**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF LOUISIANA**

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| LEAGUE OF WOMEN VOTERS OF LOUISIANA, et al.,<br><br>PLAINTIFFS,<br><br>v.<br><br>NANCY LANDRY, et al.,<br><br>DEFENDANTS. | Civil Action No. 3:25-cv-413<br><br>c/w<br><br>Civil Action No. 3:25-cv-676<br><br>Judge: JWD - SDJ |



**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

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## INTRODUCTION

Louisiana enacted Act 500 to do what every State is entitled, indeed obligated, to do: ensure that only citizens register and vote in its elections. Act 500 affirms that non-citizens are ineligible to register or vote, La. R.S. 18:102(A)(3), and directs that voter registration applicants provide proof of citizenship accordingly, La. R.S. 18:104(D)(2). The Secretary of State has spent the better part of two years pursuing an implementation pathway that the Supreme Court has blessed—seeking United States Election Assistance Commission (EAC) approval to amend Louisiana's Federal Form state-specific instructions. Into that pathway steps Plaintiffs to ask this Court to enjoin an implementation of Act 500 that, on their own pleadings, does not exist.

The jurisdictional defects require dismissal. Plaintiffs lack Article III standing: Their alleged injuries are self-inflicted, speculative, and untraceable to these Defendants. Their claims are unripe: Act 500's implementation remains up in the air, and Plaintiffs' own Complaint concedes that the Secretary's anticipated approach bears no resemblance to the harms they describe. That is only punched up by Plaintiffs' National Voter Registration Act (NVRA) notice being littered with *if*s and *might*s. And sovereign immunity, too, forecloses all claims against the Secretary outright because Plaintiffs allege no ongoing violation sufficient to trigger *Ex parte Young*.

The merits fare no better. The vagueness claim, for which Plaintiffs lack standing twice over, is manufactured. And the NVRA claims are defeated by Plaintiffs' own allegations, which acknowledge that Louisiana continues to accept

voter-registration applications on the Federal Form with nothing beyond a signed attestation—exactly what they say the NVRA requires.

The upshot is that Act 500 lawfully ensures that only qualified voters vote in Louisiana elections, the Secretary is implementing it through the administrative process the Supreme Court has expressly avowed, and this suit is a sideshow to manufacture a headline without a justiciable controversy or a claim with any merit. The Court should dismiss.

## BACKGROUND

### I. THE SECRETARY OF STATE'S IMPLEMENTATION OF ACT 500.

In 2024, the Louisiana Legislature enacted Act 500, which amended the Louisiana Election Code provisions governing voter registration. *See* 2024 La. Sess. Law Serv. Act 500 (S.B. 436). Act 500 expressly provided that a person who is "[n]ot a citizen of the United States of America" is ineligible to register or vote, La. R.S. 18:102(A)(3), and that "[e]ach applicant shall include with his application proof of United States citizenship," La. R.S. 18:104(D)(2).



The law took effect January 1, 2025. Shortly thereafter, the Secretary of State began her implementation by submitting a request to the EAC—consistent with Supreme Court precedent—asking that the Federal Form's Louisiana-specific instructions be amended to reflect Act 500's proof-of-citizenship requirement.[1] ECF No. 46-3; *see Arizona v. Inter Tribal Council of Ariz., Inc. (ITCA)*, 570 U.S. 1, 20 (2013) (States may "request … that the EAC include [that] requirement among the Federal

[1] The original request was supplemented on February 24, 2025.

Form's state-specific instructions."). Specifically, the Secretary requested that, by January 2026, the EAC adopt one of the following options:

- **Option 1(A):** "In addition to the above information, you shall also provide in box 6, if applicable, your unique immigration identifier (e.g. USCIS/Alien Registration Number; Form I-94, Arrival/Departure Recor, number; Student and Exchange Visitor Information System (SEVIS) ID number; Naturalization/Citizenship Certification Number; or Card Number/I-797 Receipt Number). If you do not have a unique immigration number, you shall provide in box 6 your place of birth (State/Province, Country); sex; and if known, your mother's maiden name (last name before marriage)."

- **Option 1(B):** "In addition to the above information, you must also attach a separate document that legibly states your place of birth (State/Province, Country) and, if applicable, your unique immigration identifier (e.g. USCIS/Alien Registration Number; Form I-94, Arrival/Departure Recor, number; Student and Exchange Visitor Information System (SEVIS) ID number; Naturalization/Citizenship Certification Number; or Card Number/I-797 Receipt Number); and, if known, your mother's maiden name (last name before marriage)."

ECF No. 46-3 at 2–3. The Secretary requested a brief pause in May to provide additional materials, and supplemented again in June. *See* ECF No. 46-4 at 5. The Secretary then awaited the EAC's anticipated August 2025 decision. *See* ECF No. 46-3.



With no response from the EAC by late summer, the Commissioner of Elections issued "Interim Guidance for Implementation of Act 500" to all parish registrars of voters on August 28, 2025. *See* Ex. A (Hadskey Declaration and Interim Guidance).[2]

[2] For purposes of this motion, the Court can consider the Hadskey Declaration and accompanying Interim Guidance—along with the EAC requests, *see* ECF Nos. 46-3, 46-4, 54-1, 55-1, 58-1— in any one of three ways: (1) They are "part of the pleadings" as "referred to in the plaintiff's complaint" and "central to [its] claim." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 499 (5th Cir. 2000); *see* Am. Compl. ¶ 140 ("neither Secretary Landry nor any other state actor has issued any guidance"); *id.* ¶ 146 ("Defendant Landry's Office submitted to the EAC"). (2) They are "matters of public record directly relevant to the issue at hand" that are judicially noticeable. *Funk v. Stryker*

The Interim Guidance reminded registrars that the State's request remained pending before the EAC and made clear that, "until that process is complete, [registrars] should continue processing voter registration applications as they always have." *Id.* Accordingly, "[a]pplicants registering to vote are not yet required to show proof of citizenship," and "[o]nce implementation of Act 500 becomes effective," the Commissioner would "provide additional information." *Id.*

In September 2025, the EAC notified the Secretary of its initial decision. ECF No. 54-1. Chair Palmer recommended that "[t]he Commission should approve the State of Louisiana's request" because it "provides the opportunity for applicants to provide necessary information to Louisiana to confirm the eligibility of applicants without any additional action by the applicant." *Id.* at 5. But the Commission deadlocked: two commissioners "voted affirmatively," and the other two "disapproved" meaning "the recommendation did not receive majority approval as required under the Help America Vote Act," which required the Commission to "reject the request … as presented in Option 1(A)." *Id.* at 5. The EAC's letter emphasized, however, that it "did not independently consider Option 1(B)" and that "Louisiana [could] request that the Commission consider Option 1(B) independent of the Commission's disposition of Option 1(A)." *Id.*



The Secretary promptly did so. ECF No. 55-1 at 2. While that request was pending, the Department's Election Integrity Division completed an investigation and issued a report detailing non-citizens identified on Louisiana's voter rolls and the

*Corp.*, 631 F.3d 777, 783 (5th Cir. 2011). And, at minimum, (3) they support Defendants "factual attack" under Rule 12(b)(1). *Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir. 1981).

elections they had voted in. *See* ECF No. 58-1 at 3. As of May 2025, some 403 non-citizens appeared on Louisiana voter rolls, accounting for hundreds of fraudulent votes in Louisiana elections—some decided by razor-thin margins. *See id.* In light of those findings, the Secretary supplemented her EAC request as to Option 1(B) and further requested that the EAC reconsider its prior disposition of Option 1(A). *Id.* at 2.

In December, EAC Chair Donald Palmer called another vote recommending approval of Louisiana's request under both options. *See* Ex. B (2026 EAC decision). Commissioners Palmer and McCormick voted affirmatively, concluding that "Louisiana has indeed met the necessity justification required by the Statute," *id.* at 5, while Commissioners Hicks and Hovland disapproved, finding that Louisiana's proposed options "fail to meet the standard of necessity and would be at odds with Congress's intent," *id.* at 6. Because the recommendation did not receive majority approval as required, *see* 52 U.S.C. § 20928, the EAC issued its decision not to approve Louisiana's request in January 2026. The State is evaluating its options in light of that decision.



## II. THIS LAWSUIT AND ITS FACTUAL ALLEGATIONS.

Plaintiffs are a collection of advocacy organizations challenging the constitutionality of Act 500.[3] Just after it took effect, they sent a letter to the Secretary, which threatened this lawsuit because "enforcement of SB 436's DPOC

[3] They are the League of Women Voters of Louisiana, League of Women Voters of Louisiana Education Fund, Voice of the Experienced, National Association for the Advancement of Colored People Louisiana State Conference, and Power Coalition for Equity and Justice. Am. Compl. ¶ 1.

provision to NVRA-mandated methods of registration will place you in violation of" certain NVRA provisions. ECF No. 61-1 at 4. The Secretary did not respond, Am. Compl. ¶ 138—not least because there was (and is) no ongoing "enforcement" of Act 500, much less in the way Plaintiffs described.

They sued anyway, naming the Secretary and several state officials (collectively "State Defendants"), and, like the letter, premised the entirety of their lawsuit on the manufactured notion that the Act will be implemented in a way inconsistent with federal law. *See, e.g.*, Compl. ¶ 4. And, like the letter, they tiredly allege that "Secretary Landry nor any other state actor has issued any guidance regarding the implementation of the proof of citizenship requirement." ¶ 140; *e.g.*, ¶¶ 3, 5, 143, 159, 223, 245, 248, 254; *but see* Ex. A. ("Interim Guidance for Implementation of Act 500"). Remarkably, even in the Amended Complaint, they maintain those same factually and legally incorrect positions—while simultaneously recognizing that the Secretary has two outstanding requests before the EAC and is not implementing Act 500 the way the United States Supreme Court has proscribed. *See* Am. Compl. ¶¶ 146–51; *see also ITCA*, 570 U.S. at 20.



To square that circle, they name as a defendant the Lafayette Parish registrar Charlene Meaux Menard and glob onto Plaintiffs' counsel's email exchange with her in which Ms. Menard claimed to be "send[ing] the Senate Bill 436 Letter[s]" to all applicants though "[n]o one has been denied" on that basis. *See* ECF No. 61-4, 61-5; *e.g.*, ¶¶ 21, 154–55. Plaintiffs confess that they "are aware of no other parish requiring documentary proof of citizenship of any voters." ¶ 248; *accord* ¶ 158. But to

be clear, that position is emphatically inconsistent with the Secretary's interim guidance, and Ms. Menard will "continue processing voter registration applications as [she] always ha[s]" "until th[e EAC] process is complete." Ex. A. And it is also inconsistent with the Secretary's stated position before the EAC of how she plans to enforce Act 500. *See* ECF No. 58-1.

Fundamental legal misunderstandings aside, Plaintiffs advance a scattershot set of reasons why, they speculate, Act 500 might be implemented in a way to harm their own operations. Those alleged injuries fall into four overlapping categories:

- **Diversion of resources.** Plaintiffs assert they "will need to divert significant resources" to new activities such as purchasing printers or scanners, retraining volunteers, and expanding voter-education efforts. ¶ 27; *see* ¶¶ 18, 22, 24 (LOWV); ¶ 36 (VOTE); ¶¶ 51–53 (NAACP); ¶¶ 68, 73–76 (PC).

- **Mission frustration and difficulties for voter registration events.** Plaintiffs allege Act 500 will "frustrate [their] core mission[s]." ¶ 21 (LOWV); ¶¶ 33, 36–37 (VOTE); ¶ 50 (NAACP); ¶ 68 (PC). Plaintiffs claim that uncertainty about Act 500's implementation renders them "unable to plan for future voter registration events." ¶ 20 (LOWV); ¶ 38 (VOTE); ¶ 68 (PC). And even at those events (and in jails), the participants may not have proof of citizenship readily available for any number of reasons. ¶ 25 (LOWV); *see* ¶¶ 33–34, 36 (VOTE); ¶¶ 55, 57 (NAACP); ¶¶ 68, 72 (PC);

- **Reputation, security, and liability concerns**. Plaintiffs contend that prospective registrants will be "distrustful" of attempts to collect or copy sensitive documents, exposing organizations to "security and liability concerns" and "reputational harm." ¶ 23 (LOWV; ¶ 37 (VOTE); ¶ 56 (NAACP); ¶ 68 (PC).

- **Speculative legal exposure.** They further assert that uncertainty over compliance could subject them to "accusations of impropriety and potential lawsuits" because they may be unable to prove that volunteers properly collected or reviewed proof of citizenship. ¶ 22 (LOWV).

Based on these asserted contingencies, Plaintiffs ultimately claim they may be "unable to register voters altogether ahead of upcoming elections." ¶ 20. In addition to asserting harms to the organizations themselves, Plaintiffs also allege that their members will be injured if Act 500 is implemented in a manner that requires proof of citizenship at the time a voter registration application is submitted. ¶¶ 28–29 (LOWV), ¶¶ 41–42 (VOTE), ¶¶ 54, 58–61 (NAACP), 71 (PC); *see* ¶¶ 173–78, 184–85.

## STANDARD OF REVIEW

**Dismissal for Lack of Jurisdiction.** Rule 12(b)(1) permits a party to raise fatal jurisdictional defects early. *See* Fed. R. Civ. P. 12(b)(1); *e.g.*, *In re FEMA Trailer*, 668 F.3d 281, 286 (5th Cir. 2012) (quoting *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998)). When "a Rule 12(b)(1) motion is filed," "the court first considers its jurisdiction." *McLin v. Twenty-First Jud. Dist.*, 79 F.4th 411, 415 (5th Cir. 2023). Standing, sovereign immunity, and ripeness are jurisdictional questions to be considered first when raised in a Rule 12(b)(1) motion. *See Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) (standing); *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023) (sovereign immunity); *Urb. Devs. LLC v. City of Jackson*, 468 F.3d 281, 292 (5th Cir. 2006) (ripeness). Plaintiffs, as "the part[ies] asserting jurisdiction," "constantly bear[] the burden of proof that jurisdiction does in fact exist." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *see, e.g.*, *United States ex rel. Johnson v. Raytheon Co.*, 93 F.4th 776, 783 (5th Cir. 2024). On a factual attack under Rule 12(b)(1), as here, "no presumptive truthfulness attaches to the [] allegations." *Williamson v. Tucker*, 645 F.2d 404, 412–13 (5th Cir. 1981) (citation omitted).

**Dismissal for Failure to State a Claim.** Dismissal is also proper where a plaintiff fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Hamilton v. Dallas County*, 79 F.4th 494, 499 (5th Cir. 2023) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Plaintiffs' "conclusory allegations, unwarranted factual inferences, or legal conclusions" are "not accept[ed] as true"—only "well-pleaded facts" receive that presumption. *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 210 (5th Cir. 2010) (internal citations and quotations omitted). Once the complaint is stripped to its "well-pleaded facts," those alone "must make relief plausible, not merely possible." *Benfield v. Magee*, 945 F.3d 333, 337 (5th Cir. 2019).



## ARGUMENT

### I. THE COURT SHOULD DISMISS PLAINTIFFS' CLAIMS UNDER RULE 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION.

#### A. Plaintiffs Lack Article III Standing.

This case should begin and end with standing. As the parties asserting jurisdiction, Plaintiffs "bear[] the burden of establishing standing as of the time [it] brought th[e] lawsuit and maintaining it thereafter." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Carney v. Adams*, 592 U.S. 53, 59 (2020)). "To have standing, '[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 285 (5th Cir. 2025) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). "An

organization 'may have standing either by showing it can sue on behalf of its members ("associational" standing) or sue in its own right ("organizational" standing).'" *Id.* (quoting *Tex. State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022)). The Amended Complaint gestures at both theories, but neither works here.

**1. Plaintiffs Lack Organizational Standing.**

Plaintiffs' organizational standing theories do not withstand *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 393–94 (2024). "Organizations suing on their own behalf 'must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals.'" *La Union Del Pueblo Entero*, 151 F.4th at 285 (quoting *FDA*, 602 U.S. at 393–94). Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 286 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013)). And "[o]nly in the rarest cases can organizations demonstrate standing by showing a defendant's action interferes with their activities." *Deep S. Ctr. for Env't Just. v. EPA*, 138 F.4th 310, 318 (5th Cir. 2025); *see FDA*, 602 U.S. at 395 (Article III requires "direct interference."). Plaintiffs fail to allege this to be one of those rare cases.

*First*, Plaintiffs' alleged resource diversions are self-inflicted—not cognizable Article III injuries. *See* Am. Compl. ¶¶ 18, 21–22, 24, 27, 33, 36–37, 50–53, 68, 73–76. Plaintiffs may well "need to divert resources" into buying printers and scanners, training volunteers, and educating people—but the "challenged" law "neither prevents [them] from engaging in [their] advocacy, education, and training activities nor compels [them] to take any action." *Deep S. Ctr.*, 138 F.4th at 319–20. "So [their]

diversion-of-resources theory fails." *Id.* at 320; *accord La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Props., LLC*, 82 F.4th 345, 353 (5th Cir. 2023) ("the perceptible impairment ... not the drain on the organization's resources, is the concrete and demonstrable injury for organizational standing" (cleaned up)); *La Union Del Pueblo Entero*, 151 F.4th at 287 ("'[D]ivert[ing] ... resources in response to a defendants' [sic] actions' does not establish standing.").

*Second*, Plaintiffs' alleged mission frustration and the alleged added difficulty of planning and executing its registration events also fall short of Article III. *See* Am. Compl. ¶¶ 20–21, 25, 33–34, 36–38, 50, 55, 57, 68, 72. "Even if [the law] 'makes it more difficult' for [Plaintiffs] to achieve [their] mission—which is far from obvious—that is not the kind of 'impediment' *Alliance* requires." *Deep S. Ctr.*, 138 F.4th at 319; *e.g.*, *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 938–39 (5th Cir. 2022) ("At best, they might at some future date seek to vindicate the specific interests of third party voters whom they (and their counsel) do not represent—which is both speculative and a far cry from concrete injury to Plaintiffs themselves.").



*Third*, Plaintiffs' allegations that registrants will be "distrustful" of attempts to collect or copy sensitive documents, thereby exposing organizations to "security and liability concerns" and "reputational harm," Am. Compl. ¶¶ 23, 37, 56, 68, is a speculative bridge too far for Article III. "[C]onsider the chain of [Plaintiffs'] speculation." *Deep S. Ctr.*, 138 F.4th at 323. Links of speculation galore: (1) The EAC denies Louisiana's pending requests; (2) the Secretary implements Act 500 in the manner Plaintiffs say; (3) Plaintiffs conduct a voting registration event; (4) they

choose to collect, copy, or handle proof-of-citizenship documentation themselves; (5) a critical mass of prospective registrants perceive those efforts as intrusive or untrustworthy; and (6) that subjective distrust translates into concrete reputational harm to Plaintiffs. But "plaintiffs attempting to show causation generally cannot 'rely on speculation about the unfettered choices made by independent actors not before the courts.'" *See FDA*, 602 U.S. at 383 (citation omitted). "[T]he attenuation itself precludes standing." *Deep S. Ctr.*, 138 F.4th at 323.

*Finally*, only LOWV poses the longshot idea that they face "accusations of impropriety and potential lawsuits" that preclude them from proving that volunteers properly collected or reviewed proof of citizenship. Am. Compl. ¶ 22 (citing La. R.S. 18:1461.2(A)(9)). That is not a serious argument. Nothing they describe is even arguably proscribed by the statute they invoke, which covers "knowingly, willfully, or intentionally" "copy[ing] or reproduc[ing] a voter registration application that has been submitted by an applicant" "[f]or [a] purpose[] other than fulfilling the person's duties relative to registration of voters as provided by law." La. R.S. 18:1461.2(A)(9). And in all events, it is the district attorney, not these Defendants, that would prosecute any offense. *See* La. Const. art. V, § 26(B). Accordingly, nothing about that threat of future prosecution is substantial. *See Wang v. Paxton*, 161 F.4th 357, 361 (5th Cir. 2025) ("To show an injury in the pre-enforcement context, [a plaintiff] must show that 'the threat of future enforcement … is substantial.'" (citation omitted)).

**2. Plaintiffs Lack Associational Standing.**

Nor can Plaintiffs invoke the supposed injuries to their members as a basis for Article III standing. *See* Am. Compl. ¶¶ 28–29, 41–42, 54, 58–61, 71. To invoke

associational standing, Plaintiffs "must demonstrate that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (quoting *Hunt v. Wa. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). Plaintiffs cannot satisfy that burden for at least two reasons.

*First*, no member has standing to sue under the NVRA. *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 191 (5th Cir. 2012) ("The first prong requires that at least one member of the association have standing to sue in his or her own right."), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). That is because the pre-suit letter Plaintiffs sent to the Secretary "did not mention" any individual member. *Scott v. Schedler*, 771 F.3d 831, 834 (5th Cir. 2014). So any member's suit would necessarily fail "on standing and notice grounds." *Id.* at 833.

*Second*, the alleged member injury is far too speculative and not traceable to these Defendants. Plaintiffs envision a member that "anticipate[s] updating their registration" sometime after a "move, change in party affiliation, or name change," Am. Compl. ¶ 28, who also "do[es] not currently possess common forms of proof of citizenship," *id.* ¶ 29. That is, of course, chains of rank speculation. *Deep S. Ctr.*, 138 F.4th at 323; *see* Am. Compl. ¶¶ 59, 71 (NAACP and Power Coalition alleging this only "[u]pon information and belief" about their own members). And, even so, the

"insurmountable barriers" that members supposedly face arise from the time and costs of "obtaining … proof of citizenship," *id.* ¶ 29—with which these Defendants and Act 500 have nothing to do, *see Haaland v. Brackeen*, 599 U.S. 255, 296 (2023) (no standing where "alleged costs are not 'fairly traceable' to the [challenged law]").

**3. Fifth Circuit Precedent Independently Forecloses Standing for Plaintiffs' Pre-enforcement Vagueness Claim.**

Even if Plaintiffs could plausibly allege a basis for organizational or associational standing (they cannot), Plaintiffs also lack standing for their pre-enforcement vagueness claim. As the Fifth Circuit has put it, a plaintiff who has "never been arrested or prosecuted for violating" a statute "lack[s] standing to preemptively challenge [it] under the Due Process Clause." *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782 (5th Cir.), *cert. denied sub nom. Nat'l Press Photographers Ass'n v. Higgins*, 145 S. Ct. 140 (2024). That is because, when "the available evidence suggests that Defendants have never enforced [the statute] against Plaintiffs (or anybody else)," "[t]he issue of whether the [challenged] provisions are unlawfully vague in their proscriptions is therefore a mere hypothetical dispute lacking the concreteness and imminence required by Article III." *Id.* That is especially so where, as here, Plaintiffs' challenge "do[es] not implicate the First Amendment." *Id.* at 782 n.32. And this case is even more attenuated, for it's entirely unclear how these Plaintiff organizations (who cannot register to vote) would have Act 500 ever enforced against them. Plaintiffs thus independently lack standing for their vagueness claim.

**B. The Claims Are Not Ripe.**

Plaintiffs' claims are also unripe because (1) they are not "fit for judicial decision," and (2) there would be no "hardship to the parties" if the court withheld its consideration. *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, 70 F.4th 914, 930 (5th Cir. 2023). A claim is "'fit for judicial decision' if it presents a pure question of law that needs no further factual development." *Id.* If a claim is "contingent [on] future events that may not occur as anticipated, or indeed may not occur at all," then the claim is not ripe. *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985). So here.

Plaintiffs' entire case is contingent upon a future implementation of Act 500 that may not occur—and indeed, is not occurring—as they predict. *See* Am. Compl. ¶ 4 ("if implemented to require additional documentation to prove citizenship"); *e.g.*, ¶¶ 18, 21, 22, 33, 42, 56, 61, 68, 71, 72 (repeating the same contingency). That is the precise "speculation" that the fitness prong guards against. *See Braidwood Mgmt.*, 70 F.4th at 926. Nor do Plaintiffs face any hardship from the Court withholding review at this time, because their supposed injury is entirely conjectural. *See Ass'n of Am. Physicians & Surgeons Educ. Found. v. Am. Bd. of Internal Med.*, 103 F.4th 383, 396 (5th Cir. 2024). In the pre-enforcement context, any hardship "must arise from a fear of prosecution that is not 'imaginary or wholly speculative.'" *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006) (citation omitted). Accordingly, there is no practical impediment to Plaintiffs waiting to file an appropriately ripened suit if their speculation becomes reality.

**C. Plaintiffs Failed to Comply with the NVRA's Notice Requirement.**

Plaintiffs also failed to comply with the NVRA's jurisdictional notice requirement. *See Scott*, 771 F.3d at 835 ("No standing is therefore conferred if no proper notice is given, since the 90–day period never runs." (quoting *Ga. State Conference of NAACP v. Kemp*, 841 F.Supp.2d 1320, 1335 (N.D. Ga. 2012))). Before an NVRA suit, "[a] person who is *aggrieved* by a violation … may provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1) (emphasis added). Only "[i]f the violation is not corrected within 90 days after receipt of a notice" can "the aggrieved person … bring a civil action." *Id.* § 20510(b)(2).

To be sure, Plaintiffs sent the Secretary of State what they call an NVRA notice on January 28, 2025. *See* ECF No. 61-1. But that letter makes clear that, at the time they sent the letter, Plaintiffs admitted that the Secretary had not committed any NVRA violation:

> This letter constitutes notice pursuant to 52 U.S.C. § 20510(b) that your enforcement of SB 436's DPOC provision to NVRA-mandated methods of registration will place you in violation of 52 U.S.C. §§ 20504, 20505, 20506, 20507, and 20508. If this violation is not corrected within 90 days, the undersigned may seek declaratory or injunctive relief to remedy the violation. *See* 52 U.S.C. 20510(b)(2)."

ECF No. 61-1 at 4. The fundamental problem is that the Secretary was not "enforc[ing]" the Act then. Rather, she was requesting that the EAC amend the Federal Form's Louisiana-specific instructions. ECF No. 46-3. So what exactly was the violation? What aggrieved Plaintiffs? What could the Secretary have "corrected" in 90 days? That is the problem with this pre-enforcement posture—and exactly what

the NVRA's notice provision was intended to forbid. There is no violation, no aggrieved party, and thus no requisite notice that could constitute the exhaustion required before a plaintiff files an NVRA suit.

**D. The State Defendants Are Entitled to Sovereign Immunity.**

**1. The Secretary is entitled to sovereign immunity from the constitutional claims (Counts I, VI, & VII).**

Sovereign immunity also forecloses Plaintiffs' vagueness claim and two Equal Protection claims against the Secretary of State. *See* Am. Compl. ¶¶ 197–207, 242–257. And *Ex parte Young* offers no refuge. That is principally because Plaintiffs do not allege any "ongoing violation[] of federal law." *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 671 (5th Cir. 2022). But for *Ex parte Young* to apply, "a complaint must allege that the defendant *is violating* federal law." *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015). And where a state official "neither enforced the challenged statute against anyone nor threatened to do so," there is no "ongoing conduct" sufficient to trigger *Ex parte Young*. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 332 (5th Cir. 2024).



The Amended Complaint's only mentions of the Secretary (the only State Defendant mentioned at all) are faulting her for *inaction* in implementing Act 500 the way Plaintiffs believed she would. *See* Am. Compl. ¶ 140 ("neither Secretary Landry nor any other state actor has issued any guidance regarding the implementation of the proof of citizenship requirement to rectify the vagueness or resolve the ambiguity"); *see also id.* ¶¶ 143, 145. And they even highlight that the Secretary told registrars that she had not yet but "*will* implement" Act 500 at a later

date. *See id.* ¶ 142. On Plaintiffs' telling, therefore, there is no "ongoing conduct" of the Secretary sufficient to trigger *Ex parte Young*.

**2. The State Defendants are entitled to sovereign immunity from the NVRA claims (Counts II, III, IV, & V).**

Sovereign immunity likewise forecloses the NVRA claims. Congress enacted the NVRA under its Article I power under the Elections Clause. *See* U.S. Const. art. I, § 4, cl. 1. But "Congress may not abrogate state sovereign immunity pursuant to its Article I powers." *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 636 (1999) (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 72–73 (1996)); *accord Allen v. Cooper*, 589 U.S. 248, 257 (2020) ("Article I cannot justify haling a State into federal court."); *cf. Ill. Conservative Union v. Illinois*, No. 20 C 5542, 2021 WL 2206159, at *9 (N.D. Ill. June 1, 2021) ("It is not entirely clear whether the Elections Clause authorizes Congress to abrogate sovereign immunity, however." (comparing *Seminole Tribe*, 517 U.S. at 72–73, and *United States v. Louisiana*, 196 F. Supp. 3d 612, 657 (M.D. La. 2016))). So Plaintiffs' NVRA claims against the State Defendants necessarily fail on sovereign immunity grounds.



## II. THE COURT SHOULD DISMISS PLAINTIFFS' CLAIMS UNDER RULE 12(B)(6).

### A. The Constitutional Claims Fail.

**1. The void-for-vagueness claim (Count I) fails.**

Though they lack standing to press it twice over, *see supra* Section I, Plaintiffs' vagueness claim independently fails on the merits. "[T]o be unconstitutionally vague, a statute must be impermissibly vague in all its applications, including its application to the party bringing the vagueness challenge." *United States v. Rafoi*, 60 F.4th 982,

996 (5th Cir. 2023) (citation omitted). "In the civil context" (like here) "the statute must be so vague and indefinite as really to be no rule at all." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 409 (5th Cir. 2020) (quoting *Groome Res. Ltd. v. Par. of Jefferson*, 234 F.3d 192, 217 (5th Cir. 2000)). Unconstitutional vagueness does not spring up "merely because a company or an individual can raise uncertainty about its application[.]" *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 509 (5th Cir. 2001); *accord United States v. Williams*, 553 U.S. 285, 305 (2008) ("Its basic mistake lies in the belief that the mere fact that close cases can be envisioned renders a statute vague.").

Under that settled rubric, Plaintiffs' vagueness theory is a nonstarter. They suppose that Act 500 is unconstitutionally vague because it does not expressly define "proof of United States citizenship." Am. Compl. ¶ 204, or spell out its implementation details, *id.* ¶ 203. Several problems follow. *First*, Plaintiffs cannot show vagueness even as applied to themselves because they are organizations categorically ineligible to register to vote. *See Rafoi*, 60 F.4th at 996. *Second*, and pointing up the prematurity of this suit, the meaning of "proof of United States citizenship" is obvious from the Secretary's EAC request. *See* ECF No. 46-3 at 2–3 ("your place of birth (State/Province, Country) and, if applicable, your unique immigration identifier (e.g. USCIS/Alien Registration Number; Form I-94, Arrival/Departure Recor, number; Student and Exchange Visitor Information System (SEVIS) ID number; Naturalization/Citizenship Certification Number; or Card

Number/I-797 Receipt Number"). For these reasons, Act 500 is not unconstitutionally vague.

**2. The Equal Protection claims (Count VI & VII) fail.**

Plaintiffs' new Equal Protection claims are also meritless. *First*, they fail from the jump because Plaintiffs have not alleged that they—nor any of their members—belong to the suspect classes they identify. *See generally* Am. Compl. Indeed, the Plaintiff organizations themselves could never be members of a suspect class. *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 945 F.3d 206, 225 (5th Cir. 2019).

*Second*, Plaintiffs' claims against the Secretary fail because they fault her only for *inaction*. *See* Am. Compl. ¶¶ 245, 254. But "only state *action* can give rise to liability under § 1983[.]" *Lindke v. Freed*, 601 U.S. 187, 193 (2024) (emphasis added). That principle applies with full force to Equal Protection claims. *See Beltran v. City of El Paso*, 367 F.3d 299, 304 (5th Cir. 2004) ("the Equal Protection Clause should not be used to make an end-run around the *DeShaney* principle"). Because Plaintiffs allege no affirmative conduct by the Secretary, their claims against her fail as a matter of law.

*Third*, and most fundamentally, Plaintiffs' conclusory accusations of national-origin and residency discrimination collapse under their own pleading exhibits. *See Stockwell v. Kanan*, 442 F. App'x 911, 913 (5th Cir. 2011) (per curiam) ("In case of a conflict between the allegations in a complaint and the exhibits attached to the complaint, the exhibits control." (citing *United States ex rel. Riley v. St. Luke's*

*Episcopal Hosp.*, 355 F.3d 370, 377 (5th Cir. 2004); and *Simmons v. Peavy–Welsh Lumber Co.*, 113 F.2d 812, 813 (5th Cir. 1940))).

The Amended Complaint alleges that the Lafayette Registrar maintains "a practice of requiring additional documentation of at least voter registration applicants who were born outside of the United States." Am. Compl. ¶ 247. That allegation is drawn from an email exchange between Plaintiffs' counsel and Ms. Menard (attached to the Amended Complaint). ECF No. 61-5.

That email exchange reveals how fundamentally untrue or, at best, misleading the accompanying allegations are. There, Ms. Menard explains that, "if #1 [i]s not checked off"—that is, the question "Are you a citizen of the United States?"—then she "process[es] the application no matter what" and merely sends a letter advising the applicant of Act 500. ECF No. 61-5 at 2. That is a far cry from the allegation that "Lafayette Parish Registrar of Voters requir[ing] at least some—and possibly all—voter registration applicants to provide documentary proof of citizenship." Am. Compl. ¶ 5; *see id.* ¶¶ 156–57 (likewise overstating).



To be sure, Ms. Menard's practice is inconsistent with the Commissioner's guidance. *See* Ex. A.[4] But nothing about registering applicants and then sending them a letter constitutes discrimination based on national origin or residency. Plaintiffs' own exhibits foreclose the inference they ask the Court to draw, so Counts VI and VII should be dismissed.

[4] For that reason, too, any injunctive relief would independently be barred by *Pennhurst State School and Hospital v. Halderman*. 465 U.S. 89, 106 (1984) ("A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law.").

**B. The NVRA Claims (Counts II, III, IV, V) Fail.**

**1. Plaintiffs have not pled a plausible NVRA violation.**

Plaintiffs' own allegations plead themselves out of their NVRA claims. On their telling, there are "no other parish[es] requiring documentary proof of citizenship of any voter[]" registration applicants. Am. Compl. ¶ 248; *see id.* ¶ 158 (similar). Nor, by Plaintiffs' own account, is the Secretary of State proceeding that way. *See* Am. Compl. ¶¶ 146–51; *accord* Ex. A. And on a fair reading of the email incorporated into the Amended Complaint, neither was the Lafayette Registrar. *See* ECF No. 65-5 at 2. As explained above, that email reflects that applications were processed regardless of whether the citizenship checkbox is marked, with applicants merely advised of Act 500—not required to submit proof as a condition of registration. *Supra* p. 21. In short, Plaintiffs allege the inescapable reality that Defendants are accepting and using both the Federal Form and State Form for mail-in voter registration, consistent with what Plaintiffs themselves say the NVRA demands. *See* Am. Compl. ¶¶ 216, 225, 235 ("Louisiana cannot require applicants using the Federal Form to provide additional proof of citizenship."). The Court should thus dismiss those claims.



**2. If the NVRA applies on these allegations, the NVRA is unconstitutional.**

If the NVRA can be wielded to declare unlawful a duly enacted State law protecting the State's election integrity, the NVRA is itself unconstitutional for at least two reasons.

**a.** The NVRA violates the Tenth Amendment and Qualifications Clause by commandeering the State legislative process. No matter its enumerated powers,

Congress lacks the power "to issue direct orders to the governments of the States." *Murphy v. NCAA*, 584 U.S. 453, 471 (2018). So "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *Id.* at 472 (quoting *New York v. United States*, 505 U.S. 144, 161 (1992)). If the NVRA operates as Plaintiffs suppose, it "unequivocally dictates what a state legislature may and may not do." *Id.* at 474. As the Supreme Court made clear in *Murphy*, that violates the anti-commandeering doctrine whether it "compel[s] a State to enact legislation" or "prohibit[s] a State from enacting new laws," like Act 500. *Id.* Nor does the Elections Clause supply an exception. *See* Paul E. McGreal, *Unconstitutional Politics*, 76 Notre Dame L. Rev. 519, 520–632 (2001) (examining the "text, history, precedent, structure, and prior government practice" to conclude that "Congress cannot commandeer under the Times, Places and Manner Clause"). Applied here, Plaintiffs' reading would convert the NVRA from a statute regulating voter-registration practices into a federal veto on Louisiana's lawmaking authority. That problem is especially stark here: Louisiana is implementing Act 500 in a manner the Supreme Court has recognized as constitutionally permissible, *see ITCA*, 570 U.S. at 20, yet Plaintiffs would wield the NVRA as a federal veto to nullify Act 500 anyway, in violation of the anti-commandeering doctrine.



**b.** Even if the NVRA, so construed, did not violate the Tenth Amendment, it would exceed Congress's power under the Elections Clause in contravention of the Qualifications Clause. That former clause provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. I, § 4, cl. 1. The latter clause provides:

> [T]he Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

U.S. Const. art. I, § 2, cl. 1. So naturally, States have the authority "to control who may vote in congressional elections" so long as they do not "establish special requirements that do not apply in elections for the state legislature." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 864–65 (1995) (Thomas, J., dissenting). But the text and history both show that "[t]he Framers did not intend to leave voter qualifications to Congress." *ITCA*, 570 U.S. at 26 (Thomas, J., dissenting). And "Article I, § 4, also cannot be read to limit a State's authority to set voter qualifications because the more specific language of Article I, § 2, expressly gives that authority to the States." *Id.* at 31. Accordingly, Act 500 fits comfortably within that scheme.



## CONCLUSION

The Court should grant Defendants' motion and dismiss Plaintiffs' claims.

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