INTRODUCTION

Rule 11 exists to deter frivolous and baseless litigation, not to shield defendants from legitimate claims supported by law and evidence. ERIC's motion for sanctions is a bad-faith attempt to suppress Plaintiffs' well-founded allegations rather than engage with them on their merits. The claims against ERIC are backed by extensive research, government records, deposition testimony, and publicly available reports—many of which led multiple states to withdraw from ERIC due to concerns over its operations, data-sharing practices, and partisan activities.

In contrast, ERIC's entire motion is built on self-serving statements, unsupported declarations, and selective interpretations of its membership agreements. Rather than addressing Plaintiffs' evidence directly, ERIC relies on its own internal statements and website content to dismiss serious allegations as frivolous. This approach does not satisfy the high burden required for Rule 11 sanctions, which are reserved for objectively baseless claims brought without factual or legal support.

Additionally, ERIC's motion is procedurally defective because it failed to comply with Rule 11's mandatory safe harbor provision. ERIC claims to have provided notice to Plaintiffs on December 30, 2024, yet Plaintiffs never received the alleged pre-filing version of the motion or its exhibits. The absence of

proper notice alone is fatal to ERIC's motion, as courts consistently reject sanctions where the safe harbor requirement is not met.

For these reasons, and while ERIC's motion must be denied in its entirety based on its failure to fulfill the pre-filing requirements under Rule 11, Plaintiffs nonetheless address ERIC's allegations substantively below to demonstrate that this action is anything but frivolous; the DPPA claim asserted is supported by substantial evidence, and the claim arises out of a complex and detailed fact pattern that should proceed on its merits—not become the subject of protracted litigation tactics to silence well-pled claims simply because the conduct in which Plaintiffs allege ERIC has engaged in is particularly egregious.

FACTUAL BACKGROUND

ERIC's activities have been subject to scrutiny in both the public and private sectors for years. Reports have been published concerning its activities by numerous sources, and at least nine (9) states, including even a founding member, have withdrawn their membership from the organization over credible claims of partisanship activity, data privacy concerns, and a shifted focus to prioritizing the addition of voters to registration lists over the mission for which ERIC purports to exist: increase accuracy in our nation's voter rolls.[1]

[1] *See* Exhibits 1-9.

ERIC was started as a project of the Pew Charitable Trusts.[2] According to research conducted by the Capital Research Center, funding was also provided by "two grants to Pew in 2011 totaling $725,000" from far-left political donor George Soros and his Foundation to Promote Open Society.[3] David J. Becker was the Pew employee behind the formation of ERIC and reports corroborate Plaintiffs allegations that describe Becker as a "a former Justice Department trial attorney who earned a reputation as a 'hardcore leftist' who 'couldn't stand conservatives.'"[4] Becker also formerly worked for People for the American Way, which is an organization that opposes voter identification requirements and other commonsense election reforms.[5] After Becker stepped down as ERIC's Executive Director in 2016, "he continued to be involved in an ex-officio nonvoting capacity on the ERIC governing board."[6]

Becker led ERIC until 2016 when he left to start "a new 'reform' group, the Center for Election Innovation and Research," which distributed tens of millions of dollars in grants to election officials and offices in battleground states in 2020. After relinquishing an operational role in ERIC, however, Becker continued to be involved in an ex-officio nonvoting capacity on the ERIC

[2] Hans A. von Spakovsky, J. Christian Adams, *Maintaining Accurate Voter Registration Rolls: The Need to Rehabilitate the ERIC Program or Form an Alternative*, THE HERITAGE FOUNDATION, (April 19, 2023); Exhibit 10.
[3] Hayden Ludwig, *The Left's Taxpayer-Funded Voter Registration Machine: ERIC's Origins*, CAPITAL RESEARCH CENTER, Organization Trends (Oct. 26, 2022); *see* Exhibit 11.
[4] *Id.*; *see also* Compl. ¶ 24.
[5] *Id.*
[6] *Infra* at fn. 2.

governing board."[7] Numerous reports have been published based on e-mails and government documents and other court filings that indicate "ERIC member data [is] being shared with Becker's Center for Election Innovation and Research."[8]

Based on this information, Plaintiffs conducted a reasonable inquiry into the substantive information upon which these resignations were based. Plaintiffs reviewed dozens of publications concerning ERIC's voter list maintenance assistance and its efforts to facilitate the addition of voters onto state registration lists en masse. Based on their review and the dozens of resources considered, Plaintiffs established the good faith basis and informed belief that supports their allegations.

Evidence of ERIC's data-sharing and partisanship activity certainly exists; its activities are well-documented by the press, its data-sharing has been studied and heavily reported on, and various state leaders, including Secretaries of State and election officials have found the evidence and support credible enough to ultimately depart from ERIC as the risks to their constituents" data, privacy, and right to accurate voter lists and nonpartisan elections outweighed the benefit(s) ERIC confers.

[7] *Id.*

[8] *Id.*; *see also* Hayden Ludwig, *ERIC Caught Sharing Voter Data with CEIR*, RESTORATION NEWS (Mar. 21, 2023), available at: https://citizenag.link/mdk (last accessed Feb. 18, 2025).

In January 2022, Secretary of State Kyle Ardoin announced Louisiana was suspending its involvement with ERIC, citing concerns over data security and third-party access to voter information.[9] A year later, Alabama's Secretary of State Wes Allen withdrew Alabama from ERIC, also over data privacy that concerned the state and ERIC's voter registration-related activities.[10] In March 2023, Florida announced it, too, was withdrawing from ERIC, with state officials citing concerns about data security and questioning the organization's transparency and partisan leanings.[11] Missouri withdrew from ERIC that same month.[12] In doing so, Secretary of State Jay Ashcroft expressed concerns that ERIC's focus had shifted from its original mission of maintaining accurate voter rolls to merely adding voters to the rolls.[13] The next state to withdraw from ERIC was West Virginia.[14] Explaining the reason for its departure, West Virginia's Secretary of State Mac Warner said the was based on concerns over the protection of personal voter information the state's desire to explore other means that would actually serve the state's goal of maintaining accurate voter rolls.[15] The fourth state to withdraw from ERIC in March 2023—and the sixth state overall—is Ohio.[16] Secretary of State Frank LaRose announced the

[9] *See* Exhibit 1.
[10] *See* Exhibit 2.
[11] *See* Exhibit 3.
[12] *See* Exhibit 4.
[13] *Id.*
[14] *See* Exhibit 5.
[15] *Id.*
[16] *See* Exhibit 6.

state's withdrawal from ERIC, citing frustrations with the organization's unwillingness to address governance concerns and the mandatory requirement to conduct outreach to eligible but unregistered voters.[17]

Iowa also ended its membership in ERIC in June 2023[18], and two months later Virginia withdrew over its concerns about data security.[19] Virginia is the ninth state to withdraw from ERIC; a move that Virginia Elections Commissioner Susan Beals explains was motivated by the Commonwealth's need to ensure its voter's information was protected.[20] Texas also withdrew from ERIC in July 2023[21] based on state officials' concerns over the security of its citizens' data and ERIC's mandatory outreach requirements that further bolster Plaintiffs' allegations that ERIC's activities are focused on bloating[22] voter rolls—not maintaining their accuracy. (Compl. ¶¶ 167, 169).

Prior to filing this action, Plaintiffs conducted far beyond a merely reasonable inquiry and dug into the specific sources of information that caused the mass exodus from ERIC due to the very activities Plaintiffs allege took place in Wisconsin and give rise to their DPPA claim.

[17] *Id.*
[18] *See* Exhibit 7.
[19] *See* Exhibit 8.
[20] *Id.*
[21] *See* Exhibit 9.
[22] The term "bloat" or verb "to bloat" is defined as "to cause to swell" or "expand or increase beyond normal desired limits." MERRIAM-WEBSTER DICTIONARY, 11th Ed. (2024).

Plaintiffs' reviewed data reports that revealed ERIC drastically causes voters to be added to voter registration lists to the tune of 10x more than the number of ineligible voters ERIC causes to be removed.[23] Plaintiffs reviewed emails that reveal ERIC's data-sharing activities[24] and they considered deposition testimony from Colorado Deputy Secretary of State Christopher Beall who admitted under oath that 60% of the voters ERIC identified as "eligible" and mandated the state contact and encourage to vote were indeed, not citizens of the United States.[25] Plaintiffs considered ERIC's membership agreement[26] to corroborate the verbatim language that Plaintiffs cite in their Complaint—which notably, ERIC has not done throughout its entire motion for sanctions despite alleging Plaintiffs recitation of its own membership agreement is somehow frivolous.

Plaintiffs also reviewed other court filings, such as answers to Requests for Admission answered by the Wisconsin Election Commission,[27] news articles confirming that 300,000 non-citizens are registered to vote in Wisconsin,[28] and meeting materials discussing the authority of the only person to ever sign a contract with ERIC, Mr. Kevin Kennedy.[29]

[23] *See* Exhibits 10-12.
[24] *See* Exhibit 13.
[25] *See* Exhibit 14.
[26] *See* Exhibit 15.
[27] *See* Exhibit 16.
[28] *See* Exhibit 17.
[29] *See* Exhibits 18-19.

Boiled down to its essence, Plaintiffs have dutifully fulfilled their pre-filing obligations. Their complaint cites dozens of independent, third-party documents, statements, filings, and studies—none of which Plaintiffs themselves produced or otherwise published. To the contrary, the same cannot be said for ERIC and the support upon which it claims Plaintiffs have not conducted pre-filing investigations. In fact, other than a study and a few references to publications by CEIR itself, the only evidence ERIC offers in support of its motion that Plaintiffs' claims are baseless and frivolous are ERIC's own statements, whether by way of Declaration of its own Executive Director or answers to some questions on ERIC's own website under an FAQ section.

Notably, ERIC also claims that it served Plaintiffs with a pre-motion letter and copy of its now-filed motion on December 30, 2024. Dkt. No. 40-9 (Certificate of Service, Robert A. Wiygul). However, Plaintiffs did not receive any of the documents referenced and only learned of ERIC's intent to move for sanctions upon the filing of the instant motion to which they now respond. *See* Exhibit 20, Declaration of Rachel L. Dreher, ¶¶ 4-5). Counsel for Plaintiffs has checked the inbox, spam folder, "junk" folder, trash, and every other folder in which any emails sent to her could possibly have been located, yet the efforts did not reveal any email from opposing counsel, opposing counsel's office, or any other communication containing the pre-filing version of ERIC's motion

for sanctions or any of the exhibits it allegedly served upon Plaintiffs as required under Rule 11's safe harbor provision. *Id.* ¶¶ 5-6. Citizen AG's Executive Director also communicated with the organization's mail department at the address where ERIC alleges it served a 21-day notice in satisfaction of Rule 11's safe harbor provision, and the office confirmed that it has never received the pre-filing documents ERIC purportedly served via email on December 30, 2024. *Id.* ¶¶ 6-7 (citing Dkt. 40-9 Certificate of Service).

Notwithstanding this fatal defect to their motion, Plaintiffs also substantively address the assertions contained in ERIC's pleading. In doing so, it is overwhelmingly clear that Plaintiffs have satisfied their obligations to conduct pre-filing investigations into the facts and that each of their arguments are grounded in well-established law and principles of American jurisprudence. For the reasons set forth herein, Plaintiffs urge that this court allow this action to proceed to discovery so the case can be resolved on the merits.

At present, Plaintiffs have merely filed their complaint; they have not yet had any obligation imposed that compels of them to produce anything beyond well-pleaded allegations sufficient to state a claim for relief. And while there undoubtedly exists voluminous evidence to support their allegations as explained herein, ERIC cannot simply allege Plaintiffs do not include all evidence upon which they rely to support a Rule 11 motion that seeks to either

re-litigate issues they did not contemplate at the time they moved to dismiss the action under Rule 12, nor can ERIC be permitted to silence Plaintiffs simply because the facts underlying their good faith claim are, admittedly, egregious.

The egregiousness of the actions Plaintiffs complaint details is of no relevance in a Rule 11 motion as the egregiousness is indeed, based on the actions of ERIC and merely described by Plaintiffs. Indeed, detailing the egregiousness of ERIC's actions does not render the allegations themselves, egregious, let alone can it be said Plaintiffs' allegations are frivolous or baseless. Accordingly, the Court must deny ERIC's motion in its entirety based on its failure to comply with Rule 11's mandatory safe harbor provision as well as based on each of the reasons explained in greater detail below.

ARGUMENT

I. PLAINTIFFS HAVE A GOOD FAITH BASIS TO BELIEVE THAT ERIC DOES NOT HAVE A CONTRACT WITH WISCONSIN

While ERIC contends it has a valid contract with Wisconsin, Plaintiffs have a reasonable, good faith basis to believe that no contractual relationship exists with the state for three reasons: ***First*****,** GAB was eliminated before the WEC was ever created and therefore, the moment GAB was eliminated the contract became void and of no effect. ***Second***, even if the GAB agreement had not terminated prior to the creation of WEC, the agreement is invalid because

it was entered into by Kevin Kennedy and Mr. Kennedy lacked authority to bind GAB (or WEC) to any contractual agreements. And ***third***, even if the GAB agreement were validly entered into and existed at the time WEC was created, the Secretary of Administration never formally adopted the Agreement as required under state law.

A. ERIC's Agreement with the GAB was Terminated before Section 266(5) Took Effect.

There is no dispute over the fact that the only agreement that was alleged to have been entered into was the membership agreement signed by Kevin Kennedy on behalf of Wisconsin's Government Accountability Board ("GAB") and ERIC on May 17, 2016 (the "Agreement").

There is also no dispute that GAB was eliminated on June 29, 2016, and WEC—the entity ERIC asserts is the other party in privity of the ERIC membership agreement with Wisconsin—did not exist until June 30, 2016. A plain reading of the statutory language of Section 266(5) further makes clear that law only applies to contracts that were in effect on June 30, 2016, and the Complaint alleges that ERIC's agreement with GAB was not in effect on June 30, 2016. Accordingly, the GAB agreement could not have been transferred to WEC as a matter of contract law or pursuant to state statute. *See* Section 266(5), 2015 Wis. Act 118.

B. Even if the Agreement was not Terminated before Section 266(5) Took Effect, Kevin Kennedy Lacked Authority to Enter into the Agreement on Behalf of GAB.

Even if the GAB/ERIC agreement had been in effect on June 30, 2016, it was never legally valid because Kevin Kennedy, who signed on behalf of GAB, failed to meet the necessary conditions for his conditional delegated authority to take effect.

Mr. Kennedy is the former Director and General Counsel for the GAB.[30] In 2015, GAB clarified that Mr. Kennedy's delegated authority to sign any sole source contract—such as the ERIC agreement—was subject to certain conditions he must satisfy in order to bind GAB in a contractual agreement. Specifically, Board Meeting materials from the January 12, 2016 GAB Board meeting reveal that in order to have authority to enter into agreements on GAB's behalf, Mr. Kennedy was required to (1) request and obtain approval from the chairman of the GAB to enter into an agreement; and (2) provide GAB with at least five days' prior to entering into any contract. *See* Exhibits 18-19. (Government Accountability Board January 12, 2016 Meeting Materials). Plaintiff is unaware of any evidence that reveals Mr. Kennedy satisfied either of these conditions precedent before he signed the ERIC Agreement and therefore, he lacked authority to sign it.

[30] *See* Exhibits 18-19. Mr. Kennedy resigned prior to the dissolution of the GAB and at no time did he have any authority or position whatsoever with the WEC.

Mr. Kennedy's authority was also subject to conditions after signing a contract on GAB's behalf, and Plaintiffs are also unaware of any evidence that indicates he satisfied these conditions, either. The same aforementioned Board Meeting materials also show that once Mr. Kennedy signed a contract on GAB's behalf, Mr. Kennedy was required to provide the Board with (1) the specifics of the action(s) taken pursuant to his delegated authority; (2) the basis for taking such action(s); and (3) the outcome of his action(s), and Mr. Kennedy was further required to do so (4) at the Board meeting immediately following the date on which exercised any of his delegated authority. *Id.* No such evidence exists that reveals these conditions were satisfied, either.

As discussed above, Section 266(5) only transferred contracts from GAB to WEC that were legally "in effect" at the time it was enacted. Thus, because Mr. Kennedy did not fulfill the conditions discussed herein, his authority to enter into the original Agreement on behalf of GAB never manifested, thereby rendering the contract void, invalid, and not transferrable under Section 266(5). It is a well-established principle of contract law that an agreement signed without proper legal authority or capacity is not binding. *Price v. Ross*, 37 Wis. 2d 287 (1967); *see also* Wis. Stat. § 403.401(1). As such, the Agreement was never in force and, therefore, could not have been transferred to WEC under Section 266(5).

C. No Evidence Exists that Shows the Secretary of Administration Transferred the GAB/ERIC Agreement to WEC as Required by 2015 Wisconsin Act 118, § 266(5).

Even assuming *arguendo* ERIC's contention that the agreement did not terminate (e.g., that it was in existence) as of June 30, 2016, and even if Mr. Kennedy had the authority to enter into the agreement on behalf of GAB, the outcome remains the same: ERIC does not have a valid agreement with WEC or the State of Wisconsin because the Agreement was never formally transferred to WEC by the Secretary of Administration in accord with the requirements of Section 266(5), 2015 Wis. Act 118. After diligent inquiry, Plaintiffs were unable to identify or locate any record that this transfer ever occurred.

Notwithstanding the issues with GAB's elimination before WEC existed or Section 266(5), the problems concerning Mr. Kennedy's capacity to sign any agreement on behalf of WEC, and the failure of the Secretary of Administration to properly transfer the GAB/ERIC Agreement to the WEC, there still remains one fatal issue that demonstrates ERIC and Wisconsin do not have a valid contractual agreement. Under Joint Rule 53 Section 266(5), any contract transferred from GAB to WEC was merely temporary. Pursuant to Wis. Stat. § 6.36(1)(ae), in order for any contract transferred from GAB to WEC to remain in full force and effect, WEC was required to separately bind itself or otherwise enter into its own agreement with ERIC, and WEC has never done so. Thus,

even if the GAB Agreement had been properly executed, there is no documentation or records available to demonstrate that the Membership Agreement later replaced it.

For each of the reasons stated above, Plaintiffs have a good faith basis to believe no contract exists with the State of Wisconsin. Accordingly, any allegations related to the inexistence of a contractual agreement between ERIC and the State are not sanctionable.

II. EVIDENCE SUGGESTS ERIC TARGETS NON-CITIZENS FOR VOTER REGISTRATION EFFORTS

In July 2024, Deputy Secretary of State Christopher Beall testified under oath that ERIC provided Colorado with a list of 50,000 "eligible but unregistered" individuals—30,000 of which (60% of the names listed in ERIC's report) were not American citizens, yet ERIC claimed these non-citizens were "eligible" to vote in our elections. *See* Exhibit 14 at 454-55 (Beall testifying that "ERIC provided us with an export from ERIC's analysis of individuals that ERIC thought should be contacted about whether they wished to register.").

Under ERIC's membership agreement, states are expressly prohibited from providing ERIC with information that indicates a resident is not a citizen, and ERIC itself concedes that it does not verify the citizenship of the names it includes in its reports, including its "eligible but unregistered" ("EBU") reports, Despite not knowing whether the names of those listed on the EBU reports

ERIC produces to the states, ERIC ***requires*** its member states to contact 95% of the individuals listed on the EBU reports.

Notably, in moving for sanctions ERIC does not use the verbatim language in its membership agreements and instead, paraphrases its own interpretation of what it alleges the agreement states. Plaintiffs, on the other hand, rely upon the precise language used and quote the membership agreement verbatim in their Complaint.

As explained below, ERIC has produced reports that include tens of thousands of non-citizens and *requires* its member states to contact these non-citizens—all of whom ERIC labels as "eligible" to vote in United States elections. These allegations are supported by evidence, including the membership agreement itself, and Plaintiffs rely not upon hypothetical scenarios, but rather, actual instances in which ERIC has caused non-citizens to be solicited to vote in our elections. There is undoubtedly good faith to assert that ERIC targets non-citizens based on these facts, especially when coupled with the additional background and history of Becker and his motivation for founding the organization in the first place.

A. ERIC's Agreement Precludes the Transmission of Evidence that a Resident is a Non-Citizen; It Does Not Preclude Transmission of Non-Citizen Records that Do Not Contain Evidence of Non-Citizenship.

If ERIC intended to preclude the receipt of any information about non-citizens, it would have done so. ERIC claims that its Membership Agreement "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." (Def.'s Mot. at 25). But this is not what it plainly says, which is indicative by the fact that ERIC's argument fails to even cite the very language used in its own membership agreement. On the other hand, Plaintiffs *do* cite ERIC's membership agreement, which makes clear ERIC does not prohibit records of non-citizens from being transmitted to it but rather, ERIC merely restricts the receipt of evidence of non-citizenship.

In paragraph 97 of their Complaint, Plaintiffs cite the verbatim language contained in the agreement, which reads in pertinent part:

> 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.

(Compl. ¶ 97). There is no need for the inclusion of the qualifying language "where the record contains documentation or other information indicating that the individual is a non-citizen" when merely prohibiting the transmission of a non-citizen's record, in its entirety, would suffice; an example of which is shown below:

> Under no circumstances shall the Member transmit an individual's record ~~where the record contains documentation or~~

~~other information indicating that~~ [if] the individual is a non-citizen of the United States.

ERIC even acknowledges its membership agreement is ambiguous. Plaintiffs' interpretation of the above-referenced clause is further bolstered by evidence and reports that reveal the reasons Becker formed ERIC in the first place. It is well-documented that ERIC came about following the Supreme Court's decision in *Citizen's United* and a solution to counter the impact of the decision by bringing "millions of new voters onto the rolls through a modernized registration system." (Compl. at 2; fn.'s 1-3).

B. ERIC Requires Members to Contact 95% of the Names it Identifies as "Eligible but Unregistered Voters" and Encourage Them to Register to Vote, Even Though Up to 60% of the Names ERIC labels as "Eligible" are Non-Citizens.

If ERIC's argument were true, then it is inexplicable how tens of thousands of illegal aliens end up on the reports ERIC generates with the explicit requirement that the states contact 95% of those individuals and encourage them to register to vote. In one instance, ERIC produced an EBU report comprised of 50,000 names; all of whom were labeled as "eligible" voters. Under its membership agreement, at least 47,500 of the 50,000 "eligible" voters ERIC identified in its report were ***required*** to be contacted and encouraged to register to vote as a condition of continued membership with the organization––yet 30,000 of the 50,000 names were not citizens of the United States. *See* Exhibit 14 at 454-55.

It would defy all logic and reason to not believe that it is possible for an entity that **requires** a minimum of 27,500 non-citizens be contacted and encouraged to register to vote has a desire for these individuals to do exactly that: register to vote.

C. ERIC's Membership Agreement Omits Non-Citizen Voters from the Definition of What Constitutes "Illegal Voting"

Under Section 5(a) of ERIC's Membership Agreement, ERIC recognizes "the appearance of illegal voting, allegations of illegal voting, and actual illegal voting undermines public confidence in the electoral process", *see* Exhibit 15, but when it comes to defining what constitutes an "illegal vote", ERIC entirely omits votes that are cast by non-citizens from its definition. Specifically, ERIC's Membership Agreement states in pertinent part:

> For the purposes of this Agreement, "illegal votes" means votes cast by an individual who may have voted more than once in the Member jurisdiction at the same election, voted in more than one Member jurisdiction at the same election, or voted on behalf of a deceased voter within the member jurisdiction.

Id. at 21. The Agreement expressly limits "illegal votes" to be defined as these three categories, exclusively, even though ERIC does not verify citizenship of the names it includes on the lists of individuals it requires every member state to contact and encourage them to register to vote.

Taken together, Plaintiff's allegations that ERIC targets non-citizens are anything but unfounded. ERIC has produced lists that consist of up to 60%

non-citizens while labeling every person identified as an "eligible voter." ERIC has required states to contact these individuals and encourage them to register to vote, and ERIC's membership agreement does not prohibit states from providing it with non-citizen information while at the same time, ERIC omits a non-citizen vote from the definition of what ERIC defines as an "illegal vote." As such, there is no basis to allege Plaintiffs' allegations are unfounded, frivolous, or unsupported by evidence.

III. ERIC HAS DISCLOSED DATA TO CEIR ON MORE THAN THE TWO "DISCRETE INSTANCES" ERIC MENTIONS.

ERIC next contends that Plaintiffs' "Complaint makes factually frivolous allegations that ERIC discloses member jurisdiction motor-vehicle data to CEIR on an ongoing basis . . . .". (Def.'s Mot. at 29). "In fact, CEIR only received data from ERIC on two occasions, in 2018 and 2020 . . .". *Id.* ERIC alleges that "Plaintiffs ignore the publicly available report prepared by CEIR about the 2020 research study" and "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." (Def.'s Mot. at 31).

But Plaintiffs did not ignore this report; instead, they contend that there is an ongoing data-sharing relationship between ERIC and CEIR based on a number of factors, including *inter alia* the non-disclosure agreement ("NDA")

ERIC entered into with CEIR that "applies to ERIC data and information that CEIR receives from ERIC." *See* Exhibit 13.

A. ERIC and CEIR Entered into a Non-Disclosure Agreement that applied to their Data Sharing Practices beyond 2020.

According to ERIC, its "data-sharing [with CEIR] occurred as part of two discrete research projects in 2018 and 2020. . .". If this were true, there would be no basis for Mr. Hamlin to send emails not in 2018 or 2020, but in 2021, to an ERIC member state explaining how to transmit its data to ERIC so ERIC, in turn, can transmit the data to CEIR. Specifically, Mr. Hamlin states that in order "[t]o facilitate the secure transfer of ERIC and ERIC member data, **data should be provided to CEIR via ERIC's secure sFTP server**." *Id.* (emphasis added). Mr. Hamlin also warns that ERIC's "[m]ember states should not transfer data directly to CEIR", *id.*, but instead, first transfer the personal information to ERIC who in turn, will disclose it to CEIR. *Id.*

Perhaps most indicative of the ongoing nature of the data-sharing relationship is Mr. Hamlin's statement that transferring data to CEIR "should be [conducted via] the same process used to provide the EBU list to CEIR." *Id.* Under ERIC's membership agreement, members are required to provide EBU data to ERIC every 60 days, and this is confirmed by the member's email response, which states, "So we use the same method as we send you our data every 60 days?" *Id.* Plaintiffs allegations concerning ERIC's ongoing

relationship with CEIR concerning the sharing of personal information from its actually and purported members are certainly reasonable based on these emails and ERIC's false claim that it never discloses data to CEIR outside the two years and study ERIC references.

While it may be true that ERIC disclosed data to CEIR in 2018 and 2020, the existence of that fact and the allegations that Plaintiffs allege concerning an ongoing data-sharing relationship can both be true. Indeed, Plaintiffs provide statements made by ERIC's own Executive Director explaining how ERIC transmits data to CEIR that it receives from its member states.

Boiled down to its essence, ERIC's assertion that "Plaintiffs' secretive-ongoing-disclosure theory" is somehow a "conspiracy" or "baseless" is refuted by ERIC's own statements and emails. Indeed, the very nature of an NDA is to maintain secrecy, and here, the NDA seeks to maintain secrecy over an ongoing data-disclosure relationship. And while the ultimate outcome of this factual dispute is yet to be determined as the parties have not engaged in discovery let alone completed the evidence gathering phase, it goes without saying that Plaintiffs allegations both, based on evidence and supported by facts that a reasonable person could find the allegations to be plausible at a minimum.

While throughout the discovery process the question as to whether ERIC has continued disclosing data to CEIR will be answered, the salient inquiry here is whether Plaintiffs have a sufficient basis to allege in good faith that an

ongoing data-sharing relationship between ERIC and CEIR exists. And whereas ERIC's membership agreement requires its members—and those it believes to be members like Wisconsin—to produce personal information protected by the DPPA every sixty (60) days, there can be no question that a genuine good faith basis exists to assert ERIC has, and continues to, disclose personal information from driving records to CEIR. And whereas ERIC admits that it treats Wisconsin as a member state even if no contract exists, there is no reason to believe ERIC treats one member state's data differently than it treats its other members' data. These facts preclude sanctions under Rule 11 for allegations concerning the ongoing data-sharing relationship Plaintiffs allege exists between ERIC and CEIR.

IV. PLAINTIFFS ALLEGATIONS THAT ERIC CAUSES NAMES TO BE ADDED TO VOTER ROLLS ARE SUPPORTED BY EVIDENCE

As a preliminary matter, ERIC misrepresents Plaintiffs allegations in arguing that Plaintiffs claim ERIC "directly" adds voters to the registration lists. Nowhere in the Complaint do Plaintiffs allege this; rather, Plaintiffs allege that ERIC *causes* non-citizens to be added to voter rolls through its data-sharing and reporting mechanisms. The distinction is critical: while ERIC may not directly input names into voter registration databases, its role in generating reports that lead to additions constitutes a causal mechanism in

voter registration activities. And Plaintiffs do not allege ERIC directly adds voters to the rolls anywhere in their Complaint.

A. Plaintiffs Do Not Allege ERIC Directly Adds Names to the Voter Rolls

ERIC's claim that Plaintiffs allege it directly adds voters to its member states' voter rolls misrepresents what Plaintiffs actually allege. Nowhere in the Complaint do Plaintiffs assert that ERIC itself inputs names into voter databases. Instead, the Complaint discusses how ERIC utilizes its EBU Reports to facilitate voter registrations and details how ERIC's EBU Reports have historically contained tens of thousands of non-citizens which it labels as "eligible voters."

The practical effect of these EBU reports is that member states initiate voter registration activities based on the information ERIC supplies, and ERIC knows that its members will rely on the reports ERIC generates. It cannot be said that the inclusion of non-citizens in its voter reports has not resulted in ERIC's members contacting and encouraging non-citizens to register to vote, and in Wisconsin, the State has admitted that felons, non-existent persons, deceased individuals, and people who have moved from the address at which they are registered to vote remain listed as registered voters. If ERIC's job is to help increase the accuracy of its member-states' voter rolls, each of these

categories of ineligible persons certainly should not be included on the lists ERIC provides to its states.

Plaintiffs highlight that ERIC "adds about ten times (10x) the number of voters to voter rolls than the number of ineligible voters it removes" and describe how ERIC's operations lead to an inflation of voter rolls. While ERIC denies this, the statistical impact of its reports and their mandated use by states demonstrate how its actions result in increased voter registrations. ERIC's provision of EBU lists with expectations for state outreach fundamentally influences the expansion of voter rolls, and numerous states have withdrawn from ERIC because ERIC's efforts to bloat voter rolls have taken precedence over the mission for which it purports to exist, which is to assist its member states in increasing voter roll accuracy.

ERIC itself acknowledges that its reports lead to states reaching out to individuals for registration, data reveals that ERIC has caused an incredible amount of names to be added to voter rolls and done so at a rate of more than 10x the number of ineligible voters ERIC has caused to be removed based on data that spans ***over a period of ten (10) years***—virtually ERIC's entire existence. Alleging that ERIC causes voters to be added to voter rolls and allegations that ERIC bloats voter rolls is backed by studies, data, and reports, testimony from state officials, and independent third party sources. Accordingly, ERIC cannot rely upon its own self-serving declaration to spin

this into asserting that somehow Plaintiffs allegations are frivolous. ERIC's claim that it does not "add" names is nothing more than a semantic distinction at best; it is not a substantive rebuttal let alone a viable basis for the imposition of sanctions.

B. Data Reveals Ten Times More Voters are Added to Voter Rolls in ERIC Member-States than the Number of Ineligible Voters ERIC Causes to be Removed

Plaintiffs Complaint cites a study that was conducted analyzing a decades' worth of data concerning the number of voters added to registration lists and the number of ineligible voters removed from voter rolls. (Compl. ¶ 120); *see also* Exhibit 12 at 27).The study concluded that ERIC member-states added nearly ten-times (10x) more voters to the rolls than then number of ineligible voters these ERIC member-states removed. The study also concluded that ERIC member-states have *less* accurate voter rolls than do non-ERIC states.

V. PLAINTIFFS HAVE A GOOD FAITH BASIS TO BELIEVE THAT ERIC ENGAGES IN PARTISAN POLITICAL ACTIVITY AND LOBBYING

Plaintiffs would be remised to ignore that not one, not two, but *nine* states have withdrawn from ERIC, many of which resigned over their concerns of ERIC's partisan political activity. There is no question: voter list maintenance should unquestionably be an apolitical activity. Not only do Plaintiffs have reason to believe ERIC has But when the accueacy of list

maintenAnd while reasonable minds can disagree and there is no doubt evidence that exists both for and against the fact that ERIC engages in partisan political activity, Rule 11 does not authorize sanctions merely because competing theories exist, let alone where Plaintiffs heavily rely upon copious amounts of evidence that proved of enough value for entire states to withdraw from the organization.

A. Nine States Have Withdrawn from ERIC Over Concerns about its Partisanship and Political Activity

As mentioned in the factual background, there are nine states who have withdrawn from ERIC over data security and partisanship concerns. Missouri's Secretary of State confirms that "ERIC refuses to require member states to participate in addressing multi-state voter fraud . . . focuses on adding names to voter rolls . . . [and] allows for a hyper-partisan individual to be an ex-officio non-voting member on its governance board."[31] The Commonwealth of Virginia's departure in 2023 highlights that it will "look to other opportunities to partner with states in an apolitical fashion" further bolstering Plaintiffs' allegations that ERIC does indeed, engage in partisan and political activity.

B. Becker Has a Longstanding History of Engaging in Partisan Political Activity and Working for Partisan Political Organizations

[31] *See* Exhibit 10.

C. Plaintiffs Rely on Studies and Data that Reveal ERIC's Involvement with State Legislative and Executive Policy and Rulemaking Efforts

Even more, Plaintiffs provide well-documented examples that detail how ERIC's policy-based preferences have persuaded states to alter their election and voter registration practices. Plaintiffs point to an instance where ERIC caused Michigan to institute a voter registration policy whereas even those who overtly opted out of registering to vote at the DMV were nevertheless registered by default unless they, again, overtly opted out a second time.

State legislatures have even enacted specific legislation solely on the basis that the legislation was needed in order for the state to join ERIC as a member. Of course, there can be no doubt that ERIC advocated for, and participated in, the process by which this legislation was drafted and otherwise came into existence.

VI. REMAINING ALLEGATIONS THAT ERIC ASSERTS ARE FALSE AND WARRANT SANCTIONS

A. Plaintiffs Have a Good Faith Basis to Question the Extent of Becker's Involvement in ERIC's Operations

Plaintiffs allege that questions exist concerning the extent of involvement Becker has with ERIC's operations based upon evidence that shows Becker speaks on behalf of ERIC, makes statements that he acts on behalf of ERIC, says that he will be very involved in bringing on California as an ERIC member-state, and that he organizes and participates in virtual get-

togethers with ERIC's members. (Compl. ¶¶ 59-66). Not once do Plaintiffs allege Mr. Hamlin has no involvement or assert, he is not ERIC's Executive Director. To the contrary, Plaintiffs make clear that they acknowledge Mr. Hamlin is involved in ERIC's operations. (Compl. ¶ 66). Based on this evidence, Plaintiffs are well within the confines of reasonableness to raise an inquiry as to the extent of Becker's involvement in controlling ERIC's operations and the extent of involvement Mr. Hamlin has regarding the same.

Despite this, ERIC portrays an entirely different picture in arguing Plaintiffs should be sanctioned for even raising this reasonable inquiry. ERIC frames Plaintiffs question as if Plaintiffs allege Mr. Hamlin has no involvement at all and their Complaint alleges Becker controls all of ERIC's operations. For instance, ERIC argues that "[t]he Complaint baselessly alleges in several places that David Becker retains control over ERIC while working at CEIR." (Def.'s Mot. at 36 (citing Compl. ¶ 49)) (internal quotations omitted). This is not what Plaintiffs allege, as explained below.

In paragraph 59 of the Complaint, Plaintiffs merely (1) "*question* [ ] whether Becker exercised control or authority over ERIC" and (2) allege it is possible he could

> While this gesture[32] offers little-to-no evidentiary weight as to whether Becker did and does or does not retain control over ERIC while working at CEIR, it is immaterial to answering the

[32] The "gesture" Plaintiffs refer to is the designation of Becker as a non-voting member of ERIC's Board of Directors. (Compl. ¶ 58).

> **question of whether** Becker exercised control or authority over ERIC as an organization. Stated differently, 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.

They specifically cite to an April 2020 meeting in which "Becker spoke on behalf of ERIC—not CEIR . . ." and even stated that he "personally is going to be very active in continuing to try to bring California on board as an ERIC member state." (Compl. ¶ 61). Plaintiffs allege that during this call, "a member-state representative asked how undelivered mail should be reported to ERIC" and despite Mr. Hamlin being on the call, it was Becker who answered this question. (*Id.*¶ 62). Plaintiffs mention that throughout the 57-minute call, Mr. Hamlin did not speak once. (*id.* ¶ 63) and also cite an email where Becker was organizing a virtual get-together.

Plaintiffs make allegations that merely *raise questions* concerning the extent of Becker's involvement with ERIC; they in no way allege Becker is in complete control of the organization or that Mr. Hamlin is not its Executive Director, contrary to what ERIC misrepresents is pled in its motion. Plaintiffs' Complaint makes this clear and ERIC ignores material verbiage intentionally despite its inclusion in the Complaint that demonstrates Plaintiffs do not allege what ERIC attempts to misconstrue.

Plaintiffs do not allege Mr. Hamlin is not the Executive Director of ERIC nor do Plaintiffs allege Mr. Hamlin has no involvement with the organization, contrary to the manner in which ERIC portrays the allegations. ERIC even squarely references the inquiry Plaintiffs raise by arguing that Plaintiffs aver that it is "questionable as to the extent of involvement Hamlin has in running the organization." Compl. ¶ 66.

In paragraph 59 of the Complaint, Plaintiffs merely (1) "*question* [ ] whether Becker exercised control or authority over ERIC" and (2) allege it is possible he *could* do so.

> While this gesture[33] offers little-to-no evidentiary weight as to whether Becker did and does or does not retain control over ERIC while working at CEIR, it is immaterial to answering the question of whether Becker exercised control or authority over ERIC as an organization. Stated differently, 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.

They specifically cite to an April 2020 meeting in which "Becker spoke on behalf of ERIC—not CEIR . . ." and even stated that he "personally is going to be very active in continuing to try to bring California on board" as an ERIC member state." (Compl. ¶ 61). Plaintiffs allege that during this call, "a member-state representative asked how undelivered mail should be reported to ERIC"

[33] The "gesture" Plaintiffs refer to is the designation of Becker as a non-voting member of ERIC's Board of Directors. (Compl. ¶ 58).

and despite Mr. Hamlin being on the call, it was Becker who answered this question. (*Id.*¶ 62). Plaintiffs mention that throughout the 57-minute call, Mr. Hamlin did not speak once, (*id.* ¶ 63), and also cite an email where Becker was organizing a virtual get-together with ERIC's member states. (Compl. ¶ 64).

B. Becker received "millions of dollars' worth of revenue comprised exclusively of state funds—including finds paid by the federal government."

Since founding ERIC, Becker has received $8,044,995 of revenue comprised exclusively of state funds—or millions of dollars. According to the totals from ERIC's Form 990 filings during the time Becker served as ERIC's Executive Director or as part of its Board, Becker generated:

2013	$398,879	**2018**	$803,869
2014	$497,225	**2019**	$907,648
2015	$583,434	**2020**	$1,220,914
2016	$871,914	**2021**	$971,244
2017	$730,116	**2022**	$1,059,752

Thus, the allegations in paragraph 48 of the Complaint are true—Becker has received millions of dollars' worth of revenue for the organization as Executive Director as well as while he was on the board. ERIC's attempt to manufacture allegations that are simply not there. Plaintiffs do not allege Becker was paid millions of income; ERIC's manufactured allegations are exactly that: manufactured, and allegations. Rule 11 does not permit the

imposition of sanctions based on a convoluted and malicious interpretation of allegations and ERIC's arguments regarding the above must be rejected.

C. ERIC member jurisdictions pay "hundreds of thousands in annual dues."

Defendants' assert Plaintiffs allegation that "ERIC member jurisdictions pay hundreds of thousands in annual dues" is frivolous and warrants sanctions; (Def.'s Mot. at 40). But in lodging this assertion, ERIC fails to acknowledge where Plaintiffs expressly make clear "the ERIC membership agreements' terms [ ] contractually entitle ERIC to ***tens*** of thousands of dollars in annual payments from its member-states." (Compl. ¶ 49) (emphasis added).

When reading the Complaint objectively and in its entirety, Plaintiffs' allegations that ERIC member jurisdictions pay "hundreds of thousands of in annual dues" is true, and this is evidenced by the amounts reported on ERIC's Form 990 filings from 2013 through 2022, a year prior to Becker's departure from the organization.

VII. ERIC'S MOTION FOR SANCTIONS MUST BE DENIED ENTIREY BECAUSE IT FAILED TO COMPLY WITH THE SAFE HARBOR PROVISION

The final allegations that ERIC asserts are sanctionable Plaintiffs have not yet addressed in this memorandum relate to Plaintiffs' recitation of statements made by Alabama Secretary of State, Wes Allen's account of his visit to ERIC headquarters where he found no staff or data servers (Compl. ¶

50, fn. 15), their allegations pertaining to HRI, (*id.* ¶ 164-65), and a non-existent allegation where ERIC claims Plaintiffs allege it made a $12 million payment despite "$12 million" not existing anywhere in the Complaint. (Compl. ¶ 18).[34] Not only are these averments factually incorrect (*see, e.g.,* paragraph 18 of the Complaint in contrast with ERIC's claims that Plaintiffs allege this paragraph asserts ERIC issued a $12 million grant to Michigan), even assuming *arguendo* any of Plaintiffs' allegations were not based on fact or law, sanctions are *per se* prohibited due to ERIC's failure to comply with the requirements of the safe harbor provision.

Rule 11 of the Federal Rules of Civil Procedure requires that a motion for sanctions must be served on the opposing party at least 21 days before it is filed with the court, providing the opposing party an opportunity to withdraw or correct the challenged paper, claim, defense, contention, or denial. *Novoselsky v. Zvunca*, 324 F.R.D. 197 (2017). This 21-day period is known as the "safe harbor" provision, *Ardisam, Inc. v. Ameristep, Inc.*, 343 F.Supp.2d 726 (2004), and failure to comply with the safe harbor provision invalidates a motion for sanctions. *Id.* In *Divane v. Krull Elec. Co., Inc.*, the court emphasized that the 21-day safe harbor period is not merely an empty

[34] The only references to any payments to Michigan in 2020 pertain to the $11.9 million in payments ***CEIR***, not ERIC, made to the Michigan Center for Election Law and Administration ("MCELA"), who in turn, paid $11.7 million of that $11.9 million to two high powered Democratic consulting firms for media strategy and purchase. (Compl. ¶¶ 84-85m fn. 16).

formality and must be strictly followed 200 F.3d 1020 (1999); *see also Ardisam*, 343 F.Supp.2d 726 (denying motion for sanctions because movant did not serve the motion 21 days before filing it with the court).

Here, ERIC did not comply with the safe harbor provision. In its motion, it merely files a certificate of service—not a declaration under penalty of perjury—to support its position that it allegedly mailed and emailed copies of the motion and exhibits prior to filing. (Dkt. No. 40-9). Not only is this certificate of service of no evidentiary value, it is also rebutted by a signed declaration confirming that no email or any mailing containing these documents received by Plaintiffs. *See* Exhibit 20, Dreher Decl. ¶¶ 1-7).

While it is clear that no basis exists to impose sanctions on any of the claims ERIC raises—all of which are merely supported by no more than a self-serving declaration of ERIC's Executive Director and numerous references to content on ERIC's website and a CEIR publication. Even if there were any allegation that was unsupported by fact or law, it is not subject to dispute that absent compliance with the safe harbor provision, sanctions are absolutely prohibited. *See In re Lisse*, 567 B.R. 813 (2017) (holding that imposing sanctions without adhering to the 21-day safe harbor provision constitutes an abuse of discretion).

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CONCLUSION

For the foregoing reasons, and because the imposition of Rule 11 sanctions is not only unfounded and unwarranted but otherwise would constitute an abuse of discretion based on ERIC's failure to comply with the safe harbor provision, ERIC's motion for sanctions must be denied in its entirety.

Dated: February 18, 2025.

Respectfully submitted,

/s/ Rachel Dreher

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2025, a true copy of the foregoing was filed and served via the Court's CM/ECF and/or NextGen electronic filing system upon all parties and counsel of record.

/s/ *Rachel L. Dreher*
Rachel L. Dreher