EBU, and other reports, which member jurisdictions use to maintain their voter rolls, and that ERIC itself has no ability to add or remove names from voter rolls – let alone to determine how “votes [are] cast,” Compl. ¶ 48 (emphasis omitted). ERIC’s role is accurately described, for example, on WEC’s website, which Plaintiffs ignore: “ERIC’s technical staff uses sophisticated data matching software to compare Member Data from all member states, sometimes with data from other sources, to create [its] four ‘list maintenance’ reports. . . . Simply put, ERIC compares a member’s voter records to other members’ voter records, motor

vehicle department records, and to federal deceased data and national change of address data, for the purposes of flagging differences that indicate a member's voter record may be out of date or inaccurate." Electronic Registration Information Center (ERIC), Wisconsin Elections Commission (hereinafter "WEC Website"), Rule 11 Motion Exs. 1-8.¹¹

Moreover, publicly available information on ERIC's website, which Plaintiffs similarly ignore, confirms that ERIC has no ability to amend member jurisdictions' voter rolls. Nor does ERIC have any direct access to its members' motor-vehicle or voter-registration databases.¹² Rather, ERIC's member jurisdictions periodically submit data pulled from their motor-vehicle and voter-registration databases to ERIC. This is apparent both from ERIC's Membership Agreement, *see* Membership Agreement ¶ 2(b), Compl. Ex. 1 at 13 (member must share voter-registration and motor-vehicle data at least once every sixty days); Membership Agreement ¶ 2(b), Hamlin Decl. Ex. G (same), and from ERIC's website, *see* Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(1) ("At least every 60 days, each member submits their voter registration data and licensing and identification data from motor vehicle departments (MVD) to ERIC."). *See also* WEC Website, Rule 11 Motion Exs. 1-8 (displaying an "ERIC Calendar" listing when Wisconsin shares data with ERIC).

¹¹ <https://elections.wi.gov/statistics-data/voter-list-maintenance/electronic-registration-information-center-eric-0#230548828-3426144381>.

¹² *Contra* Compl. ¶ 49 (alleging that ERIC has "unfettered access" to its members state motor vehicle department and voter registration data); *see also id.* ¶¶ 46, 96, Introduction at 2; Rule 11 Motion ¶ 34.

ERIC's website also includes a 2023 Open Letter published by Executive Director Shane Hamlin that rebuts precisely the misinformation that Plaintiffs allege. The Open Letter explains: "ERIC is never connected to any state's voter registration system. Members retain complete control over their voter rolls and they use the reports we provide in ways that comply with federal and state laws." Hamlin Decl. Ex. F.¹³ Similarly, the "Technology & Security Overview" on ERIC's website explains that "ERIC servers are never connected to any state's voter registration system." Hamlin Decl. Ex. E.¹⁴

Nor does ERIC itself contact individuals appearing on a member jurisdiction's EBU report, as Plaintiffs erroneously suggest in their Complaint. Compl. Introduction at 2 ("ERIC will contact ninety-five percent (95%) of the names it puts on the state's 'eligible but unregistered' lists . . ."). In fact, it is up to the member jurisdiction to do that, as Plaintiffs could easily have ascertained by reviewing ERIC's Membership Agreement – either the 2016 version attached to Plaintiffs' Complaint or the current, publicly available one on ERIC's website. Membership Agreement ¶ 5(a), Compl. Ex. 1 at 15 ("[T]he *Member* shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote." (emphasis added)); Membership Agreement ¶ 4(a), Hamlin Decl. Ex. G (same language). The same

¹³ <https://ericstates.org/an-open-letter/>.

¹⁴ The current version of the Technology & Security Overview, which has been updated since the filing date of the Complaint but contains the same language cited above, is available at <https://ericstates.org/security/>.

information is available elsewhere on ERIC's website, which Plaintiffs ignore. *See, e.g.,* How Does It Work, Hamlin Decl. Ex. D; Frequently Asked Questions, Hamlin Decl. Ex. B, Question B(3).¹⁵

Accordingly, this Court should impose Rule 11 sanctions for Plaintiffs' baseless assertions that ERIC adds names to member jurisdiction voter rolls.

E. The Complaint Makes Additional Sanctionable Allegations

The Complaint makes additional false allegations that – while less central to Plaintiffs' DPPA theory than the preceding allegations – are sanctionable because they are factually or legally frivolous and further demonstrate that Plaintiffs either did not come close to conducting a reasonable pre-filing investigation or, even worse, did so and disregarded the results. These allegations present a false picture of ERIC and of the legal basis for Plaintiffs' DPPA claims.

1. Allegations that David Becker Controls ERIC

The Complaint baselessly alleges in several places that David Becker "retain[s] control over ERIC while working at CEIR." Compl. ¶ 59; *see also id.* ("Becker could be a non-voting board member of ERIC while still dictating and controlling the manner in which ERIC operates and what activities it engages in."); *id.* ¶ 60 (Becker "maintained and exhibited control over ERIC's activities and objectives."); *id.* ¶¶ 57, 58, 61–67; *see* Rule 11 Motion ¶ 29.

¹⁵ These sources also make clear that the individuals appearing in an EBU Report are not automatically added to the voter rolls, either by ERIC or the member jurisdiction; rather, these individuals merely receive information about how to register, including the legal requirements for registration. *See id.*; *see supra* at 28.

This is flatly untrue; a reasonable pre-filing investigation would have made clear that Mr. Becker does not control ERIC. Rule 11 Motion ¶¶ 30–32. Mr. Becker is not even an officer of ERIC, a fact that Plaintiffs should have known because ERIC’s IRS Form 990s list all its officers, and no 990 names Mr. Becker as an officer. Hamlin Decl. Exs. H–R (ERIC’s FY 2013–2023 990s). As to who founded and controls ERIC, ERIC’s Frequently Asked Questions explain that “[a] bipartisan group of chief election officials from seven states formed ERIC in 2012, with assistance from The Pew Charitable Trusts.” Hamlin Decl. Ex. B, Question A(2). The Frequently Asked Questions also make clear that ERIC is controlled by its member jurisdictions. *Id.*, Question A(4); *see also* WEC Website, Rule 11 Motion Exs. 1–8.

ERIC’s governing documents – its Bylaws and Membership Agreement – confirm that ERIC is controlled by its members, who hire an Executive Director (Shane Hamlin, not Mr. Becker) to manage the day-to-day operations of the organization. *See, e.g.*, Bylaws Art. III, Sec. 2 (stating that each member jurisdiction gets a seat on ERIC’s board of directors); *id.* Art. IV, Secs. 6 & 7 (membership of key committees comprises certain directors, Immediate Past Chair of Board of Directors, and Executive Director (i.e., Mr. Hamlin)); *id.* Art. V, Sec. 2 (all officers are current members of Board of Directors except for the Executive Director (i.e., Mr. Hamlin) and Immediate Past Chair of Board of Directors); *id.* Art. V, Sec. 4 (stating that the Board of Directors shall hire an Executive Director with “day-to-day responsibility for the management of the staff and programs of the Corporation”). As these and other provisions demonstrate, ERIC’s governance structure reflects – and effectuates – the membership’s control of the organization.

Moreover, public evidence, including ERIC's website and its Form 990s, demonstrates that Mr. Hamlin has served as ERIC's Executive Director since 2017. The meeting minutes for each board meeting since February 19, 2023, available on ERIC's website,¹⁶ demonstrate that Mr. Hamlin has actively participated in these meetings in his role as Executive Director. *See* Board Meeting Minutes, Hamlin Decl. Exs. S-CC. This publicly accessible information belies Plaintiffs' frivolous allegations that Mr. Becker is, or has been, in control of ERIC, and that it is "questionable as to the extent of involvement Hamlin has in running the organization." Compl. ¶ 66. In sum, ample publicly available information makes clear that ERIC is not run by Mr. Becker.

2. Allegations that ERIC Engages in Impermissible Lobbying, Grantmaking, and Partisan Activity

The Complaint repeatedly and falsely alleges that ERIC engages in lobbying and partisan activities with respect to voter registration. Rule 11 Motion ¶ 36; Compl. ¶¶ 107, 110, 117, 121, 122.¹⁷ Along the same lines, the Complaint frivolously alleges that ERIC made a \$12 million grant to Michigan in 2020. Rule 11 Motion ¶ 38; Compl. ¶ 18.

These allegations are baseless. Rule 11 Motion ¶ 37. As a 501(c)(3) non-profit corporation, ERIC does not engage in an impermissible amount of lobbying or political campaign activities. ERIC is required to report its lobbying expenditures on its annual

¹⁶ *See* <https://ericstates.org/corporate-transparency/>.

¹⁷ *See also* Compl. Introduction at 3 ("With [state motor vehicle] information in hand, Becker and his two not-for-profits engage in campaign and political activities, including, without limitation, partisan voter outreach, text messaging, and registration solicitation.").

IRS Form 990s. ERIC's Form 990s show that in each year of its existence, it has engaged in either no lobbying or only small amounts of lobbying, in any event well below legally permissible limits. ERIC's 990s show that it engaged in no lobbying whatsoever between FY 2013 and FY 2018 (the year the Complaint says Michigan passed its automatic voter registration law it alleges ERIC "sought to have implemented," Compl. ¶ 110). *See* Hamlin Decl. Exs. M-R. ERIC's 990s for subsequent fiscal years also show small amounts of lobbying, well below the lobbying caps applicable to ERIC as set forth in the 990s. *See* ERIC FYs 2019-2023 Form 990s, Hamlin Decl. Exs. H-L.

Finally, the allegation that ERIC made a \$12 million grant to Michigan is false, and this falsity is demonstrated by ERIC's publicly available Form 990s, which show that (a) ERIC does not make grants, *see, e.g.*, ERIC FY 2020 Form 990, Hamlin Decl. Ex. K, Part I, Line 13, Part IV Line 21 & Part IX, Lines 1-3; ERIC FYs 2021-2023 Form 990s, Hamlin Decl. Exs. H-J (same); and (b) ERIC's annual revenue has never come anywhere close to \$12 million, rendering it impossible for ERIC to have made a grant of that amount. Rule 11 Motion ¶ 38; *see also infra* at 39-40. Plaintiffs cite no contrary evidence because there is none.

3. Allegations that ERIC Collects "Millions" of Dollars

The Complaint frivolously overstates the amount of funding received by ERIC. Rule 11 Motion ¶ 39; Compl. ¶ 48 ("Becker received millions of dollars' worth of revenue comprised exclusively of state funds").¹⁸ In fact, ERIC's Form 990s indicate

¹⁸ *See also* Compl. Introduction at 2 (ERIC member jurisdictions pay "hundreds of thousands in annual dues.").

that it has never received even \$2 million of revenue in one fiscal year. *See, e.g.*, ERIC FYs 2021–2023 Form 990s, Hamlin Decl. Exs. H–J (FY 2023: total revenue of \$1,544,943; FY 2022: total revenue of \$1,059,752; FY 2021: total revenue of \$971,244).¹⁹ Additionally, ERIC does not engage in fundraising; its funding is provided by its members. *See, e.g.*, Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(5) (Q. “How is ERIC Funded?” A. “Members fund ERIC.”); WEC Website, Rule 11 Motion Exs. 1–8 (similar); Bylaws Art. II, Sec. 5, Hamlin Decl. Ex. G (members obligated to pay dues); Membership Agreement ¶ 1, Hamlin Decl. Ex. G (similar).

Whether viewed as outright falsehoods, or a “pattern of embellishment to the point of misrepresentation,” these allegations violate Rule 11. *King*, 71 F.4th at 525.

4. Allegations that ERIC Has No Staff or Servers

Next, the Complaint alleges that ERIC “has no staff . . . let alone data servers to store the massive amount of information it obtains from its member-states.” Compl. ¶ 50; *see* Rule 11 Motion ¶ 40. To the contrary, as a reasonable investigation would have revealed, ERIC does (of course) have staff, who work remotely. *See, e.g.*, Who We Are, Hamlin Decl. Ex. C (listing three full-time staff);²⁰ ERIC FYs 2020–23 Form 990s, Hamlin Decl. Exs. H–K (naming two employees: Shane Hamlin, Executive Director and Ericka

¹⁹ The statement in the Complaint’s introduction that members pay “hundreds of thousands in annual dues” is misleading at best because it could be read to suggest that each member pays “hundreds of thousands” in dues, which is not the case. Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(5) (noting that member state dues for the 2023–2024 fiscal year ranged from about \$37,000 to \$174,000).

²⁰ <https://ericstates.org/who-we-are/>.

Haas, Systems Engineer & Technical Liaison). ERIC also has data servers that are housed in a managed, secure data center in the United States. Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(6).

The only evidence that Plaintiffs cite in support of their contention is a statement by Alabama Secretary of State Wes Allen that he visited ERIC's registered address in Washington, DC in 2023 and found "no ERIC headquarters at that address," including "no employees" and "no servers." Compl. ¶ 50 n.15. But public documents state clearly that "ERIC's Washington, D.C. address is a mailing address only. Like other organizations, employees work remotely. ERIC members are aware of this arrangement." Frequently Asked Questions, Hamlin Decl. Ex. B, Question A(6). And even if this were a staffed office, of course ERIC's servers would be located in a secure data center, and not in an office. Plaintiffs had a duty to conduct a reasonable pre-filing investigation, rather than to recklessly advance speculative, facially unsupported – and publicly contradicted – inferences. *See Lake*, 643 F. Supp. 3d at 1008 (sanctioning plaintiffs who "filled the gaps between their factual assertions, claimed injuries, and requested relief with false, misleading, and speculative allegations").

5. Allegations Misstating the Clear Statutory Language of the DPPA

Finally, the Complaint misstates the plain language of the DPPA relating to highly restricted personal information. *See* Compl. ¶¶ 164–165. These allegations are legally frivolous. Rule 11 Motion ¶¶ 42–45.

The DPPA defines two categories of information from motor vehicle records: "personal information," which is subject to certain protections, and "highly restricted

personal information,” which is subject to greater protections. *See* 18 U.S.C.

§§ 2721(a)(1)–(2), 2725(3)–(4). As this framing suggests, the definition of personal information” is broader than that of “highly restricted personal information.” The former comprises “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,” but the latter includes only “an individual’s photograph or image, social security number, [and] medical or disability information.” 18 U.S.C. § 2725(3)–(4). The restrictions attaching to each category of information are different. *See* 18 U.S.C. § 2721(a)–(b).

Despite these clear categorical distinctions, the Complaint incorrectly asserts that “[t]he DPPA further protects ‘Highly Restricted Information’ (HRI) [sic], which includes names, addresses, social security numbers, driver’s license numbers, phone numbers, photographs, dates of birth, and vehicle registration information.” Compl. ¶ 164. The error is material because Plaintiffs’ contention that ERIC obtained and disclosed Plaintiff Jennifer McKinney’s highly restricted personal information is premised on the Complaint’s erroneously broad definition of that term. In particular, Plaintiffs seem to allege – falsely – that phone numbers are highly restricted personal information under the DPPA. *See* Compl. ¶ 165 (“Defendants knowingly obtained and disclosed Ms. McKinney’s personal information or HRI without authorization This unauthorized use of HRI exacerbated the harm to Plaintiffs, increasing the risk of identity theft, privacy invasion, and unauthorized political targeting.”); McKinney Decl. ¶ 9, Ex. 1 to

Pls.’ Oppo to ERIC’s Mot. to Dismiss (Dkt. 30) (alleging that McKinney received unwanted political text messages).²¹

The Complaint’s construction of “highly restricted personal information” — which, perplexingly, Plaintiffs have refused to withdraw or correct — is legally frivolous and sanctionable. *See King*, 71 F.4th at 526 (affirming Rule 11 sanctions where plaintiffs’ counsel “apparently did not read the statute they said was violated”).

V. CONCLUSION

“[A]ny objectively reasonable investigation of this case would have led to publicly available and widely circulated information contradicting Plaintiffs’ allegations and undercutting their claims.” *Lake*, 643 F. Supp. 3d at 1009. “Thus, Plaintiffs either failed to conduct the reasonable factual and legal inquiry required under Rule 11, or they conducted such an inquiry and filed this lawsuit anyway.” *Id.* “Either way, no reasonable attorney, ‘after conducting an objectively reasonable inquiry into the facts and law, would have found the complaint to be well-founded.’” *Id.* (quoting *Holgate v. Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005)).

“Baseless filings do not harm only one’s adversary; they harm the entire judicial system, including the court whose time they waste.” *Douglas v. Vill. of Palatine*, No. 17 C 6207, 2022 WL 474182, at *4 (N.D. Ill. Feb. 15, 2022). “For this reason, courts mete out

²¹ Notably, for all their fictional assertions, even Plaintiffs do not allege that ERIC’s data-analysis activities involve the obtaining or disclosing of “an[y] individual’s photograph or image, social security number, [and] medical or disability information.” *See* 18 U.S.C. § 2725(4) (definition of “highly restricted personal information”); *see also supra* at 11 (ERIC’s members apply a cryptographic one-way hash to social security numbers).

Rule 11 sanctions as they deem sufficient for general and specific deterrence.” *Id.* (citing Fed. R. Civ. P. 11(c)(4)). In that regard, it is worth noting that this case is only the latest in a series of sanctionable lawsuits frivolously alleging conspiracies among election administrators – and those who support them – to corrupt the integrity of American elections. *See, e.g., King v. Whitmer*, 71 F.4th 511 (6th Cir. 2023); *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168 (D. Colo. 2021); *Lake v. Hobbs*, 643 F. Supp. 3d 989 (D. Ariz. 2022). Such lawsuits are a colossal misuse of federal judicial resources; “[t]he third branch of government is ill-equipped to address citizens’ disaffections that are predicated on an alternative view of reality.” *Haeuser v. Vill. of Caledonia*, No. 21-CV-1337, 2021 WL 5566163, at *2 (E.D. Wis. Nov. 29, 2021). The malicious allegations Plaintiffs assert here – that, for example, Defendants are intentionally registering non-citizens to vote – are also dangerous, recklessly placing Defendants’ staff at risk. The allegations are also pernicious on a broader level: “[U]nfounded claims about election-related misconduct ‘spread the narrative that our election processes are rigged and our democratic institutions cannot be trusted.’” *Lake*, 643 F. Supp. 3d at 1009 (quoting *King*, 556 F. Supp. 3d at 732). In sum, the need for “general deterrence” here is especially acute.

For the foregoing reasons, ERIC respectfully requests that the Court grant this motion and impose sanctions on Plaintiffs 1789 Foundation, Inc. d/b/a/ Citizen AG

and Jennifer McKinney, and their attorneys,²² pursuant to Federal Rule of Civil Procedure 11, including, without limitation, requiring Plaintiffs and their attorneys to reimburse ERIC for the attorneys' fees and costs incurred in litigating this action.

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Respectfully submitted,

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²² "Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." Fed. R. Civ. P. 11(c)(1).