IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LEAGUE OF WOMEN VOTERS OF INDIANA et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. 1:25-cv-02150-MPB-MJD
MORALES et al,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

Plaintiffs' claims are not justiciable because Plaintiffs lack standing under either organizational or associational standing theory and their claims as to the current-voter crosscheck requirement are moot. Additionally, the Secretary of State is not a proper defendant because he has no role in enforcing the state laws at issue. Further, the Plaintiffs have failed to allege claims upon which relief may be granted because the challenged statutes comply with the NVRA and the CRA. Plaintiffs' claims should be dismissed.

BACKGROUND

Effective July 1, 2025, the Indiana General Assembly required additional procedures in the verification by election officials of the citizenship of voters. Section 17 of Indiana Public Law 65-2024, codified at Indiana Code § 3-7-38.2-7.3, requires the Election Division to compare the voter registration system with the Bureau of Motor Vehicles' list of temporary credentials. Specifically, the Election Division must crosscheck voter registrations with BMV credentials listed under either Indiana Code sections 9-24-11-5(c) or 9-24-16-3(f), both of which list the types of evidence the BMV accepts to show temporary lawful status.

If the Election Division determines that evidence exists showing the individual may not be a citizen of the United States, the Division will notify the county election office in which the individual has registered. Ind. Code § 3-7-38.2-7.3(b). The county will then send a notice to the registrant requiring the individual to provide documentary proof of citizenship ("DPOC") within thirty days of receipt of the notice. Ind. Code § 3-7-38.2-7.3(c). If the individual is unable to provide proof of citizenship, the county shall cancel that voter registration. Ind. Code § 3-7-38.2-7.3(d).

An individual whose registration is cancelled under this process may appeal in person or by mail, after which the county election board must conduct a hearing, make findings, and notify the county voter registration office of its findings. Ind. Code § 3-7-38.2-7.3(e). Evidence provided by an individual to prove citizenship is confidential. Ind. Code § 3-7-38.2-7.3(f).

In addition to the new requirements for existing voter registrations, the state legislature also codified a similar requirement on new registrations at Indiana Code § 3-7-26.3-37. If a new voter registration uses an identification number from a temporary credential issued by the BMV, the county voter registration official must send a notice requesting proof of citizenship (as defined at Indiana Code § 3-7-38.2-7.3(a)) within thirty days of receipt. If the individual fails to provide proof of citizenship, the county shall reject the registration. Ind. Code § 3-7-26.3-37(c).

On October 21, 2025, Plaintiffs, four organizations, filed their "Complaint for Declaratory and Injunctive Relief." Dkt 1. Plaintiffs seek declarative relief that the two challenged laws (Indiana Code § 3-7-38.2-7.3 and 3-7-26.3-37) violate the National Voter Registration Act (NVRA), the Civil Rights Act of 1964 (CRA), a permanent preliminary injunction barring enforcement of the challenged laws and a court order requiring Defendants to notify county

election officials of the injunction, and an order requiring Defendants to produce individualized voter information. Dkt. 1 ¶¶ 242-246. Plaintiffs further seek costs and fees. Dkt. 1 ¶ 248.

Plaintiffs completed service on Secretary of State Diego Morales on November 14, 2025. Dkt. 14. Service on the Election Division Co-Directors Bradley King and Angela Nussmeyer on November 19, 2025. Dkt. 15-16. Plaintiffs filed their Motion for Expedited Discovery on November 28, 2025. Dkt. 17. The Court set a hearing on December 12, 2025, on that motion. Dkt. 18.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) permits a party to assert the court's "lack of subject matter jurisdiction" as a defense. Jurisdictional objections may be raised at any time in litigation, *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006), and a court is required to dismiss an action if "it determines at any time that it lacks subject-matter jurisdiction." Fed. R. Civ. P. 12(h)(3). The plaintiff, as the party invoking federal jurisdiction, bears the burden of proof to establish "the irreducible constitutional minimum of standing." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "In deciding whether the plaintiffs have carried this burden, the court must look to the state of affairs as of the filing of the complaint; a justiciable controversy must have existed at that time." *Int'l Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1210 (7th Cir. 1980).

At the pleading stage, the plaintiff must "clearly . . . allege facts demonstrating" each element of standing: (1) an injury-in-fact, (2) fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Where a complaint may be initially sufficient to allege standing, if a defendant raises external facts that call the court's jurisdiction into question, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not

preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 444 (7th Cir. 2009) (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). Instead, on a factual challenge to a plaintiffs' standing, the court may "properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Id.*

The Federal Rules of Civil Procedure also allow a defendant to file a motion to dismiss a complaint based on the plaintiff's "failure to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). A complaint "must contain sufficient factual matter . . . to 'state a claim that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A motion to dismiss for failure to state a claim upon which relief may be granted challenges the legal sufficiency of the complaint, not the merits. *See Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Northwest Indiana*, 786 F.3d 510, 526 (7th Cir. 2015). At the pleadings stage, the Court "accept[s] all well-pleaded factual allegations as true and view[s] them in the light most favorable to the plaintiff." *Emerson v. Dart*, 109 F.4th 936, 941 (7th Cir. 2024). The Court is not, however, "bound by the non-moving party's legal characterization of the facts." *Nat'l Fidelity Life Ins. Co. v. Karaganis*, 811 F.2d 357, 358 (7th Cir. 1987). "[W]hen it is 'clear from the face of the complaint, and matters of which the court may take judicial notice, that the plaintiff's claims are barred as a matter of law,' dismissal is appropriate." *Parungao v. Community Health Systems, Inc.*, 858 F.3d 452 (7th Cir. 2017) (quoting *Conopco, Inc. v. Roll Int'l*, 231 F.3d 82, 86 (2d Cir. 2000).

ARGUMENT

I. Plaintiff's claims are not justiciable

A. Plaintiffs lack standing to litigate this matter on their own behalf

Article III of the Constitution limits federal court jurisdiction to "cases" and "controversies." Standing is one element of that limitation which serves to prevent courts from usurping the powers of the other branches of government. *Clapper v. Amnesty International USA*, 568 U.S. 398, 408 (2013). Plaintiffs must show an "actual or imminent threat of suffering a concrete and particularized 'injury in fact,'" that the injury is "fairly traceable" to the defendant's actions, and that a favorable decision will prevent or redress the injury. *Common Cause Indiana v. Lawson*, 937 F.3d 944, 949 (7th Cir. 2019). To establish an injury in fact, the plaintiff must show "an invasion of a legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Again, plaintiffs purported injury must be "actual or imminent," a party does not establish Article III standing by alleging an injury that is merely "conjectural or hypothetical." *Keep Chicago Livable v. City of Chicago*, 913 F.3d 618, 625 (7th Cir. 2019). The mere possibility of harm is insufficient for a preliminary injunction; the harm must be likely. *Winter v. Natural Resources Defense Counsil, Inc.,* 555 U.S. 7, 22 (2008).

Where the plaintiffs are organizations alleging an injury not to their members, but to the organization itself, the pleadings must show a "clear nexus" between the purported injury and an "interest of the organization." *Id.* An organization claiming it has been injured because it must divert resources to address the allegedly unlawful conduct must show "concrete evidence and demonstrable injury to the organization's activities" resulting in a "drain on the organization's resources." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). An organization cannot simply "convert ordinary program costs into an injury in fact." *Common Cause Indiana v. Lawson*,

937 F.3d 944, 956 (7th Cir. 2019) (quoting *National Taxpayer's Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). There must be something more than a "setback to the organization's abstract social interests." *Havens Realty Corp. V. Coleman*, 455 U.S. 363, 379 (1982).

Alleging mere frustration of organizational purpose is insufficient for injury. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015). There must be additional or new burdens created by the challenged law. *Common Cause Indiana*, 937 F.3d at 955. Other Courts have concluded, for instance, that where training is already provided, having to provide related additional training is not an injury. *Fair Elections Ohio v. Husted*, 770 F.3d 456, 459 (6th Cir. 2014). Here, the League alleges that it has had to devote "substantial time and organizational resources" to address the DPOC requirement. Complaint ¶ 98. Plaintiffs admit that they already expend "considerable resources" educating voters about the requirements of registering to vote. Complaint ¶ 95. It stretches belief for Plaintiffs to claim they already conduct these activities yet are injured by having to educate voters simply because there are changes to the law. If Plaintiffs' argument is correct, they would have standing every time there is a minute change in election law, regardless of the law's actual effect on Plaintiffs' efforts. This remote possibility of harm does not suffice.

Plaintiffs' other allegations also do not amount to injury. Whether Plaintiffs believe the new requirements to be legal or not, they must "investigate" to understand how statutory changes may change its effects, retrain its staff and update its resources to reflect the most up-to-date information. Complaint ¶¶ 100–102. This claim is not appropriate for prospective relief, since the alleged damage would have already occurred. The state act for which Plaintiffs seek relief has already occurred. The challenged statutes are already enacted. An injunction would not remove the

challenged statutes from existence. *Driftless Area Land Conservancy v. Valcq*, 16 F. 4th 508, 521 (7th Cir. 2021). The proper relief for Plaintiffs claim is not available in the Courts, but in the Legislature. The remainder of Plaintiffs' allegations are prospective and remote. Plaintiffs assume that the challenged statutes will result in harm, specifically that some citizens will be removed from the voter registration rolls, without anything more than speculation. Furthermore, Plaintiffs have not connected how that would cause injury to the organizations themselves. Any naturalized or derived citizen would need to still have a temporary credential to trigger the notice requirement. Even then, there is no risk of disenfranchisement unless the voter does not provide documentary proof of citizenship. Plaintiffs' concern that some persons may be required to provide documentation is based on the speculation of a particular set of circumstances which does not appear to cause any injury to the organizations. Mere speculation of future injury is not sufficient for the purposes of standing. *Clapper v. Amnesty International USA*, 568 U.S. 398, 411 (2013).

The individualized injuries plead by each of the Plaintiffs do not alter the analysis. The League's claim that it had to "delay, suspend, and forgo other programs" in response to the new law is highly speculative. A plaintiff cannot "manufacture standing merely by inflicting harm on themselves based on their fears of a hypothetical future harm that is not certainly impending." *Clapper*, 568 U.S. at 416. Similarly, Common Cause's claim that it will have to divert "approximately 5% of its annual budget to responsive programming" is not based on allegations of concrete or reasonably likely injuries but on a perceived injury that lacks a factual basis. The challenged statutes are already in effect. It is insufficient for prospective relief that Common Cause claims future expenditure on a past act.

Hoosier Asian American Power's ("HAAP") claim that it "anticipates" having to spend half of its 2026 budget in response to the new law. This claim is unsupported by facts showing

why it expects to spend that amount or why it expects to spend significant funding for a law that has been in effect for several months. Furthermore, the claim that HAAP has had to delay or forgo other programs is based purely on speculation and without support. Again, the prospective relief HAAP seeks is to remedy an alleged injury for laws that have been active for months.

Exodus Refugee Immigration ("Exodus") has failed to establish injury for the purpose of standing. Training and education are fundamental activities of an organization. Exodus will have to train its staff members and educate its clients on the relevant law and procedures. That Exodus assumes the new law requires significant commitment is speculation. Additionally, because Plaintiffs allege that they have already reacted to the challenged statutes, the injury that they have already inflicted upon themselves is not appropriate matter for prospective relief. There is no prospective relief available to remedy the injuries Plaintiffs claim to have sustained. The Plaintiffs have failed to allege standing, so the Court may not assert subject-matter jurisdiction in this case.

B. Plaintiffs lack associational standing to bring this lawsuit.

To the extent that Plaintiffs are attempting to sue on behalf of their members or clients, *see* Dkt. 1 ¶¶ 19–22 (referencing members who may have be naturalized citizens), without identifying an individual member of their organization(s) that have standing in their own right, the organizational Plaintiffs' lack associational standing. Associational standing "requires factual allegations showing that (1) at least one of the association's members would otherwise have standing to sue in their own right; (2) the interests sought to be protected by the lawsuit are germane to the association's purpose; and (3) neither the claims asserted nor the relief sought requires the participation of individual members in the lawsuit." *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wis.*, 95 F. 4th 501 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14 (2024) (citing *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L.Ed.2d

383 (1977)). To establish that a member of an organization has "standing to sue in their own right," the Supreme Court has "required plaintiff-organizations to make specific allegations establishing that at least one identified member ha[s] suffered or w[ill] suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009).

An organization cannot rely solely on "statistical probability" or speak of "its individual members only as a collective." *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1009–10 (7th Cir. 2021). It must provide "facts sufficient to show that at least one of its members could sue in their own right." *Id*. at 1010. Statistical probabilities can be "difficult[]" to "verify." *Summers*, 555 U.S. at 499. Thus, the Supreme Court maintains that "identifiable members" are required to confer associational standing. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 201 (2023). None of four of the organizational Plaintiffs have even attempted to identify one of their members being harmed by the challenged Indiana provisions. That alone is fatal.

More than that, none of the Plaintiff organizations have alleged in their complaint that any of their members are (1) naturalized or derived citizens; (2) who registered to vote in Indiana using a temporary credential; and, (3) have been or will be harmed by the challenged statutes. Plaintiffs contend that "naturalized or derived citizens" are injured by the time and expense of obtaining DPOC, but the Plaintiffs can only speculate that these naturalized or derived citizens "may be members or beneficiaries of the services and educational resources of LWVIN, CCIN, HAAP, and Exodus[.]" Compl. ¶ 65. The Complaint does manage to allege that an individual from Monroe County and two individuals from Marion County have been "flagged" under Indiana Code § 3-7-38.2-7.3. Compl. ¶¶ 78-9. However, the Complaint does not (1) identify who these individuals are, (2) declare that any of these individuals are members of the Plaintiff-organizations, or (3)

establish any injury suffered by these unnamed individuals. Therefore, these alleged facts fail to establish that one of the Plaintiffs' members would have standing to sue in their own right.

Rather than name any individual member from their organizations, Plaintiffs want the Court to establish standing through a "statistical probability" approach rejected by the Supreme Court. *See Summers*, 555 U.S. at 497. LWVIN mentions that a "vast majority" of their members are registered Indiana voters, but LWVIN neglects to state whether any of their "approximately 1,400 members" have been or will be affected by the challenged provisions of Indiana law. Compl. ¶ 91. CCIN, like LWVIN, purports to have thousands of "members and supporters who live and vote in Indiana," but they fail to name a specific member-individual harmed (or imminently threatened with harm) by the challenged Indiana provisions. Compl. ¶ 113. HAAP "has over 185 members." Compl. ¶ 130. However, HAAP omits any allegations suggesting that their members have been harmed by the challenged Indiana laws. And Exodus fails to mention its members outright. Compl. ¶¶ 147-54.

Based on the factual allegations in Plaintiffs' Complaint, it is statistically possible for exactly zero members of the plaintiff-organizations to be injured, even if there is an abstract possibility that one of their members might be. Only "conjecture" supports the Plaintiffs' associational standing. *Summers*, 555 U.S. at 496. And Summers rejected the notion that "statistical probability" of harm to a member suffices to satisfy associational standing. *Id*. at 497.

C. Plaintiffs' claims as to the Current-Voter Crosscheck Requirement are moot.

Plaintiffs' claims that the Current-Voter Crosscheck Requirement, codified as Indiana Code § 3-7-38.2-7.3, are moot and should be dismissed. Defendants King and Nussmeyer, as the officials enforcing that statutory provision, have already fulfilled their obligations under the statute.

Therefore, the injunctive relief sought be Plaintiffs will not provide the relief they seek, rendering their claims as to this provision moot.

Article III of the U.S. Constitution limits the jurisdiction of federal courts to "Cases and "Controversies." *Chafin v. Chafin*, 568 U.S. 165, 171–72 (2013). "[T]o invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Id.* (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)). This doctrine "prevent[s] federal courts from resolving questions that cannot affect the rights of the parties before them." *Ruggles v. Ruggles*, 49 F.4th 1097, 1099 (7th Cir. 2025). The live case or controversy requirement endures throughout the litigation, from the time the suit is filed through its ultimate disposition. *Id.* Thus, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome," the case becomes moot. *Id.* In other words, a case becomes moot when it is no longer possible for the court to grant any effectual relief to the prevailing party." *Id.* And where a claim becomes moot, a court must dismiss for lack of jurisdiction. *DM Trans, LLC v. Scott*, 38 F.4th 608, 616 (7th Cir. 2022).

Plaintiffs' claims against the Current-Voter Citizenship Crosscheck Requirement are moot because the Indiana Election Division has already issued notices under Indiana Code § 3-7-38.2-7.3(b). *See* Compl. ¶ 6, 244. The Current-Voter Crosscheck Requirement, contained in § 3-7-38.2-7.3(b), only compels the "NVRA official," the Co-Directors of the Indiana Election Division, Ind. Code § 7-7-11-1, to "compare the statewide voter registration system with the bureau of motor vehicles list of temporary credentials issued," then notify the "county registration office of the county in which the individual is registered to vote that the registered voter may not be a citizen of the United States." Once IED notifies the county registration office, all further action is taken

by the county registration office, including the maintenance to the statewide voter registration list that Plaintiffs complain of. *See id.* § 3-7-38.2-7.3(c)–(e); *id.* § 3-7-26.3-11. Moreover, IED's actions under the Current-Voter Crosscheck Requirement are only taken with respect to voters who registered prior to July 1, 2025, as all new registrants thereafter are governed by the New-Registrant Crosscheck Requirements contained in a separate statute. *See* Ind. Code § 3-7-26.3-37; Compl. ¶ 52. Thus once IED, pursuant to § 3-7-38.2-7.3(b), searches for and notifies county officials of registered voters with the relevant temporary BMV credentials, IED Defendants have fulfilled all obligations under the Current-Voter Crosscheck Requirement. Declarations of the IED Co-Chairs are attached as Exhibits A and D, attached and incorporated by reference.

IED Defendants King and Nussmeyer have already completed their obligations under the Current-Voter Crosscheck Requirement, Ind. Code § 3-7-38.2-7.3. With respect to individuals registered to vote before July 1, 2025, IED Defendants have already compared the statewide voter registration system with the BMV list of temporary credentials and notified the appropriate county voter registration offices. *See* Ex. A, B. As Plaintiffs recognize, *see* Compl. ¶¶ 44–49, all further actions with respect to existing registered voters are taken by county voter registration offices, who Plaintiffs have elected not to sue. Preliminarily and permanently enjoining IED Defendants from enforcing the Current-Voter Crosscheck Requirement thus would not provide any "effectual relief" to the Plaintiffs because there is simply nothing left to enjoin IED Defendants King and Nussmeyer from doing with respect to the Current-Voter Crosscheck Requirement. *See* Ex. A, B. The lack of effectual relief renders Plaintiffs' claims on this issue moot and the Court should therefore dismiss Plaintiffs' claims with respect to this requirement. *See Ruggles*, 49 F.4th at 1099.

II. The Secretary of State is not a proper defendant because he does not enforce the challenged statutes and an injunction against him will not provide Plaintiffs with any relief

To the extent that any of Plaintiffs' claims are otherwise justiciable, at minimum, the Secretary of State should be dismissed as an improper defendant. The Secretary plays no role in enforcing the Challenged Statutes. The Secretary's lack of involvement in the enforcement of the Challenged Statutes renders Plaintiffs' claims against him barred by sovereign immunity and leaves the Plaintiffs without standing to sue the Secretary.

A. The Eleventh Amendment bars Plaintiffs' claims against the Secretary of State

The Eleventh Amendment "generally immunizes" a state or state official from suit in federal court. *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018), *cert. denied*, 586 U.S. 822 (2018).)). "If properly raised, the amendment bars actions in federal court against a state, state agencies, or state officials acting in their official capacities." *Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin.*, 603 F.3d 365, 370 (7th Cir. 2010). To pierce sovereign immunity, a plaintiff "must show that the named state official plays some role in enforcing the statute[.]" *Doe*, 883 F.3d at 975. *Ex parte Young* cannot be invoked against state officials who merely regulate or supervise a particular area of state activity; the defendant official must have a role in enforcing state law against the parties to invoke federal jurisdiction. *See Peshek v. Johnon*, 111 F.4th 799, 804–05 (7th Cir. 2024); *Doe*, 883 F.3d at 796–98.

But Plaintiffs have failed to demonstrate the Secretary of State has any role in enforcing the Challenged Statutes. While the Secretary "is responsible for overseeing elections through the IED" and is Indiana's "chief election official," the text of the Challenged Statues provides no role for the Secretary to play in their enforcement. Compl. ¶ 23 (citing authorizing statutes). For starters, while Indiana law provides that the Secretary is the "chief election official," Ind. Code § 3-6-3.7-1, Indiana law delegates the "coordination of state responsibilities" under the National Voting Registration Act to the co-directors of the Indiana Election Division. Ind. Code § 3-7-11-1. And neither of the Challenged Statutes make any mention of the Secretary. In the Current-Voter

Citizenship Crosscheck Requirement, it is the IED co-directors as the "NVRA official" that "shall compare the statewide voter registration system with the bureau of motor vehicles list of temporary credentials issued under I.C. 9-24-11-5(c) or I.C. 9-24-16-3(f)." Ind. Code § 3-7-38.2-7.3(b). The Current-Voter Citizenship Crosscheck Requirement also assigns duties to the individual counties via the county voter registration office. *See* Ind. Code § 3-7-38.2-7.3(b)-(e). The statute gives the Secretary no role in enforcement. The New-Registrant Citizenship Crosscheck Requirement is similarly devoid of any reference to the Secretary. Instead, the statute allocates tasks to the IED and individual counties via the county voter registration official. *See* Ind. Code § 3-7-26.3-37(a)-(c). In fact, Plaintiffs' complaint fails to identify any action that the Secretary may take in the enforcement of the Challenged Statutes.

Plaintiffs have failed to show the Secretary "plays some role in enforcing the statute." *Doe*, 883 F.3d at 975. Plaintiffs have accordingly failed to overcome the Eleventh Amendment's grant of sovereign immunity. Absent an applicable exception to sovereign immunity, Plaintiffs' claims for injunctive relief against the Secretary are barred and should be dismissed. *Gerlach v. Rokita*, 95 F.4th 493, 49 (7th Cir. 2024).

B. Plaintiffs lack standing to sue the Secretary of State for injunctive relief

In addition to the Eleventh Amendment's sovereign immunity protection, the lack of any enforcement of the Challenged Statutes by the Secretary of State renders Plaintiffs without standing. The Seventh Circuit has recognized that "the requirements of *Ex parte Young* overlap significantly with the last two standing requirements—[traceability] and redressability." *Doe*, 883 F.3d at 975.And where a plaintiff has sued a named state official with no enforcement power over the challenged statute, no redressability exists. *See Peshek v. Johnson*, 111 F.4th 799, 804 (7th Cir. 2024). Moreover, traceability and redressability are often "flip sides of the same coin." *Sprint*

Comm'ns Co. v. APCC Servs., Inc., 554 U.S. 269, 288 (2008). "If a defendant's actions causes an injury, enjoining the action . . . will typically redress that injury." *FDA v. All. For Hippocratic Medicine*, 602 U.S. 367, 381 (2024). Therefore, a plaintiff must not only "show that the named state official plays some role in enforcing the statute[,]" they must also "establish that his injury is causally connected to that enforcement and that enjoining the enforcement is likely to redress his injury." *Peshek*, 111 F.4th at 975-76. Where traceability and redressability are lacking, there is no subject matter jurisdiction. *See Peshek*, 111 F.4th at 804 (citing *Lujan,* 504 U.S. at 560).

Here, the harm that Plaintiffs seek to enjoin is not traceable to the Secretary. Plaintiffs allege that their harms stem from Challenged Statutes' violations of the NVRA and Civil Rights Act of 1964. Compl. ¶¶ 192–233. Accordingly, Plaintiffs seek to "[p]reliminarily and permanently enjoin all Defendants from enforcing the Challenged DPOC Provisions." Compl. ¶ 244. But the Secretary is not responsible for these alleged harms. The NVRA requires that each State "designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. Under Indiana law, the Co-Directors of the Indiana Election Division—not the Secretary of State—"are jointly designated under § 52 U.S.C. 20509 as the chief state election official responsible for the coordination of state responsibilities under NVRA." And as explained, it is the Indiana Election Division and county voter registration offices that are tasked with enforcing the Challenged Statutes. *See* Ind. Code § 3-7-38.2-7.3(b); Ind. Code § 3-7-26.3-37. Thus, any injury inflicted upon the Plaintiffs is not traceable to any action by the Secretary, as he has no role in enforcing the Challenged Statutes within the framework established by the NVRA and Civil Rights Act.

Because the Secretary is not the source of Plaintiffs' alleged injury, an injunction barring the Secretary from enforcing the Challenged Statutes will not redress Plaintiffs' alleged injury. The

redressability requirement for Article III standing "generally serves to ensure that there is a sufficient 'relationship between the judicial relief requested and the injury suffered.'" *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025) (quoting *California v. Texas*, 593 U.S. 659, 671 (2021)). A plaintiff must show that their purported injury is "likely" to be redressed by the requested relief. *Haaland v. Brackeen*, 599 U.S. 255, 291–92 (2023). Where an injunction against a named defendant "would not give [plaintiffs] legally enforceable protection from the allegedly imminent harm," then the redressability requirement of Article III standing is not satisfied. *Id.* Because the Secretary has no role in enforcing the Challenged Statutes, an injunction against the Secretary would not provide any relief to the Plaintiffs. The Secretary is not responsible for comparing the Statewide Voter Registration System with the BMV list of temporary credentials, does not issue notices that proof of citizenship is required, and does not cancel voter registrations where proof of citizenship is not provided. *See* Ind. Code § 3-7-38.2-7.3(b); Ind. Code § 3-7-26.3-37. There is simply no action the Secretary could take pursuant to the text of Challenged Statutes for the Court to enjoin. Because the Secretary plays no role in the enforcement of challenged provisions, the SOS should be dismissed from these proceedings.

III. Plaintiffs have failed to state a claim upon which relief may be granted

Election administration is generally entrusted to the States except where Congress intervenes. U.S. Const. art. I § 4, cl. 1. States possess "broad power" in that administration. *Washington State Grange v. Washington State Republican Party*, 522 U.S. 442, 451 (2008). This is consistent with the general reservation of power to the States under the Tenth Amendment. Congress has, however, chosen to exercise its authority through the NVRA and the CRA, establishing administrative requirements and procedures.

The Complaint alleges that the challenged statutes violate multiple sections of the NVRA and the different practices provision of the CRA. Dkt. 1 ¶¶ 192-236. Plaintiffs rely on misinterpretation and misapplication of the statutes in reaching this conclusion. Neither the current-voter crosscheck requirement nor the new-registrant crosscheck requirement violates federal law. Indeed, the challenged statutes help the State fulfill two of the stated purposes of the NVRA: to "protect integrity of the electoral process and ensure that current and accurate voter registration rolls are maintained." 52 U.S.C. § 20501(b).

A. The challenged statutes are consistent with Section Six of the NVRA because they do not require more than what is necessary for voter registration administration.

Plaintiffs allege that the challenged statutes violate section six of the NVRA by "impos[ing] an additional requirement" on those registering with the federal form. Dkt. 1 ¶¶ 197-198. Section six states, in relevant part, that a voter registration form may not require more than "identifying information and other information … as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." 52 U.S.C. § 20508(b)(1). The NVRA places requirements on the voter registration form but does not "regulate [the] qualifications of voters." *Ass'n of Cmty. Orgs. for Reform Now v. Miller,* 912 F. Supp. 976, 985 (W.D. Mich. 1995). Additionally, the language of the NVRA does not support the conclusion that states are prohibited from requiring additional information when processing voter registration forms, *Gonzalez v. State of Arizona,* 435 F. Supp. 2d 997, 1001 (D. Ariz. 2006), or conducting voter list maintenance. *See* 52 U.S.C. § 20507(b).

To vote in Indiana, an individual must "(1) be at least eighteen (18) years of age at the next general, municipal, or special election; (2) be a United States citizen; and (3) reside in a precinct continuously before a general, municipal, or special election for at least thirty (30) days; to register to vote in that precinct[.]" Ind. Code § 3-7-13-1. Once the requirements of Indiana Code § 3-7-13-

1 are met, Indiana law prescribes multiple avenues for people to register to vote. Prospective voters may register (1) simultaneously with their application for an Indiana driver's license (Ind. Code § 3-7-14-5); (2) in person at county registration offices (Ind. Code § 3-7-19-2); or (3) by mail registration form (Ind. Code § 3-7-22-1). When an individual registers to vote by mail, they have the option to choose to register using either the federal form promulgated by the federal Election Assistance Commission, Ind. Code § 3-7-22-2, or, in the alternative, the individual may register to vote using the state form issued by the Indiana Election Division, Ind. Code § 3-7-22-3.

A copy of the federal form, incorporated into the Complaint by reference, is attached to this response as Exhibit C, and a copy of the state form, also incorporated into the Complaint by reference, is attached as Exhibit D. The federal voter registration form and the Indiana voter registration form are practically identical, and county voter registration offices are required to accept both the federal and the state voter registration forms. Ind. Code §§ 3-7-22-2 and 3-7-22-3. The Indiana voter registration form does not require registrants to provide citizenship documentary proof of citizenship with the registration form. *See* Ex. B. The state form merely requires registrants to fill out an attestation stating that they are eligible to vote and meet the citizenship requirement. Ind. Code § 3-7-22-5. Once the Indiana registrant fills out the state form and it is delivered to their county of residence, the county voter registration office determines whether the registrant is eligible to vote and notifies the registrant via mail to the mailing address on the registration form. Ind. Code § 3-7-33-5(c)(2). It is only after determining that registration is flagged as having a BMV credential indicating possible non-citizenship that notice is sent requiring proof of citizenship. Ind. Code § 3-7-26.3-37. No additional information is required to accompany the registration form, nor is any requested unless the criteria of Indiana Code section 3-7-26.3-37(a) are met.

Contrast this process with the process at issue in *Arizona v. ITCA*. That case concerned an Arizona law that required state officials to "reject" the federal form when it was unaccompanied by documentation proving citizenship. *Arizona v. Inter Tribal Council of Arizona (ITCA), Inc.*, 570 U.S. 1, 9 (2013). There, the form was rejected if the registrant failed to include information dictated by the state; here, the county accepts the registration and must request documentation confirming that the registrant is a citizen (an affirmation present on both the state and federal form) if the registrant has a temporary credential from the BMV, an indicator that the registrant may not be a naturalized or derived citizen. Ind. Code § 3-7-26.3-37. The current-registrant citizenship crosscheck process is even further distinguished, since that is a back-end maintenance program that never interacts with the acceptance of voter registration forms. Under Ind. Code Section 3-7-38.2-7.3, lists of already-registered voters are compared against the BMV's list of temporary credentials. Ind. Code Section 3-7-38.2-7.3(b). Thus, because voters are not submitting new registrations, and state officials are not accepting or rejecting voter applications, the current-registrant citizenship crosscheck is more akin to voter list maintenance. Therefore, both challenged statutes comply with section five of the NVRA.

Plaintiffs next allege that the challenged statutes require information from registrants that is not necessary to establish citizenship, and therefore, the state registration form is not "equivalent" to the form described in 52 U.S.C. section 20508(a)(2) as required under 52 U.S.C. section 20506(a)(6)(A)(ii). Again, the challenged statutes make no change to the voter registration form. Registrants only need to provide documentation when notified that further information is needed. Ind. Code § 3-7-26.3-37(a).

The processes established in the challenged statutes are more akin to the administration procedures allowed under 52 U.S.C. section 20507, which is back-end maintenance, than a change

to the registration form. For example, States are permitted to remove eligible voters from their voter lists when a registrant has changed residences and subsequently failed to respond to a notice sent from the State to the registrant. 52 U.S.C. section 20507(d)(1)(B). States are further mandated to conduct and complete voter removal programs designed to "systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. section 20507(c)(2)(A). Indiana's challenged statutes maintenance the eligible voter lists only after a voter's registration has been accepted and the voter has been added to Indiana's voter list. The current-registrant citizenship crosscheck and new-registrant citizenship crosscheck only come into operation after the registrant has submitted (and county officials have accepted) the registrant's state form. Thus, the challenged statutes are more appropriately categorized as a voter roll maintenance program, rather than a substantive change to Indiana's state registration form.

Plaintiffs further allege that challenged statutes violate sections 5, 6,7 and 9 of the NVRA by requiring information that is not "necessary "on the state registration form. Dkt. 1 ¶ 216. The NVRA requires that the registration form, whether a person is registering simultaneously with an application for a motor vehicle driver's license or via a paper or online voter registration form, may only require the minimum information necessary "to assess the eligibility of the applicant and to administer voter registration." *See* 52 U.S.C. § 20504(c)(2)(B); 52 U.S.C. § 20508(b)(1). Courts have found that Congress did not intend for "minimum information necessary" to always equate to the citizenship attestation on the voter registration form. *Fish v. Kobach*, 840 F.3d 710, 741 (10th Cir. 2016). Nevertheless, the challenged statutes comply with the requirements of those sections. Under the voter registration crossscheck procedure, it is only after the registrant submits the registration form to the county voter registration office and crosscheck is conducted that the office may determine that the statute requires documentary proof of citizenship. The registrant may then

be notified that proof of citizenship is required. The necessary information provisions of the NVRA are not violated by the challenged statute, because no further information is requested from the registrant. Under the challenged statutes, Indiana still accepts and uses the federal mail voter registration form as required by 52 § 20505(a)(1). Further, the challenged statutes do not make the form inequivalent for the purposes of 52 U.S.C. § 20506(a)(6)(A), which requires that voter registration agencies distribute the federal mail voter registration form (or a state equivalent) described in U.S.C. 52 § 20508(a)(2).

Plaintiffs next allege that the challenged statutes violate the Section 8(b) of the NVRA, which requires that any State program to maintain accurate and current voter registration rolls must be "uniform, nondiscriminatory and in compliance with the Civil Rights Act of 1965." 52 U.S.C. § 20507(b)(1). Generally, state law must comport with the constitutional principle that the law cannot treat some groups differently than others. *Engquist v. Oregon Dept. of Agr.,* 553 U.S. 591, 601 (2008). However, as long as a law does not implicate a fundamental right nor targets a suspect class, the law will be upheld if there is a rational basis for the classification. *U.S. v. Skrmetti*, 605 U.S. 495, 509 (2025). A program is uniform and nondiscriminatory if it applies to "everyone in the process." *See Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 707 (N.D. Oh. 2006). Programs that apply only to a "selected class" of persons do not meet the requirements of § 20507(b)(1). *Id*. The Civil Rights Act of 1965 bars voting qualifications based on race or color. 52 U.S.C. § 10301(a).

Here, Plaintiffs allege that the challenged statutes require documentation only from registrants who are naturalized or derived citizens. Dkt. 1 ¶ 223. However, the crosscheck procedures for both registered voters and new registrations require notice to be issued to any registrant who "uses an identification number from a temporary credential issued under IC 9-24-11-5(c) or IC 9-24-16-3(f)." Ind. Code § 3-7-26.3-37(a); Ind. Code § 3-7-38.2-7.3(b). These

credentials are issued to any person with temporary lawful status, including those with nonimmigrant visa status, pending application for asylum, pending or approved application for temporary protected status in the United States, approved deferred action status, or a pending application for adjustment of status. Ind. Code § 9-24-16-3(f); Ind. Code § 9-24-11-5(c).

This is not a discriminatory program against naturalized or derived citizens because it applies to anyone with a temporary BMV credential. Naturalized and derived citizens who have a regular credential will not be required to provide documentation of citizenship. Even if a voting citizen were to be flagged based on a temporary credential, they would be notified and given opportunity to provide documentation to fix the problem. These procedures are clearly intended to ensure that a citizen with a temporary credential is not erroneously removed as an eligible voter. It is not discrimination simply because differently situated registrations are not treated alike. The challenged statutes use BMV data that strongly indicates temporary status, itself an indicator that a person is not a citizen and uses that information in determining citizenship. The challenged statutes hold no ramifications for any specific protected class. The Legislature was evidently concerned that non-citizenship registrations may cause issues both for those that maintain voter registration systems and for those who work polling places on Election Day (and after). The crosscheck programs allow for voting officials to address potential voter fraud while avoiding the confusion that can follow the day of the election. The challenged statutes avoid these last-minute issues by requiring election officials to conduct maintenance beforehand.

B. The Challenged Statutes do not violate the Civil Rights Act of 1964.

Plaintiffs next allege that the challenged statutes violate the different practices provision of the Civil Rights Act of 1964. The provision bars any person acting "under color of law" from applying any "standards, practices, or procedures different from the standards, practices, or

procedures applied under such law to persons have been found to be qualified to vote" in determining whether a person is qualified to vote. 52 U.S.C. § 10101(a)(2)(A). For example, a Michigan procedural requirement that applied to registered voters whose original state identification has been returned as undeliverable need not also apply that requirement to registered voters whose replacement identification was returned undeliverable. *U.S. Student Ass'n Foundation v. Land*, 585 F. Supp 2d 925, 949 (E.D. Mich. 2008). There was sufficient distinction between those two groups because those whose original ID was returned undeliverable are less likely to actually reside in Michigan than somebody who already had an ID and was requesting a replacement. *Id.* at 950.

Plaintiffs' argument is that the challenged statutes violate the CRA because they place requirements "that no registered voter applicants who are born as U.S. citizens will be subject to." Dkt. 1 ¶¶ 229-230. Again, the crosscheck procedures do not apply different procedures to naturalized or derived citizens. Every voter registration is evaluated for eligibility; under the crosscheck system, it is purely incidental that some naturalized or derived citizens may be asked to provide documentation. Furthermore, the crosscheck procedure does not leave room for county officials to apply a different procedure than what is applied equally to every voter registration across the state. This is in stark contrast to *Mi Familia Vota v. Fontes*, in which county recorders were tasked with "researching" the citizenship status of voters and determining their eligibility. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 705 (9th Cir. 2025). The Indiana statutes leave to the county officials no discretion in determining whether a person is eligible. Instead, Indiana officials must specifically follow the statewide procedures. This avoids the potential discrimination and subjective results that concerned the Court in *Mi Familia*. *Id*. at 714.

C. The NVRA public disclosure provisions do not require the unrestricted disclosure of all records.

Plaintiffs' complaint as to Count 5, regarding the disclosure of records, is similarly flawed. The public disclosure requirements of the NVRA requires the State to make available "records "concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1). There is no requirement under the NVRA for the State to disclose the "individualized voter information" of voters to whom the challenged statutes may pertain that Plaintiffs seek. Dkt. 1 ¶ 235. The NVRA does not require the disclosure of unredacted documents. *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1344 (N.D. Ga. 2016). The text of § 20507(i)(2), listing only "names and addresses," supports the conclusion that Congress intended to protect other types of information from disclosure. *Id.* Congress did not intend to erode Federal and State law protecting against the disclosure of private, personal information. *Id.* at 1345. Indiana law explicitly bars the disclosure of documentary proof of citizenship to the public, and plaintiffs have not brought a preemption claim. *See* Ind. Code § 3-7-38.2-7.3(f). It stands to reason that the NVRA is not intended to allow for the release of private, sensitive information such as that which appears on proof of citizenship.

CONCLUSION

The Court should dismiss this case for lack of jurisdiction because Plaintiffs have failed to state justiciable claims, have failed to identify the proper defendants for their claims, and have failed to state any claim upon which relief by this Court may currently be granted.

Respectfully submitted,

THEODORE E. ROKITA
Attorney General of Indiana
Attorney No. 18857-49

Date: December 10, 2025 By: */s/ John E. Oberdorf*

John E. Oberdorf
Bradley S. Davis
Drew Green
OFFICE OF ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Phone/Fax: (317) 232-6217/(317) 232-7979
E-mail: John.Oberdorf@atg.in.gov
Bradley.Davis@atg.in.gov
Drew.Green@atg.in.gov