**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| 1789 FOUNDATION INC., d/b/a CITIZEN AG, and ANTHONY GOLEMBIEWSKI,<br><br>*Plaintiffs*,<br><br>*v.*<br><br>AL SCHMIDT, in his official capacity as Secretary of the Commonwealth, and the COMMONWEALTH OF PENNSYLVANIA,<br><br>*Defendants*,<br><br>AFT PENNSYLVANIA, and the PENNSYLVANIA ALLIANCE FOR RETIRED AMERICANS,<br><br>*Intervenor-Defendants*. | Case No. 3:24-cv-01865-RDM<br>(Hon. Robert D. Mariani) |



**BRIEF IN SUPPORT OF AFT PENNSYLVANIA AND PENNSYLVANIA ALLIANCE FOR RETIRED AMERICANS' MOTION TO DISMISS**

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## INTRODUCTION

Plaintiffs 1789 Foundation, Inc. ("Citizen AG") and Anthony Golembiewski's Complaint and Supplemental Complaint should be dismissed. Plaintiffs seek to employ this Court to compel election officials to initiate a sweeping voter purge that is inconsistent with federal law and would improperly remove tens of thousands of registered Pennsylvanians from the rolls. Although Plaintiffs admit that Pennsylvania has removed hundreds of thousands of voters from the rolls in recent years, Plaintiffs want the Court to require more extensive purges of registered voters. To support their demand, Plaintiffs cobble together out-of-context survey data and voter records to weaponize the National Voter Registration Act ("NVRA") against the very voters it was enacted to protect from erroneous removals. All the while, Plaintiffs fail to plausibly allege any cognizable injury or any basis to infer that Pennsylvania has failed to make "reasonable effort[s]" to conduct list maintenance as required by the NVRA. 52 U.S.C. § 20507(a)(4).



As the Court already recognized, Plaintiffs' Complaint "on its face does not give rise to a cognizable injury." ECF No. 20 ("Memo") at 17–18. Nothing in the Supplemental Complaint rectifies this fatal flaw. Plaintiffs' pleadings remain as inadequate as they were three months ago when this Court expressed "grave doubts" about Plaintiffs' Article III standing. *Id.* at 18. Plaintiffs fare no better on the merits. They fail to make even a *single* factual allegation that identifies what, specifically,

about Pennsylvania's voter registration efforts falls short of the NVRA's requirement to conduct "reasonable efforts" at list maintenance. Nor do they identify any specific voter who they say should have been removed from the rolls but was not. Instead, Plaintiffs focus exclusively on results, contending that because Pennsylvania did not remove as many voters as Plaintiffs would have liked, the state's actions must be unlawful. But Plaintiffs' statistical comparisons are misleading and ignore that the NVRA is designed to guard against wrongful disenfranchisement and as such does not require—and, in fact, expressly *prohibits*—immediate removal of many voters, even if they may seem ineligible. *See, e.g.*, 52 U.S.C. § 20507(d). This fact, along with other requirements of the NVRA, provides an "obvious alternative explanation" for Plaintiffs' dubious allegations about registration and removal rates. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 566–67 (2007). As a result, Plaintiffs have not plausibly alleged lawless conduct sufficient to demonstrate a violation of law. Plaintiffs' "naked assertion" that Pennsylvania has "greater than zero inactive voters" is not enough to state a claim. *Id*. at 557; Memo at 27.



## FACTUAL BACKGROUND

The NVRA requires states to provide simplified, voter-friendly systems for registering to vote. In enacting the NVRA, Congress expressly aimed to *improve* access to the franchise by establishing "procedures that will increase the number of

eligible citizens who register to vote in elections for Federal office" and by making it "possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2). Congress also found that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities." *Id.* § 20501(a)(3).

To further those pro-voter purposes, the NVRA imposes strict restrictions on whether, when, and how a state may cancel a voter registration. *See id.* § 20507(a)(3)–(4), (b)–(d). A state may immediately cancel a registration only in rare circumstances, such as when a registrant requests to be removed from the rolls or is convicted of a disenfranchising felony. *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may not remove voters from the rolls without first complying with prescribed procedural minimums meant to protect qualified voters' access to the franchise and minimize the risk of erroneous cancellations. *See id.* § 20507(a)(3)(C), (c)–(d). For instance, a registrant may be removed from the rolls by reason of change of residence, in most cases, only after failing to respond to a written notice and then failing to appear to vote for two general elections for federal office. *Id.* § 20507(d)(1). This means that it may take *at least* four years for a voter to be removed from the registration rolls because of a change of residence.

Congress also mandated that states maintain a "general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters." *Id.* § 20507(a)(4). But Congress did not demand perfection. It is entirely consistent with the NVRA that some inactive voters remain on the rolls for more than two election cycles because the "NVRA requires only a 'reasonable effort,' not a perfect effort, to remove registrants," *Pub. Int. Legal Found. v. Benson*, 721 F. Supp. 3d 580, 597 (W.D. Mich. 2024), and states need not "use duplicative tools or [] exhaust every conceivable mechanism" to comply with the NVRA's "reasonable effort" requirement, *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th Cir. 2019). This balanced approach reflects the twin policy objectives of the NVRA—to "enhance[] the participation of eligible citizens as voters" and also "to protect the integrity of the electoral process." 52 U.S.C. § 20501(b). And it further reflects Congress's judgment that it is better to tolerate some voters remaining on the rolls past their eligibility than to permit the erroneous removal—and potential disenfranchisement—of eligible voters. As the Third Circuit has explained, the NVRA "was intended as a shield to protect the right to vote, not as a sword to pierce it" because Congress was "wary of the devastating impact purging efforts previously had on the electorate." *Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 178, 182 (3d Cir. 2017).

## PROCEDURAL HISTORY

### I. Plaintiffs' Complaint and Emergency Motion

One week before the 2024 general election, Plaintiffs Citizen AG and Anthony Golembiewski filed this suit against Secretary of the Commonwealth Al Schmidt and the Commonwealth of Pennsylvania alleging they had violated the NVRA by (1) "fail[ing] to make records available for inspection" and (2) "fail[ing] to maintain accurate/current voter registration lists." Suppl. Compl., ECF No. 46, at 19, 26. Plaintiffs alleged they had become "concerned about the state of the nation's voter registration rolls," and "fear[ed]" that their votes would be "nullified or diluted." Suppl. Compl. ¶¶ 53–54. Plaintiffs also filed a motion for a temporary restraining order and a preliminary injunction seeking this Court to "enjoin Defendants from counting any vote cast by a Pennsylvania inactive registrant" meeting Plaintiffs' criteria, and to "compel[]" Pennsylvania to "reveal" how many inactive registrants voted in the 2020 or 2022 elections. *See* ECF No. 4 at 13–14; *see also* ECF No. 3.



This Court denied Plaintiffs' motion for emergency relief on November 4, 2024. *See* ECF Nos. 20, 21. Though the Court expressed "grave doubts" and "grave concerns" over Plaintiffs' individual, associational, and organizational standing, Memo at 14–15, 18, the Court tabled outright dismissal under Article III because the parties had not yet fully briefed standing on a motion to dismiss, *id.* at 15. Instead,

the Court denied Plaintiffs' motion because they failed to demonstrate a likelihood of success on the merits. *See id.* at 18–29. To start, Plaintiffs did not "set forth any viable assertion, argument, or evidence" that the Secretary did not, or would not, timely comply with Plaintiffs' open-records request. *Id.* at 24. As for Plaintiffs' list-maintenance claim, allegations that some 277,768 voters remained unlawfully on the voter rolls were "purely speculative" because they were based on "snapshot" survey data. Memo at 26 (quoting ECF No. 17 at 14–15). Furthermore, Plaintiffs "fail[ed] to explain how evidence of 'greater than zero' inactive voters" constituted a claim under the NVRA, or how "the number of inactive voters" showed that Pennsylvania "failed to maintain accurate/current voter registration lists." Memo at 27.



## II. Plaintiffs' Supplemental Pleadings

Shortly after this Court denied Plaintiffs' motion for emergency relief, the Secretary responded to Citizen AG's records request with a spreadsheet listing, *inter alia*, the number of registrations Pennsylvania canceled that were associated with voters who (1) failed to respond to change-of-address and/or address-verification notices, and (2) did not vote in the 2020 or 2022 federal elections. *See* Suppl. Compl. ¶ 47; ECF No. 46-3. Plaintiffs then moved to supplement their complaint, which this Court permitted on January 15. *See* ECF Nos. 40, 45. Despite the Secretary's disclosures, which show that Pennsylvania "removed" at least 132,575 "inactive" voters from its voting rolls after the 2022 midterm elections, *see* Suppl. Compl. ¶ 89,

Plaintiffs continue to allege that Pennsylvania is violating the NVRA's records-inspection and list-maintenance provisions, because, in Plaintiffs' telling, the "numbers do not add up," and the Secretary "admi[tted]" in his November disclosures that Pennsylvania "had not removed *at least* 77,188 registrants who, as of November 9, 2022, were ineligible to vote ***absent re-registering***." Suppl. Compl. ¶¶ 47, 88 (bolded emphasis added); *see also id.* ¶¶ 63–120. The Supplemental Complaint adds no new allegations regarding Plaintiffs' standing, choosing instead to rest on allegations as to which this Court previously expressed "grave" concerns. *See generally id.* ¶¶ 51–62, 91–96, 112–16.



## QUESTIONS INVOLVED

(1) Whether Plaintiffs adequately alleged individual, associational, or organizational standing?

(2) Whether Plaintiffs' allegations fail to state a claim under Rule 12(b)(6)?

## LEGAL STANDARD

"Absent Article III standing, a federal court does not have subject matter jurisdiction to address a plaintiff's claims, and they must be dismissed." *Common Cause of Pa. v. Pennsylvania*, 558 F.3d 249, 257 (3d Cir. 2009) (quoting *Taliaferro v. Darby Twp. Zoning Bd.*, 458 F.3d 181, 188 (3d Cir. 2006)). As parties "invoking the federal courts' jurisdiction," Plaintiffs "bear the burden of establishing their standing." *Id.* (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)).

To establish standing, Plaintiffs must plausibly allege (1) a "concrete" and "particularized" injury-in-fact, actual or imminent, (2) that is fairly traceable to the defendant's conduct, and (3) is likely to be redressed by a favorable decision from the court. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). "Injury in fact is a constitutional requirement, and '[i]t is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.'" *Id*. (alteration in original) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997)).

Under Rule 12(b)(6), a claim must be dismissed for failure to state a claim unless the "[f]actual allegations [are] enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Twombly*, 550 U.S. at 545. While a court presumes that all well-pleaded material allegations are true, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (alteration in original) (quoting Fed. R. Civ. P. 8(a)). Additionally, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief,'" and it "must be dismissed." *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)).

## ARGUMENT

### I. This Court lacks subject-matter jurisdiction because Plaintiffs have not adequately alleged Article III standing.

Plaintiffs lack Article III standing because they fail to allege any "concrete and particularized" injuries-in-fact. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Each of their purported bases for standing—abstract and generalized concerns about election integrity and vote dilution, as well as vague claims of spending resources based on those unreasonable and baseless worries about Pennsylvania's list-maintenance procedures—are insufficient.



#### A. Plaintiffs' concerns about election integrity and vote dilution are speculative, generalized grievances.

At best, Plaintiffs assert only generalized grievances that do not confer Article III standing. The Supreme Court "repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 482–83 (1982) (cleaned up). Nor may Plaintiffs sue "merely because their legal objection is accompanied by a strong moral, ideological, or policy objection to a government action." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (citing *Valley Forge*, 454 U.S. at 473). Indeed, "[v]indicating 'the *public* interest (including the public interest in Government observance of the Constitution and laws) is the function of Congress

and the Chief Executive,'" not private citizens. *Id.* at 382 (citing *Lujan*, 504 U.S. at 576); *see also Milnes v. United States*, 720 Fed. Appx. 680, 681 (3d Cir. 2018) (finding no standing where claims constituted "generalized grievances about government and the U.S. electoral system, which [were] widely shared and would be most appropriately addressed in the representative branches").

Plaintiffs' "concerns" about issues such as election "integrity," the "undermining" of "confidence" in the electoral process, and "fear[s]" that votes will be "nullified," Suppl. Compl. ¶ 54, are textbook examples of "abstract grievance[s]" that, even if true, would be "shared by most Pennsylvanians" and do not confer Article III standing, *Common Cause of Pa.*, 558 F.3d at 268. All citizens in Pennsylvania share a common interest in lawful elections, rendering Plaintiffs' concerns "plainly undifferentiated and 'common to all members of the public.'" *Lujan*, 504 U.S. at 575 (cleaned up) (quoting *United States v. Richardson*, 418 U.S. 166, 171 (1974)). Plaintiffs admit as much, alleging that "[m]illions of Pennsylvanians" share general concerns about "the integrity of the electoral process." Compl., ECF No. 1, at 4. But the mere concern about whether a federal election requirement "has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance." *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

In place of individualized injury, Plaintiffs complain that Pennsylvania's list maintenance procedures might "dilute" votes. Suppl. Compl. ¶ 54. But a "veritable tsunami" of courts to have considered this very theory of injury have rejected it as insufficiently particularized. *O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-cv-03747-NRN, 2021 WL 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff'd,* No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022). In "seeking relief that no more directly and tangibly benefits [Plaintiffs] than it does the public at large," the pleadings do "not state an Article III case or controversy." *Lance*, 549 U.S. at 439 (quoting *Lujan*, 504 U.S. at 573–74). "At bottom, they are simply raising a generalized grievance which is insufficient to confer standing." *Hall v. D.C. Bd. of Elections*, No. 23-1261, 2024 WL 1212953, at *4 (D.D.C. Mar. 20, 2024) (rejecting vote dilution theory of standing); *see also Reschenthaler v. Schmidt*, No. 1:24-cv-1671, 2024 WL 4608582, at *7 (M.D. Pa. Oct. 29, 2024) (same); *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020) (same).



Plaintiffs' concerns about possible voter fraud also fail to satisfy Article III for a separate reason—they are as speculative as they are undifferentiated. Citizen AG claims its members "fear that their legitimate votes will be nullified or diluted," Suppl. Compl. ¶ 54, but they fail to plead any facts substantiating these concerns. Such "highly speculative fear" cannot "satisfy the requirement that threatened injury must be certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410

(2013). Courts have broadly rejected standing theories premised upon nothing more than vague and hypothetical concerns about voter fraud. *E.g.*, *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 342 (W.D. Pa. 2020); *Donald J. Trump for President, Inc. v. Way*, No. 20-10753, 2020 WL 6204477, at *6 (D.N.J. Oct. 22, 2020); *see also Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1028–29 (D. Ariz. 2022); *Thielman v. Fagan*, No. 3:22-cv-01516-SB, 2023 WL 4267434, at *4 (D. Or. June 29, 2023). This Court should follow suit.

This theory of injury also raises serious traceability and redressability concerns; there is no reason to think that Plaintiffs' requested relief will resolve their groundless and conjectural fears about voter fraud. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (explaining it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision"). That is particularly true here because, even following a "favorable decision," any future acts of voter fraud would still depend on "the unfettered choices made by independent actors" who are "not before the courts." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989).

The same is true of Citizen AG's claim that it has suffered injury in the form of its "analyses" of Pennsylvania's "registration rates, removal rates, Confirmation Notice statistics, and inactive rates." Suppl. Compl. ¶ 59. Citizen AG's choice to conduct such analyses is not traceable to any NVRA violation because the NVRA

contemplates keeping voters who have moved on the voter rolls for two federal election cycles. *See* 52 U.S.C. § 20507(d). Regardless of any remedy afforded in this case, Citizen AG will still have the same reasons to prepare these "analyses"; voters will continue moving to other states, and nothing in the NVRA will require their immediate removal from Pennsylvania's rolls. *See Sheller, P.C. v. U.S. Dep't of Health & Hum. Servs.*, 663 Fed. Appx. 150, 156 (3d Cir. 2016) (finding no redressability where relief would "produce[] only a 'chain of contingencies [] which amounts to mere speculation'" about how parties would accrue further litigation costs).

In sum, Plaintiffs' lawsuit is nothing more than a naked—and non-cognizable—attempt to "to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government." *Valley Forge Christian Coll.*, 454 U.S. at 479.



**B. Citizen AG fails to allege any organizational injury.**

Nor can Citizen AG manufacture standing simply because it chose to spend time and money investigating Pennsylvania's list-maintenance practices in anticipation of speculative, generalized harm. Though an organization like Citizen AG can sometimes have "standing in its own right to seek judicial relief from *injury to itself* and to vindicate whatever rights and immunities the [organization or] association itself may enjoy,'" *Warth v. Seldin*, 422 U.S. 490, 511 (1975),

"organizations may not satisfy the injury in fact requirement by . . . simply choosing to spend money fixing a problem that otherwise would not affect the organization at all," *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 285 (3d Cir. 2014) (citation omitted).

As the Court correctly observed, Citizen AG's allegation that it "expended substantial resources, including staff time, investigating Defendants' failure to comply with their NVRA voter list maintenance obligations, communicating with Pennsylvania officials and concerned members about Defendants' failure, and researching statements made by Defendants in their correspondence [] on its face does not give rise to a cognizable injury." Memo at 17–18 (citing Compl. ¶ 61). Plaintiffs have done nothing to fix these fatal deficiencies, which do not allow them to "spend [their] way into standing simply by expending money to gather information and advocate against the [State] [D]efendant's action." *All. for Hippocratic Med.*, 602 U.S. at 394.



Nor can Citizen AG transform this abstract injury into a concrete one merely by pleading that it "diverted its resources to counteract" Pennsylvania's alleged "noncompliance." Suppl. Compl. ¶ 62. Plaintiffs still "fail to acknowledge *Hippocratic Medicine's* clear directive relevant to the assertion that Citizen AG has suffered a cognizable injury based on the alleged diversion of resources" on this point, Memo at 17, and Citizen AG has nowhere alleged how Pennsylvania's list-

maintenance efforts could have "directly affected and interfered with [its] core business activities," *All. for Hippocratic Med.*, 602 U.S. at 395.

### C. Plaintiffs lack standing to assert their records-inspection claim.

Citizen AG's allegation that it suffered informational injuries, Suppl. Compl. ¶¶ 95–96, also fails to satisfy Article III because it alleges no ensuing concrete harm from the alleged lack of information. "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 441–42 (2021) (citation omitted). Even if Citizen AG "had a right to the records sought," it has "not established an injury in fact." *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 936 (5th Cir. 2022). It must identify what "downstream consequences" it will suffer "from failing to receive the required information." *TransUnion*, 594 U.S. at 442 (citation omitted). Applying *TransUnion*, the Fifth Circuit recently held that organizations lacked standing to assert an NVRA claim because they failed to identify "concrete harm from governmental failures to disclose" information including names and voter identification numbers of registrants identified as potential non-citizens. *Campaign Legal Ctr.*, 49 F.4th at 938.



Plaintiffs' records-inspection claim suffers from the same deficiency. Citizen AG alleges it has been "deprived of the opportunity to inspect and review records" concerning voter list maintenance, which allegedly "frustrates its purpose of preserving constitutional rights and civil liberties including those of its members

such as Mr. Golembiewski." Suppl. Compl. ¶ 94. But those are not concrete, "downstream consequences" because Citizen AG does not allege that the supposedly lacking information itself will "directly lead to action relevant to the NVRA," or that Citizen AG's "direct participation in the electoral process will be hindered." *Campaign Legal Ctr.*, 49 F.4th at 938. In short, because Plaintiffs allege no concrete injury stemming from the purported failure to produce records, their records-inspection claim should also be dismissed on standing grounds. *See* Suppl. Compl. ¶¶ 92–93.



## II. Plaintiffs fail to state a claim.

Plaintiffs' claims must also be dismissed for failure to state a claim. While Plaintiffs conclude that State Defendants have not made "reasonable effort[s]" to conduct voter-list maintenance under the NVRA, Suppl. Compl. ¶ 98 (Count II), they fail to identify any specific deficiency in the state's lawful (and reasonable) processes for removing voters. Nor do they identify any particular voter who remains on the rolls who should not be there. Instead, Plaintiffs merely complain that Pennsylvania's list maintenance program—which Plaintiffs recognize has removed hundreds of thousands of voters from Pennsylvania's voting rolls since 2022—has not removed as many voters as Plaintiffs would prefer on the timeline they demand. *See* Suppl. Compl. ¶¶ 40, 89. Separately, Plaintiffs' records-inspection claim must

be dismissed because Plaintiffs failed to comply with the NVRA's notice requirement (Count I).

### A. Plaintiffs do not adequately plead that Pennsylvania has failed to make reasonable efforts to maintain its voter rolls.

As Plaintiffs acknowledge, all the NVRA requires is that states "conduct a general program that makes a reasonable effort to remove" the names of ineligible voters "from the official lists of eligible voters." Suppl. Compl. ¶ 8 (citing 52 U.S.C. § 20507(a)(4)). In other words, to state a claim, Plaintiffs must plausibly allege that Pennsylvania has been *unreasonable* in its list maintenance efforts. *See RNC v. Benson*, No. 1:24-cv-262, 2024 WL 4539309, at *13 (W.D. Mich. Oct. 22, 2024). Conclusory allegations that simply parrot the NVRA's language "do not state a plausible claim." *Id.* Rather, Plaintiffs must allege "specific breakdown[s]" in Pennsylvania's voter registration system. *See id.*; *see also Pub. Int. Legal Found. v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020) (denying relief where there was no "allegation, let alone proof, of a specific breakdown in Pennsylvania's voter registration system").



Instead of identifying any actual insufficiency in Pennsylavania's procedures, Plaintiffs offer allegations substantively indistinguishable from those the Court rejected in denying their emergency motion last fall. Relying on survey data from the Election Administration and Voting Survey ("EAVS"), Plaintiffs originally claimed that "a minimum" of 277,768 registrants remained on the voter rolls

unlawfully because, according to their calculations, that number of voters had not responded to confirmation notices sent prior to the 2020 election, and two federal elections had "since elapsed." *See* Compl. at 2–3, ¶ 74. But as this Court rightly found, Plaintiffs' allegations were "purely speculative" because they merely reflected a "'snapshot in time.'" Memo at 26 (quoting ECF No. 17 at 14–15). That snapshot could not offer a "definitive picture" of Pennsylvania's registration rates "much less any indication of whether list maintenance is going on and whether it's . . . reasonable." *Bellitto*, 935 F.3d at 1208; *see also Benson*, 2024 WL 4539309, at *5 (similar). That is because Pennsylvania's list maintenance activities are not "static" given that voter records are "constantly changing." Memo at 26 (quoting ECF No. 17 at 14–15).



Following the Secretary's November 12 records disclosure, Plaintiffs now claim that "at least" 77,188 registrants remain improperly on the rolls—a 70 percent decrease from their prior claim. Suppl. Compl. ¶ 47. But Plaintiffs' allegations suffer from the same fundamental flaw that doomed their first pleading—they rely on cherry-picked data points that do not account for the continually changing nature of voters' registrations. Accordingly, Plaintiffs do not sufficiently allege that any of those registrants were, in fact, removable under the NVRA. For instance, as the Secretary explained when he provided this data to Plaintiffs, "[a] voter record can be changed from inactive to active status and thus avoid cancellation *even where the*

*voter does not vote*," and "if a voter contacts the election office or attempts to re-register to vote, their status may be changed to active." Ex. A (Mot. for Leave to Suppl. Compl., ECF No. 40, Ex. 4) at 2 (emphasis added). Plaintiffs admit as much, conceding that the registrants they target would only be ineligible to vote "absent" them "re-registering." Suppl. Compl. ¶ 47.

Beyond these statistical snapshots, Plaintiffs point to nothing else to support an inference that Pennsylvania is falling short of the NVRA's requirements. Plaintiffs nowhere acknowledge Pennsylvania's extensive statutory removal procedures, *see, e.g.*, 25 Pa. C.S. §§ 1901, 1902, never mind "allege that this program itself is deficient" or "point to a specific breakdown that makes the program 'unreasonable,'" *Boockvar*, 495 F. Supp. 3d at 359. In fact, Plaintiffs admit that Pennsylvania has removed hundreds of thousands of inactive voters from its rolls over the challenged period, Suppl. Compl. ¶¶ 40, 105, confirming the state's general program is operating reasonably. And never do Plaintiffs identify a purportedly ineligible voter who remains on the rolls. Indeed, "the NVRA does not require [the] perfection" Plaintiffs demand; it requires reasonableness. *Boockvar*, 495 F. Supp. 3d at 359. Though Plaintiffs might think the Secretary is "taking too long to remove" voters from the rolls, that is not enough to show an NVRA violation. *Drouillard v. Roberts*, No. 24-cv-06969-CRB, 2024 WL 4667163, at *10 (N.D. Cal. Nov. 4, 2024). The NVRA simply "does not require states to immediately remove every

voter who may have become ineligible." *Benson*, 721 F. Supp. 3d at 596. Instead, "the NVRA envisions [the] careful and deliberate—i.e., not immediate—process," *Drouillard*, 2024 WL 4667163, at *10, that Pennsylvania administers.

At bottom, Plaintiffs fail to show that "evidence of 'greater than zero' inactive voters provides them with a basis for their claim" because Plaintiffs nowhere explain how Pennsylvania acted unreasonably in its list maintenance practices. *See* Memo at 27. And "absent such detail, [Plaintiffs'] allegations are equally consistent with lawful . . . behavior, and therefore insufficient to state a plausible claim." *Parkell v. Markell*, 622 Fed. Appx. 136, 141 (3d Cir. 2015) (citing *Twombly*, 550 U.S. at 567–68). Such allegations offer nothing more than the speculative prospect of wrongdoing, but fail to offer the necessary "factual context" to "'nudge' their [NVRA] claim 'across the line from conceivable to plausible.'" *Benson*, 2024 WL 4539309, at *13 (quoting *Iqbal*, 556 U.S. at 683).



**B. Plaintiffs have not complied with the NVRA's notice requirement.**

Plaintiffs lack a ripe cause of action for their records-inspection claim because they failed to comply with the NVRA's mandatory notice provision before suing. "A person aggrieved by a violation of the NVRA must first provide 'written notice of the violation to the chief election official of the State involved' before they may proceed with a civil action concerning that violation." *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 408 (M.D. Pa. 2021) (citing 52 U.S.C.

§ 20510(b)(1)–(2)). Though a party must ordinarily wait 90 days after providing written notice before filing a civil action, "the notice period is eliminated entirely when a violation occurs within 30 days of an election." *Id.* at 408–09 (citing 52 U.S.C. § 20510(b)(2), (3)). "The purpose of the NVRA's notice requirement is to 'provide states . . . an opportunity to attempt compliance before facing litigation.'" *Id.* (citing *Scott v. Schedler*, 771 F.3d 831, 836 (5th Cir. 2014)).

Plaintiffs did not provide any notice to the Secretary before bringing their records-inspection claim. *See* Suppl. Compl. ¶¶ 63–70; *see also* 52 U.S.C. § 20507(i). Plaintiffs' Complaint acknowledges this failure but alleges the notice requirement is waived under § 20510(b)(3) because the Secretary "violated the NVRA within thirty (30) days of a federal election." Suppl. Compl. ¶ 20.

That is wrong for the reasons set forth in the Court's November 4, 2024 Memo, which made clear that November 12 was "the proper date" on which the Secretary's response was due. Memo at 22. Nevertheless, Plaintiffs contest the adequacy of the Secretary's November 12 response. *See* Suppl. Compl. ¶¶ 87–90. But even so, that violation would have occurred on November 12, 2024, which is *not* within 30 days of an upcoming election. *See* 52 U.S.C. § 20510(b)(3). As such, the NVRA's notice-waiver does not apply, and Plaintiffs must send written notice to the Secretary, and then wait 90 days before filing suit "to allow the [Secretary]

time to correct the violation." *Pub. Int. Legal Found. v. Boockvar*, 370 F. Supp. 3d 449, 457 (M.D. Pa. 2019). Until then, their records-inspection claim is premature.

## CONCLUSION

The Court should dismiss the Complaint and Supplemental Complaint.

Dated: February 19, 2025

Respectfully submitted,
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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.08**

The undersigned hereby certifies that this document contains 4,994 words, according to the word count feature on Microsoft Word, and therefore complies with the length limitations for briefs under Local Rule 7.08(b)(2).

*/s/ Lalitha D. Madduri*
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 19th day of February, 2025, with a copy of this document via the Court's CM/ECF system.

*/s/ Lalitha D. Madduri*
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