UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, et al.,

Plaintiffs,

v.

HOWARD W. LUTNICK, et al.,

Defendants.

No. 8:25-cv-02486-WFJ-SDM-RSR

INTERVENORS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

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ARGUMENT

I. Plaintiffs lack standing.

A. Plaintiffs fail to allege causation and redressability.

Plaintiffs do not allege facts showing that the allegedly "excessive" imputation *caused* the alleged undercount that they say produced their injuries. Standing requires "allegations plausibly suggesting (not merely consistent with)" causation. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Just as the plaintiffs in *Twombly* could not state a conspiracy claim with "an allegation of parallel conduct and a bare assertion of conspiracy," *id.* at 556, Plaintiffs cannot show causation by alleging imputation and an undercount and asserting that the one caused the other, without factual allegations connecting them. Plaintiffs' own allegations reveal an "obvious alternative explanation" for the undercount, *id.* at 567—challenges caused by COVID-19. Plaintiffs nowhere say what the Bureau should have done differently or how it could have done more enumeration, given COVID-19.

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Plaintiffs also cannot show redressability. Even Plaintiffs know it is now six years too late to directly enumerate more 2020 households, so the relief they seek is only to "*exclude*[] population data . . . derived primarily from statistical methods," Dkt. 88 at 43–44 (emphasis added)—they do not and could not demand the Bureau time travel to directly enumerate more households six years ago. Excluding imputed population could only *reduce* Florida's

population, and Plaintiffs offer no factual allegations suggesting Florida would lose less population than other states and thus come out ahead from such relief.

B. Plaintiffs do not allege any informational injury.

Plaintiffs also fail to allege standing based on an "informational" injury. They fail causation and redressability, because they do not allege facts showing that the Census would have been more accurate without imputation, nor that it would be made more accurate by removing imputed population data now. But they also fail to allege a cognizable informational injury at all.

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Congress's creation of a cause of action for Rep. Donalds does not give him an informational injury, because Congress "may not simply enact an injury into existence," and even with a statutory cause of action, "[a]n asserted informational injury that causes no adverse effects cannot satisfy Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426, 442 (2021) (citation omitted). *FEC v. Akins*, 524 U.S. 11 (1998), and *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989), do not help Plaintiffs, because "[i]n *Public Citizen* and *Akins*, the plaintiffs identified such adverse effects." *Laufer v. Looper*, 22 F.4th 871, 880–81 (10th Cir. 2022); *see also Trichell v. Midland Credit Mgmt.*, 964 F.3d 990, 1004 (11th Cir. 2020). And regardless, after *TransUnion*, the "real issue" is whether Plaintiffs' "injury is sufficiently concrete under the Supreme Court's opinion" in that case. *PILF v. Sec'y Commonwealth of Pa.*, 136 F.4th 456, 463 (3d. Cir. 2025). Rep. Donalds's conclusory allegations that he "uses"

census data to "inform his votes" and "advise constituents" in unspecified ways, Dkt. 88 ¶¶ 178, 183, do not suffice.

Rep. Donalds's asserted informational injury is also inadequate under *Raines v. Byrd*, 521 U.S. 811 (1997). Like the plaintiff in *Walker v. Cheney*, Rep. Donalds' injury is institutional because if Rep. Donalds "were to retire tomorrow, he would no longer have a claim." 230 F. Supp. 2d 51, 66 (D.D.C. 2002) (citation modified); *see also Waxman v. Thompson*, No. CV 04-3467 MMM, 2006 WL 8432224, at *11 (C.D. Cal. July 24, 2006) (applying *Raines* to informational injury). For a legislator's injury to be "personal," it must "zero[] in on the individual." *Kerr v. Hickenlooper*, 824 F.3d 1207, 1216 (10th Cir. 2016). Rep. Donalds' injury, though, is "shared by the [534] members of the Congress who did not join the lawsuit." *Blumenthal v. Trump*, 949 F.3d 14, 19 (D.C. Cir. 2020).

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II. Section 209 precludes Plaintiffs' APA claims.

Plaintiffs' argument that Section 209 is a "special statutory review proceeding that operates within the APA framework" is a concession that an APA action is barred. An APA action "may be brought against the United States, the agency by its official title, or the appropriate officer" *only* "[i]f no special statutory review proceeding is applicable." 5 U.S.C. § 703. "Thus, APA review is not available in the instant matter because special statutory-review proceedings under [Section 209] already exist." *Harris v. DHS*, 18 F. Supp. 3d

1349, 1359 (S.D. Fla. 2014) (Rosenbaum, J.) (discussing 5 U.S.C. § 703). Section 209(c)(2)'s reference to "final agency action" does not change that. Congress routinely uses similar language in statutes that, like Section 209, preclude APA claims. *See, e.g.*, *Stephens v. Dep't of Health & Human Servs.*, 901 F.2d 1571, 1576 (11th Cir. 1990) (holding that the Civil Service Reform Act, which governs appeals from a "final order or decision" of the MSPB, 5 U.S.C. § 7703(a)(1), precludes APA review).

Section 209 provides an "adequate" remedy because it creates a cause of action for those "aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act)." Act of Nov. 26, 1997, Pub. L. No. 105-119, § 209(b), 111 Stat. 2440, 2481. That covers the whole Complaint, including Count V, which argues the "decision" to "use imputation to the extent that they did" was "arbitrary and capricious" in violation of 5 U.S.C. § 706(a)(A) and 13 U.S.C. § 141(a). Dkt. 88 ¶¶ 212, 216. In contrast, *Department of Commerce v. New York*, 588 U.S. 752 (2019), fell outside Section 209 because it did not challenge statistical methods.

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III. Plaintiffs' claims are untimely.

A. Plaintiffs' claims are time barred.

Plaintiffs' claims under Section 209 are time barred under 28 U.S.C. § 1658, for two reasons. First, they cannot be brought against "the United States," 28 U.S.C. § 2401(a), but only against official capacity defendants under

the legal fiction of *Ex parte Young*, 209 U.S. 123 (1908). Plaintiffs' citation of a series of Section 209 cases that do not name the United States as a defendant confirms this. Dkt. 103 at 21–22. Official-capacity suits are treated as claims against the United States when covered by a waiver of the United States' sovereign immunity. *See Geyen v. Marsh*, 775 F.2d 1303, 1307 (5th Cir. 1985) (citing 5 U.S.C. § 702). But Section 209 has no waiver.

Second, even if Section 2401(a) applies, it does not conflict with, and thus does not supersede, Section 1658's independent statutory bar. Section 2401 says only that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years." 28 U.S.C. § 2401(a). It imposes a six-year maximum time to sue without foreclosing application of another, shorter period. It therefore does not "otherwise provide[] by law" as would be necessary to overcome Section 1658's four-year period. *Id.* § 1658(a).

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B. Plaintiffs' claims are barred by laches.

Plaintiffs ignore the explicit proviso in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), that laches may bar equitable relief within the limitations period in "extraordinary circumstances." *Id.* at 685. Plaintiffs' delay in suing and the nationwide upheaval that would result are extraordinary by any measure. Even if the "full scope" of imputation was not "apparent" until February 2022, Dkt. 103 at 23, Plaintiffs could have sued then—before the first federal elections under districts based on the new census were held. And this

Court has already rejected Plaintiffs' "continuing violation," argument, *id.* at 24, as "legally baseless." Dkt. 84 at 18. Just as "later consequences of past violative conduct don't extend the limitations period," *id.*, they cannot excuse Plaintiffs' extraordinary delay from application of laches.

The prejudice from the belated relief Plaintiffs seek would be no less extraordinary. It is not "democracy working as intended," Dkt. 103 at 24, for a court kick off a *nationwide* re-draw of virtually *every* legislative district in the country halfway through the decennial census cycle. Courts have applied laches where the relief sought would result in much more modest changes to legislative districts. *See Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000); *Sanders v. Dooly Cnty.*, 245 F.3d 1289, 1290–91 (11th Cir. 2001) (per curiam). And any declaratory relief that would actually redress Plaintiffs' alleged injuries would be no less disruptive. *Contra* Dkt. 103 at 25.

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True, the Eleventh Circuit, in a case pre-dating *Petrella*, declined to apply the "extraordinary circumstances" exception in a copyright case seeking an injunction against *future violations*. *Peter Letterese & Assocs. v. World Inst. of Scientology Enters.*, 533 F.3d 1287, 1321 (11th Cir. 2008). But Plaintiffs no longer seek prospective relief as to the 2030 Census—they seek only a remedy for past alleged wrongs. While that remedy will have future effects, it is not "prospective" relief in the sense *Peter Letterese* used that term.

IV. Plaintiffs' claims fail on the merits.

A. *Utah v. Evans* forecloses Plaintiffs' constitutional claims.

Plaintiffs' conclusory allegation that the Bureau "suspended normal procedures" and relied on imputation at an "unprecedented scale" does not plausibly allege anything approaching the wholesale "substitution of statistical methods" hypothesized in *Utah v. Evans*, 536 U.S. 452, 477 (2002); *see* Doc. 103 at 33 (citing TAC ¶ 49). Again, Plaintiffs have not explained what the Bureau should have or could have done differently under the circumstances of COVID-19. They therefore necessarily have not alleged that the Bureau failed to make "all efforts . . . to reach every household," *Evans*, 536 U.S. at 479. That fatal pleading defect should be resolved on a motion to dismiss.

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B. Plaintiffs fail to state a claim under 13 U.S.C. § 141(a).

The Bureau cannot have "violated" 13 U.S.C. § 141(a) because that section does not forbid anything—it is a grant of discretionary authority. While that discretion is not "unbounded," Dkt. 103 at 32 (quoting *Dep't of Com.*, 588 U.S. at 772), its bounds are found elsewhere, not in Section 141(a). *See, e.g.*, 13 U.S.C. § 195. The Supreme Court in *Department of Commerce* held merely that the Secretary's decisions about what questions to include on the census questionnaire are judicially reviewable and do not fall within the narrow exception in 5 U.S.C. § 701(a)(2) for agency actions "committed to agency

discretion by law." 588 U.S. at 771–72. There was no claim in that case that the Bureau "violated" Section 141(a).

C. The use of imputation was not arbitrary and capricious.

Plaintiffs' conclusory allegation that the Bureau's action was "arbitrary and capricious" is merely "a formulaic recitation of the elements of a cause of action" that does not suffice to state a claim. *Twombly*, 550 U.S. at 555. "Simply reciting the APA's 'arbitrary and capricious' standard and gesturing at a regulatory citation is not a legal argument. A petitioner cannot just allege a violation and leave it to the Court to connect the dots." *Lageyre-Ravelo v. Lyons*, No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *6 (M.D. Fla. Mar. 2, 2026). Merely alleging that (1) the Bureau used more imputation than in past years and (2) there was a statistically significant undercount, Dkt. 103 at 35, says nothing at all about whether the decision to do so was "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). That question can and should be resolved on a motion to dismiss, especially since the reasonableness of the Bureau's decision and their explanation are apparent on the face of the TAC.

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CONCLUSION

The Court should dismiss the Third Amended Complaint with prejudice. Contrary to Plaintiffs' account, they have already twice made substantial changes to their standing and substantive allegations in prior amendments.

Dated: April 24, 2026

Respectfully submitted,

/s/ David R. Fox
David R. Fox* (Lead Counsel)
Richard A. Medina*
Max C. Accardi*
Tori Shaw*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW,
Suite 400
Washington, D.C.
Telephone: (202) 968-4490
dfox@elias.law
rmedina@elias.law
maccardi@elias.law
tshaw@elias.law

*Special admission

/s/ Frederick S. Wermuth
Frederick Wermuth
Fla. Bar No. 0184111
Quinn B. Ritter
Fla. Bar. 1018135
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
25 East Pine Street
Orlando, FL 32801
Telephone: (407) 422-2472
fwermuth@kbzlaw.com

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2026, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar. No. 0184111