**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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| NATIONAL CONFERENCE OF JEWISH WOMEN, GREATER NEW ORLEANS SECTION,<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al.,<br><br>Defendants. | No. 8:25-cv-03675-ABA |
| LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *et al.*,<br><br>Defendants. | No. 8:25-cv-03777-ABA |



**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

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## INTRODUCTION

Defendant U.S. Citizenship and Immigration Services ("USCIS") has discontinued its practice of inviting nongovernmental entities to provide voter registration services at administrative naturalization ceremonies when state and local authorities are not able to attend. It memorialized this change in policy by updating the USCIS Policy Manual (at Volume 12, Part J, Chapter 5, Section H), https://perma.cc/ZBN6-H64, and issuing Policy Alert No. PA-2025-21 (Aug. 29, 2025) (collectively referred to as "the 2025 Alert" herein), https://perma.cc/4GHW-Z6DG. This modest change does not harm new citizens' access to applications to register to vote, as applications and information will continue to be provided by state or local election officials, or USCIS staff at the end of administrative naturalization ceremonies. As a result, Plaintiffs' complaints fail to identify any individual who actually suffered such harm.

Plaintiffs, the League of Women Voters ("LWV")[1] and the National Council of Jewish Women, Greater New Orleans Section ("NCJW-NO"), have filed separate complaints against USCIS and its co-defendants[2] for adopting the policy change and issuing the 2025 Alert.[3] One or both plaintiffs contend that the 2025 Alert violates the First and Fifth Amendments and the substantive and procedural requirements of the Administrative Procedure Act ("APA"), 5



[1] The body of the LWV's complaint names the League of Women Voters Education Fund and the League of Women Voters of the United States, Colorado, New Jersey, Saratoga County, the Charleston Area, and Milwaukee County as plaintiffs. Compl., *League of Women Voters of the U.S. v. USCIS*, No. 8:25-cv-3777-ABA (D. Md. Nov. 18, 2025), ECF No. 2 ¶¶ 10, 15, 18, 21, 23, 25. The caption of the LWV's complaint names the League of Women Voters of New Jersey Education Fund as another plaintiff, *id.*, but the body of the complaint does not refer to the Fund.

[2] Defendants other than USCIS are the Department of Homeland Security, the Secretary of Homeland Security, and the Director of USCIS. *Id.* ¶¶ 28-30; Am. Compl., *National Council of Jewish Women, Greater New Orleans Section v. USCIS*, No. 8:25-cv-3675 (D. Md. Dec. 5, 2025), ECF No. 17 ¶¶ 23-25.

[3] LWV Compl., ECF No. 2; NCJW-NO Am. Compl., ECF No. 17.

U.S.C. §§ 551-59, 701-06.[4] Plaintiffs lack standing to assert these claims and have failed to adequately plead them.

Plaintiffs lack standing for all of their claims. Plaintiffs have sustained no First Amendment injury, and thus have no standing, because "the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) (collecting cases). In short, Plaintiffs have no legally protected interest in expressing their views at a specific time in a specific forum (after administrative naturalization ceremonies). Plaintiffs have also not sustained any actual First Amendment injury because they retain the ability to promulgate their message at judicial naturalization ceremonies and the many other public fora available to them. Nor can Plaintiffs establish standing based upon their organizational interest in seeing that newly naturalized citizens are encouraged or registered to vote, as this alleged harm constitutes a generalized grievance on which all or a large class of citizens might have standing. Standing cannot be maintained on this basis. *Carney v. Adams*, 592 U.S. 53, 58 (2020). Plaintiffs also cannot establish standing on the basis of alleged harms to their missions or on a diversion of resources theory in light of the Supreme Court's recent decision in *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024).



Granting Plaintiffs the assumption that they do have a legally protected interest in participating in administrative naturalization ceremonies, Plaintiffs have failed to adequately state a claim for relief on First Amendment grounds because the 2025 Alert imposes a reasonable, viewpoint-neutral restriction on their activities. Longstanding precedent makes clear that administrative naturalization ceremonies are nonpublic forums, thus the relevant

[4] LWV Compl. ¶¶ 4-5; NCJW-NO Am. Compl. ¶ 7.

restrictions need only be viewpoint neutral and reasonable, as they are here.

The NCJW-NO Plaintiff both lacks standing to bring, and has failed to adequately plead, their Fifth Amendment claims. NCJW-NO's Fifth Amendment claims are asserted *on behalf of* the naturalized citizens they aim to engage at administrative naturalization ceremonies—individuals with whom they lack a close relationship and who face no impediment to bringing these claims on their own behalf. *See Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). Lack of third-party standing notwithstanding, NCJW-NO fails to identify any individual whose ability to vote or register to vote was impeded in any way by their organization's absence at administrative naturalization ceremonies as a result of the 2025 Alert. As such, NCJW-NO does not allege any actual injury on which standing for these claims could be based. Under similar reasoning, NCJW-NO has failed to allege sufficient factual matter, taken as true, to state plausible claims for relief under the Fifth Amendment.

This Court also lacks subject matter jurisdiction over both Plaintiffs' APA claims. The APA bars judicial review of agency action to the extent that it "is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). Here, the statutes that require USCIS to distribute information about United States citizenship and conduct naturalization ceremonies—8 U.S.C. §§ 1443(h), 1448—are broadly drawn such that this Court would have no meaningful standard against which to judge USCIS's exercise of discretion as to the manner in which naturalization ceremonies are performed. In essence, "there is no law to apply" and the APA does not permit judicial review. *Heckler v. Chaney*, 470 U.S. 821, 830 (1985) (citation omitted). Further, USCIS was not required to engage in notice-and-comment rulemaking prior to issuing the 2025 Alert. Nor is the 2025 Alert, for the reasons discussed herein, contrary to constitutional right or otherwise unlawful.

For these reasons, and as explained further below, both Plaintiffs' complaints should

be dismissed in their entirety.

## BACKGROUND

### I. Statutory and Regulatory Background

The Immigration Act of 1990, requires the Attorney General to "broadly distribute information concerning the benefits which persons may receive under this [subchapter] and the requirements to obtain such benefits." Pub. L. No. 101-649, 104 Stat. 4978, § 406 (codified at 8 U.S.C. § 1443(h)). The Act further specifies that the Attorney General "shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations." *Id.* This function was formally delegated by the Attorney General to the Department of Homeland Security ("DHS") and its subagency, U.S. Citizenship and Immigration Services ("USCIS"), which is responsible for processing naturalization applications and scheduling naturalization ceremonies. *See* 8 U.S.C. § 1421(a) (providing the Attorney General with "[t]he sole authority to naturalize persons as citizens of the United States[.]"); 6 U.S.C. § 557 (replacing statutory references to other departments, commissions, or agencies whose functions were transferred pursuant to Title VI, Chapter 1 establishing the Department of Homeland Security with the "Secretary, other official, or component" of Homeland Security "to which such function is so transferred"); 8 C.F.R. § 2.1 (vesting the Secretary of Homeland Security with the authority to administer and enforce the immigration laws); 8 C.F.R. § 310.1(a), (b) (delegating the authority of the Attorney General to "naturalize persons as citizens of the United States" to the "Commissioner of the Immigration and Naturalization Service").[5] After establishment of the USCIS, the agency began administering

[5] *See also* 6 U.S.C. § 291(a) (abolishing the Immigration and Naturalization Service); 6 U.S.C. § 271 (establishing the Bureau of Citizenship and Immigration Services, USCIS, and providing that the Director shall perform such functions as are provided or transferred to them by law.)

naturalization ceremonies.

There are two types of naturalization ceremonies. In administrative naturalization ceremonies, USCIS administers the oath of allegiance. Judicial naturalization ceremonies are ceremonies "where a federal, state or local court administers the Oath of Allegiance."[6] This case challenges only the conduct of administrative naturalization ceremonies.

8 U.S.C. § 1448 sets forth the statutory requirements and procedures for naturalization. In addition, the statute provides that the "Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion." *Id.* § 1448(d). The regulations implementing section 1448 are found at 8 C.F.R. part 337. The first regulations were issued in 1957 and were mostly recently updated in 2011. Among other things, the regulations set forth the content of the oath of allegiance and minimum requirements for naturalization ceremony. *See* 8 C.F.R. § 337.2. The regulations require that the ceremony must be "public," take place at "a time and place designated by USCIS or [the Executive Office for Immigration Review] within the United States," and "be conducted at regular intervals as frequently as necessary to ensure timely naturalization." *Id.* § 337.2(a). Beyond these basic requirements, neither Section 1148 nor the implementing regulations provide any specific instructions governing the ceremony itself.

To fill that gap, USCIS issued internal policy guidance in 2011 that sets forth detailed procedures for conducting administrative naturalization ceremonies. The guidance was issued through a Policy Memorandum titled "Model Plan for Administrative Naturalization



[6] USCIS Policy Mem. No. PM-602-0014.1 ("2011 Mem.") at 1 n.1 (Sept. 20, 2011), https://perma.cc/L73F-PTGJ; *Naturalization Ceremonies*, U.S. Citizenship and Immigration Services, https://perma.cc/L33L-J5AL.

Ceremonies" (2011 Mem.). *See* USCIS Policy Mem. No. PM-602-0014.1 (Sept. 20, 2011). USCIS did not publish a notice in the Federal Register proposing the issuance of the 2011 Memorandum..

The 2011 Memorandum addresses a broad range of topics regarding the conduct of administrative naturalization ceremonies, ranging from the check-in process to guest speakers to the music that is played. The 2011 Memorandum sought to "standardize the naturalization ceremony experience" by directing "USCIS offices" to take the following actions at "all administrative ceremonies": (1) play *Faces of America*, a video; (2) play the Star Spangled Banner, either by recording or live; (3) have the master of ceremonies present opening or welcoming remarks; (4) have a designated official read aloud a list of the countries represented by "the birthplaces of the naturalization candidates"; (5) "[a]dminister the Oath of Allegiance to the naturalization candidates"; (6) have field leadership or a guest speaker present keynote remarks; (7) play *Presidential Congratulatory Remarks*, a video; (8) recite the Pledge of Allegiance; (9) have field leadership or the master of ceremonies present concluding remarks; and (10) have field leadership and staff present certificates of naturalization to the naturalized U.S. citizens.[7]



The 2011 Memorandum declared that "[a]ll newly naturalized citizens will have the opportunity to receive a voter registration application at administrative naturalization ceremonies" because "[t]he ability to vote in federal elections is both a right and responsibility that comes with U.S. citizenship."[8] The 2011 Memorandum said, however, that "the mechanism for distribution [of voter registration applications] may vary by ceremony location," provided that the distribution takes place "in every case . . . only after the

[7] 2011 Mem. at 5-6.

[8] *Id.* at 7.

conclusion of the ceremony," and listed the following "in preferential order" as the "options for distribution": (1) "State or local government election offices"; (2) "Non-governmental organizations . . . if qualified and approved according to the criteria identified below"; and (3) USCIS.[9] The 2011 Memorandum specified, however that "USCIS is not responsible for the collection of applications or any other activities related to voter registration."[10]

The 2011 Memorandum made clear that "voter registration services by the state or local election office is the optimal mechanism" for distributing information to newly naturalized citizens. Non-governmental organizations were permitted to provide such services only "[i]f state or local election officials are unable to participate." *Id.* at 8. In that event, "interested non-governmental groups may seek the privilege of offering voter registration services at the conclusion of administrative naturalization ceremonies." *Id.*

To participate as a substitute for absent state or local officials, the 2011 Memorandum set forth various criteria that non-governmental organizations must satisfy. The 2011 Memorandum provided that "non-governmental organizations and their representatives . . . [m]ust not participate in any political activity, partisan or otherwise, while participating in voter registration activities during administrative naturalization ceremonies, regardless of whether the ceremonies take place on federal or non-federal property."[11] Defining the term "[p]olitical activity" as "activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group . . . [or as] advocacy for particular referenda or other political propositions," the 2011 Memorandum said that "a non-governmental group participating in voter registration activities at an administrative



[9] 2011 Mem. at 7.
[10] *Id.*
[11] *Id.* at 8.

naturalization ceremony may not provide information for or against a state immigration law or proposition" and that the activities of such an organization "while participating must also comply with the Hatch Act, 5 U.S.C. §§ 7321-26."[12]

The 2011 Memorandum was incorporated into USCIS's newly-created Policy Manual in 2013 when the agency consolidated various memoranda and policies into a centralized online repository.[13]

USCIS issued the 2025 Alert on August 29, 2025. Captioned "Voter Registration at Administrative Naturalization Ceremonies," the 2025 Alert "supersede[d] any related prior guidance" by providing the following "effective immediately": "[O]nly state and local election officials are permitted to provide voter registration services at the conclusion of an administrative naturalization ceremony. Nongovernmental entities are not permitted to provide voter registration services at USCIS facilities during naturalization ceremonies." The 2025 Alert acknowledged that "previous USCIS policy and practice" had permitted nongovernmental organizations "to provide voter registration applications and general information at administrative naturalization ceremonies" but said that "the use of nongovernmental organizations was sporadic and varied based upon the location" and that "USCIS staff previously provided voter registration applications and information at naturalization ceremonies in the event state and local election offices were not available to do so."[14] The 2025 Alert therefore said that USCIS was "discontinuing the practice of permitting the[] attendance [of nongovernmental organizations] at naturalization ceremonies" because "USCIS does not primarily rely on nongovernment organizations for



[12] 2011 Mem. at 8.

[13] *See* USCIS Policy Manual, https://perma.cc/DL5W-S95U

[14] 2025 Alert at 1-2.

voter registration services" and because "ensur[ing] that those nongovernmental organizations who provide voter registration services are nonpartisan" placed an "administrative burden on USCIS."[15] To be sure, USCIS never has primarily relied on nongovernment organizations for voter registration services.[16]

In reaching this decision, USCIS concluded that this change "in no way impacts new citizens' access to information and applications to register to vote, as this information will continue to be provided by state or local election officials, or USCIS staff at the end of naturalization ceremonies." 2025 Alert at 3. USCIS also found that "there is a reduced need for nongovernmental organizations to assist new citizens with collecting and submitting their voter registration applications" because of the proliferation of "online voter registration in most states." *Id.* The 2025 Alert was issued when the USCIS Policy Manual was updated to include the new policy regarding the NGO participation in in naturalization ceremonies.



## II. Factual Background

The LWV and NCJW-NO both purport to be non-partisan organizations.[17] The LWV says on its website that it "is a nonpartisan, grassroots nonprofit dedicated to empowering everyone to fully participate in our democracy" and that it is "engage[d] in advocacy, education, litigation, and organizing to protect every American's freedom to vote."[18] The LWV's mission has expanded to include "Expanding Voter Access; Fighting Voter Suppression; Money in Politics; Redistricting' Safe and Fair Elections" as well as "social and economic justice through

[15] 2025 Alert at 2.

[16] *Id.*

[17] *See, e.g.*, LWV Compl. ¶¶ 10-26, NCJW-NO Am. Compl., ¶ 4 (referring to "a host of nonpartisan organizations – including [NCJW-NO]").

[18] League of Women Voters, *About Us*, https://www.lwv.org/about-us (last accessed Dec. 31, 2025).

the lenses of health care, the environment, immigration reform, and the Census."[19]

The NCJW-NO identifies itself on its website as "a grassroots organization of volunteers and advocates who turn progressive ideals into action" that "strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms."[20] The NCJW-NO states that they have historically been "dedicated to improving the quality of life for women, children, and families, and to safeguarding individual rights and freedoms both in the U.S. and Israel."[21] Today, their mission includes "[a]dvanc[ing] the well-being and status of women, [a]dvanc[ing] the well-being of children and families, [e]nhanc[ing] the quality of Jewish life, [e]nsur[ing] individual and civil rights, and [s]upport[ing] a secure Israel and the well-being of all its people."[22]

The LWV says in its complaint that it has "more than a million members and supporters" and that affiliates of the League in the following areas have provided "voter registration and education services at administrative naturalization ceremonies" since the following dates: Colorado, 2017; Burlington County, New Jersey, 2017; Montclair Area, New Jersey, 2022 or 2023; Greater Princeton Area, New Jersey, 2022 or 2023; Saratoga County, New York, 2013; Charleston Area, South Carolina, 2003; and Milwaukee County, Wisconsin, 1975 or earlier.[23] NCJW-NO says it has "approximately 800 members."[24]



## LEGAL STANDARDS

A motion to dismiss under Rule 12(b)(1) challenges the Court's jurisdiction over the

[19] *Id.*
[20] NCJW Greater New Orleans, https://www.ncjwneworleans.org/ (last accessed Jan. 13, 2026).
[21] NCJW Greater New Orleans, *About*, https://www.ncjwneworleans.org/about/ (NCJW Webpage) (accessed Jan. 13, 2026).
[22] *Id.*
[23] *See generally* LWV Compl. ¶¶ 10, 18, 20, 22, 24, 26.
[24] NCJW-NO, *About*, https://www.ncjwneworleans.org/about/ (NCJW Webpage) (last accessed Jan. 13, 2026).

subject matter of the suit. The motion may either attack the court's subject matter jurisdiction by asserting "that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based," or may assert that as a factual matter, the plaintiff cannot meet his burden of establishing a jurisdictional basis for the lawsuit. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982).

The Court need not, however, "apply the same presumption of truth to conclusory statements and legal conclusions contained in . . . [the] complaint." *Beck v. McDonald,* 848 F.3d 262, 270 (4th Cir. 2017) (citation omitted). In evaluating subject-matter jurisdiction, the court may, when necessary, "look beyond the pleadings and 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." *Vance v. CHF Int'l*, 914 F. Supp. 2d 669, 676 (D. Md. 2012) (citation omitted).



To survive a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This "plausibility" standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). While the Court accepts well-pleaded factual allegations as true, "mere conclusory statements" and "legal conclusion[s] couched as . . . factual allegation[s]" are "disentitle[d] . . . to th[is] presumption of truth." *Id.* at 678, 681 (citation omitted). Although the Court generally may not rely on material outside the pleadings under Rule 12(b)(6), it may consider any "matters of public record" of which the court may take judicial notice, *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700,

705 (4th Cir. 2007) (citations omitted), as well as evidence attached to the motion to dismiss "[if] it was integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity," *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004) (citation modified).

## ARGUMENT

### I. THIS COURT SHOULD DISMISS ALL PLAINTIFFS' CLAIMS FOR LACK OF JURISDICTION

#### A. LWV and NCJW-NO Plaintiffs Lack Article III Standing

Plaintiffs' complaints should be dismissed in their entirety for lack of Article III standing. "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" that "ensure[s] that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). To meet Article III's standing requirement:

> a plaintiff must sufficiently allege the three elements identified by the Supreme Court [in *Spokeo*]. That is, a plaintiff must allege that they 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."

*Hutton v. Nat'l Bd. of Examiners in Optometry, Inc.*, 892 F.3d 613, 619-20 (4th Cir. 2018) (quoting *Spokeo,* 578 U.S. at 338). "The injury-in-fact requirement ensures that plaintiffs have a 'personal stake in the outcome of the controversy.'" *Kenny v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). "Injury in fact is 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Spokeo*, 587 U.S. at 339). The burden of sufficiently establishing these three elements falls on the party invoking federal jurisdiction. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

### 1. Plaintiffs' Alleged Harm Is Neither Actual nor Imminent, nor Caused by USCIS' Change in Policy

An "injury in fact" for standing purposes must be "concrete and particularized," "actual or imminent" and not "conjectural" or "hypothetical." *Lujan*, 504 U.S. at 560–61 (citation omitted). Threatened injury must be "certainly impending" or present a "substantial risk." *Clapper v. Amnesty Int'l USA,* 568 U.S 398, 410, 414 n.5 (2013). These are high standards, and a mere "objectively reasonable likelihood" is not sufficient. *Id.* at 410.

Both Plaintiffs complain that USCIS' change in policy infringes their First Amendment rights to express their views and to freely associate. NCJW-NO Am. Compl. ¶¶ 106-9; LWV Compl. ¶¶ 108-24. Neither is the case. The NCJW Plaintiffs allege that the new policy prevents them from expressing their viewpoint and violates their right to associate. NCJW-NO Compl. ¶¶ 108, 121. The LWV Plaintiffs allege that the new policy "restricts and chills [LWV's] association activities" and "unconstitutionally infringes on Plaintiffs' First Amendment right to freedom of speech." LWV Compl. ¶¶ 122, 126. Neither is an injury in fact sufficient to establish Plaintiffs' standing.



First, Plaintiffs lack standing to bring their First Amendment claims because they do not have a constitutionally protected interest in engaging in speech at administrative naturalization ceremonies. "[T]he irreducible constitutional minimum of standing contains three elements" and the first of those elements is that "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest . . .[.]" "It is . . . common ground, however, that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron*, 452 U.S. at 647 (collecting cases). Simply put, Plaintiffs have suffered no actual injury because there is no legally protected interest to violate. Neither Plaintiff has a legally protected interest entitling them to express their message at administrative naturalization ceremonies.

Furthermore, neither Plaintiff's speech has been unconstitutionally restricted by the government. Each Plaintiff here—and indeed any nonprofit organization advancing any message—has only been barred from expressing their message at administrative naturalization ceremonies, during or immediately following the ceremonies wherever they are held. This change in policy in no way censors or "chills" Plaintiffs from expressing their views about the importance of voting and voter registration for new citizens or on any topic more broadly. Indeed, Plaintiffs may still participate in judicial naturalization ceremonies and deliver the very same message they seek to express in a very specific forum here. Even accepting all allegations in Plaintiffs' complaints as true, Plaintiffs have not established a First Amendment injury-in-fact and, lacking this essential element, do not have standing to raise their First Amendment claims

Plaintiffs also allege that USCIS' change in policy bars their organizations' abilities to fulfill their missions. LWV Compl. ¶¶ 66, 69; NCJW-NO Compl. ¶¶ 21. Plaintiffs cannot establish standing on the "intensity of [their] interest" in participating in naturalization ceremonies, nor can they establish standing on their opposition to Defendant's decision not to invite their participation. *See All. for Hippocratic Med.*, 602 U.S. at 394 (citations omitted). Plaintiffs must show "far more than simply a setback to the organization's abstract social interests." *Id.* (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Seeing that newly naturalized citizens are assisted with voter registration and encouraged to vote at naturalization ceremonies is precisely the type of "abstract social interest" on which Plaintiffs may not base standing. *Id.*

Plaintiffs further allege that they have expended extensive resources to find alternative venues to promote voting and voter registration among new citizens. The Supreme Court has recently and firmly rejected the notion that "standing exists when an organization diverts its

resources in response to a defendant's actions." *All. for Hippocratic Med.*, 602 U.S. at 395. If that were enough, it "would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Id.* Thus, the Supreme Court has distinguished (and rejected) a diversion of resources theory from the "unusual" situation where a defendant provided false information that directly impaired an organization's ability to engage in its related core business activities, as in *Havens Realty*. *Id.* at 395–96 (distinguishing between the facts before the Court and the Court's opinion in *Havens*). Unlike in *Havens*, the 2025 Alert does not directly prevent or impair Plaintiffs from engaging in their core activities. At most, each organization is making an "uncompelled choice to expend resources." *Republican Nat'l Comm. v. N.C. Bd. of Elections,* 120 F.4th 390, 396 (4th Cir. 2024). And as the Fourth Circuit recently confirmed, an organization cannot "spend its way into standing." *Id.* (citation omitted). Accordingly, Plaintiffs' diversion of resources theory also fails. *See All. for Hippocratic Med.*, 602 U.S. at 394 (noting that "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action," where plaintiff was an advocacy organization and it diverted resources to engage in a core business activity).



LWV Plaintiffs also allege that the new policy impedes their ability to "assist[] [newly naturalized] voters with the completion, collection, and submission of voter registration applications" and "Plaintiffs' ability to undertake such efforts are critical to maintaining and growing their own membership." LWV Compl. ¶ 121. But that injury is not fairly traceable to USCIS' new policy. An injury suffices for Article III standing only if it is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (citation modified). "Where a

causal relation between injury and challenged action depends upon the decision of an independent third party" (*e.g.*, an unknown individual's decision not to become a member of LWV), "standing is not precluded, but it is ordinarily 'substantially more difficult to establish.'" *California v. Texas*, 593 U.S. 659, 675 (2021) (quoting *Lujan*, 504 U.S. at 562); *see Clapper*, 568 U.S. at 414 (expressing "reluctance to endorse standing theories that rest on speculation about the decisions of independent actors"). Here, an individual's decision to become a member of or volunteer on behalf of LWV would be the consequence of an "unfettered choice[]" made by an "independent actor[]" that is not before the Court. *Lujan*, 504 U.S. at 562 (citation omitted). Because LWV's alleged injury is tied to the decisions of unnamed individuals—prospective members who choose not to join LWV—they face an even higher bar to establish standing.

Where causation hinges upon the choices of third parties, a plaintiff must adduce facts to show that those choices "have been or will be made in such [a] manner as to produce causation and permit redressability of injury." *Id.* Plaintiffs have not satisfied that higher burden. Plaintiffs have not presented any evidence to show that the 2025 Alert has a direct causal impact on the LWV Plaintiffs' ability to attract, recruit, and retain members and volunteers. This argument rests on a speculative chain of attenuated possibilities regarding the motivations for why certain individuals may choose not to join LWV. LWV has also not demonstrated that an order of this Court rescinding the 2025 Alert and associated policy change would directly increase their membership.

For these reasons, LWV's theory fails both the traceability and redressability prongs of the standing analysis.

**2. Plaintiffs' Generalized Grievances Do Not Confer Standing**

In addition to the standing requirement of an "injury in fact," the doctrine of standing

also holds that "a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an injury in fact." *Carney*, 592 U.S. at 58. "In other words, a plaintiff cannot establish standing by asserting an abstract 'general interest common to all members of the public,' . . . 'no matter how sincere' or 'deeply committed' a plaintiff is to vindicating that general interest on behalf of the public." *Id.* at 59 (quoting *Lance v. Coffman*, 549 U.S. 437, 440 (2007) and *Hollingsworth v. Perry*, 570 U.S. 693, 706-7 (2013)); *see also Warth*, 422 U.S. at 499 ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.").

Plaintiffs appear to base their standing to bring their claims on a generalized interest in seeing that newly naturalized citizens are encouraged to vote and provided the opportunity to register. But Plaintiffs are not conferred standing on the basis of their generalized grievance that newly naturalized citizens are not being encouraged or registered to vote by *their* organizations. *Cf. Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21–25 (1998) (finding standing where a *group of voters* challenged an agency decision from which they alleged a concrete, though widespread, harm when they were prevented from accessing publicly disclosable voting-related material). Indeed, any American citizen could assert support for voting rights and, as such, it is a generalized grievance that does not warrant this Court's exercise of jurisdiction over Plaintiffs' claims. *See Warth*, 422 U.S. at 499.

In any event, the naturalized citizens that Plaintiffs claim an interest in encouraging and registering to vote are not, nor will they be, discouraged from voting or denied the ability to register to vote by the 2025 Alert. Quite the opposite. Naturalized citizens are currently provided voter registration information at all naturalization ceremonies.[25] Neither the LWV

[25] The U.S. government makes voter registration information available to the public writ

Plaintiffs nor the NCJW-NO Plaintiff can base their standing on a generalized policy interest in promoting access to voter information by newly naturalized citizens.

### 3. Plaintiffs' Diversion of Resources Does Not Confer Standing

Plaintiffs' allegation that they have had to expend resources to find other ways to reach new citizens also does not confer standing. To show the requisite injury-in-fact, "an organization must allege that the defendant's conduct perceptibly impaired the organization's ability to provide services." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) (citation omitted). And, as the Supreme Court recently clarified, the notion that "standing exists when an organization diverts its resources in response to a defendant's actions . . . is incorrect." *All. for Hippocratic Med.*, 602 U.S. at 395. Otherwise, "all the organizations in America would have standing to challenge almost every federal policy that they dislike." *Id.*

### 4. NCJW-NO Plaintiffs Lack Standing for their Fifth Amendment Claims

The NCJW-NO Plaintiff lacks standing to raise their Fifth Amendment discrimination and substantive due process claims. Plaintiff alleges that the 2025 Alert "targets naturalized citizens' access to voter registration services." NCJW-NO Am. Compl. ¶ 101. Because NCJW-NO raises these claims *on behalf of* the new citizens they seek to engage at naturalization ceremonies, they must demonstrate third party standing. They do not, and cannot, do so.

As a threshold matter, NCJW-NO would fail to satisfy the elements of Article III standing with respect to its Fifth Amendment claims, even if raised on its own behalf. NCJW-NO fails to identify a single naturalized citizen who was prevented from voting or registering to vote by their organization's absence at naturalization ceremonies. The absence of such

large via its vote.gov website. *See* vote.gov, http://www.vote.gov/ (last accessed Jan. 27, 2026); *see also Voting as a new U.S. citizen*, vote.gov, https://vote.gov/guide-to-voting/new-united-states-citizen/ (last accessed Jan. 27, 2026).

evidence is fatal to their claim and shows there is neither an actual injury nor that such injury was caused by the 2025 Alert. Plaintiff also fails to establish that the relief they request in their complaint is necessary to redress this injury—*i.e.*, that a permanent injunction would prevent the government from interfering in newly naturalized citizens' exercise of the franchise, which Plaintiff does not claim the government is doing. Thus, even if NCJW-NO were seeking to vindicate their own rights, it would lack all three Article III standing requirements for their Fifth Amendment claims.

Here, however, NCJW-NO asserts its Fifth Amendment claims on the basis of the constitutional rights of the newly naturalized citizens they claim are being deprived in some way of the right to vote or the ability to register to vote. "A party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Kowalski,* 543 U.S. at 129 (2004) (quoting *Warth*, 422 U.S. at 499). However, "there may be circumstances where it is necessary to grant a third party standing to assert the rights of another." *Id.* at 129-130. The Supreme Court has "limited this exception by requiring that a party seeking third-party standing make two additional showings . . . [(1)] whether the party asserting the right has a 'close' relationship with the person who possesses the right [and (2)] whether there is a 'hindrance' to the possessor's ability to protect his own interests." *Id.* at 130 (internal citations omitted). The NCJW-NO Plaintiff cannot satisfy either requirement for this limited exception.



First, NCJW-NO does not maintain a "close relationship" with newly naturalized citizens. In *Kowalski*, the Supreme Court assessed whether an attorney-client relationship could constitute such a close relationship. *Id.* at 131. The Court identified two cases in which it found third-party standing based on an "*existing* attorney-client relationship" but held that a "*hypothetical* attorney-client relationship" was "quite distinct." *Id.*. *Kowalski* also distinguished

petitioners in that case – attorneys seeking to invoke the rights of hypothetical, future clients – from attorneys "involved [in] the representation of *known* claimants." *Id.* (emphasis added). NCJW-NO is similarly situated to petitioners in *Kowalski*. They lack the necessary "close relationship" with a hypothetical, unidentified, recently naturalized citizen and therefore cannot establish the "close relationship" required for third-party standing.

Second, NCJW-NO has not demonstrated that naturalized citizens would be unable to advance their own constitutional rights to vote or register to vote. If they were, one wonders why NCJW-NO did not assemble a group of naturalized citizens who were harmed by the 2025 Alert to raise their Fifth Amendment claims. No such evidence is in the record, presumably because no newly naturalized citizen has been deprived of a constitutionally protected interest as a result of the 2025 Alert. Nevertheless, there is nothing preventing a naturalized citizen from raising a Fifth Amendment equal protection or substantive due process claim in a challenge to the 2025 Alert themself. Accordingly, NCJW-NO lacks third-party standing to assert these claims.



**5. NCJW-NO Has Not Established Associational Standing**

An organization may establish associational standing by showing that "(a) its members would otherwise have standing to sue in their own right; (b) the interests [the organization] 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." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). NCJW-NO contends that it has associational standing by generally asserting the rights of its members, claiming that such members have been barred from providing voter registration information at naturalization ceremonies. *See* NCJW-NO Am. Compl. ¶¶ 7, 105. Yet they fail to specifically identify any such members of their organizations. This is inadequate to establish standing. Indeed,

"[w]hen a petitioner claims associational standing, it is not enough to aver that unidentified members have been injured." *Chamber of Comm. of U.S. v. EPA*, 642 F.3d 192, 199 (D.C. Cir. 2011). "Rather, the petitioner must specifically identify members who have suffered the requisite harm." *Id.* (citation omitted); *see also Am. Chemistry Council v. Dep't of Transp.*, 468 F.3d 810, 820 (D.C. Cir. 2006) ("[A]n organization bringing a claim based on associational standing must show that at least one specifically-identified member has suffered an injury-in-fact . . . . At the very least, the identity of the party suffering an injury in fact must be firmly established."). A contrary holding "flouts the Supreme Court's instruction that . . . organizational plaintiffs seeking to establish associational standing must 'identify or 'name' members who have suffered the requisite harm." *Satanic Temple, Inc. v. Rokita*, ---F.4th---, 2026 WL 34486, at *5 (7th Cir. Jan. 6, 2026) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498-99 (2009)). Without knowing the identity of their members and the specific features of their injuries, Plaintiffs' allegations are inherently speculative. Even if NCJW-NO had identified a specific member, the general injuries they assert are no different from the injuries to the organization itself, which fail to establish standing for the reasons explained above.



### B. Plaintiffs' APA Claims Fail Because Defendants' Decision to Allow or Not to Allow Non-Governmental Organization Participation in Naturalization Ceremonies is Committed to Agency Discretion by Law

The USCIS's decision to not to seek the assistance of non-governmental organizations to distribute voting information during administrative naturalization ceremonies to meet the requirements of 8 U.S.C. § 1443(h) and 8 U.S.C. § 1448 is a determination that is committed to agency discretion by law. Accordingly, Plaintiffs' APA claims set forth in Counts 1-2 and 5-6 of LWV's Complaint, and Counts 4-6 of NCJW-NO's Amended Complaint, should be dismissed for lack of jurisdiction.[26] The APA bars judicial review of agency action to the extent

[26] The Fourth Circuit recently confirmed that a court lacks subject matter jurisdiction when an

that it "is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). Agency action may be deemed committed to agency discretion "even where Congress has not affirmatively precluded review." *Chaney*, 470 U.S. at 830. Where "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion"—where, effectively, "there is no law to apply"—the APA does not permit judicial review. *Id.* (citation omitted); *see Pharm. Coal. for Patient Access v. United States*, 126 F.4th 947, 964 (4th Cir. 2025).

Here, the statutes that require USCIS to distribute information about United States citizenship and conduct naturalization ceremonies do not expressly preclude judicial review. *See* 8 U.S.C. §§ 1443(h), 1448. Thus, the Court must consider whether there is a meaningful standard by which it can determine whether USCIS appropriately exercised its discretion. "[I]f no judicially manageable standards are available for judging how and when an agency should exercise its discretion, then it is impossible to evaluate agency action for 'abuse of discretion.'" *Chaney,* 470 U.S. at 830. "The danger that agencies may not carry out their delegated powers with sufficient vigor does not necessarily lead to the conclusion that courts are the most appropriate body to police this aspect of their performance." *Id.* at 834.



Combining the relevant Supreme Court precedents on the issue of nonreviewability, the Fourth Circuit in *Holbrook v. Tennessee Valley Authority*, 48 F.4th 282 (4th Cir. 2022), devised a two-part inquiry to determine whether an agency action is of the kind that is committed to agency discretion. First, the Court must consider "whether an agency action is the kind of action that has traditionally been committed to agency discretion." *Id.* at 290. "Once we are in a traditional category, the 'presumption of reviewability' under the APA flips, and the agency

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action is committed to agency discretion by law and thus should be dismissed under Rule 12(b)(1). *See Pharm. Coal. for Patient Access v. United States*, 126 F.4th 947, 964 (4th Cir. 2025)

action becomes 'presumptively unreviewable.'" *Id.* at 289 (quoting *Chaney*, 470 U.S. at 831-832). Second, this presumption of nonreviewability can be overcome where Congress has provided "'guidelines for the agency to follow in exercising its enforcement powers,' by 'setting substantive priorities, or by otherwise circumscribing an agency's power.'" *Id.* at 293 (quoting *Chaney,* 470 U.S. at 833). "Because the question is about what Congress did, it amounts to a question of statutory interpretation." *Id.*

As to the first inquiry, "[n]o clean rule materializes for determining whether an agency action is the kind of action that has traditionally been committed to agency discretion." *Id.* at 290. However, one such area the Supreme Court has identified is agency actions that "involve 'complicated balancing of a number of factors which are peculiarly within [the agency's] expertise, . . . especially decisions that involve resource allocation and the need for flexibility to 'adapt to changing circumstances.'" *Id.* (quoting *Lincoln v. Vigil*, 508 U.S. 182, 192-193 (1993)). This is precisely the type of agency action USCIS has taken here. Congress transferred the function of administering naturalization (to include naturalization ceremonies) to the USCIS and, as such, the USCIS is entitled to exercise a substantial degree of discretion in carrying out administrative naturalization ceremonies.[27] Issuance of the 2025 Alert involved a consideration of agency resources, public access to voter information and registration applications, and the reliance interests of new citizens on NGO assistance. *See* 2025 Alert. The action also involved resource allocation decisions and represented the agency's adaptation to changing circumstances (*e.g.,* the availability of online voter registration in most states). *Id.* Thus, the 2025 Alert is of the type of agency action traditionally committed to agency discretion and is presumptively unreviewable.

As to the second inquiry, the statute directing USCIS to seek the assistance of

[27] *See* 6 U.S.C. § 271(b)(2).

"appropriate community groups, private voluntary agencies, and other relevant organizations" in distributing information about U.S. citizenship or naturalization does not provide any clear guidance or instruction sufficient to overcome the presumption of unreviewability. 8 U.S.C. § 1443(h). Section 1443(h) directs that USCIS "shall seek the assistance" of outside groups, volunteer agencies, and other organizations, but it is not specific as to *what* information should be provided about citizenship or naturalization, nor *who* should provide it. *See id.* It does not say whether state and local governments are or are not "relevant organizations" within the meaning of the statute. *See id.* It also does not prohibit USCIS from determining that it can satisfy the statute's mandate to "broadly distribute information concerning the benefits" of citizenship itself and the "assistance" of outside organizations is unnecessary. *See id.* The statute provides no upper or lower bound on the number of outside organizations from which USCIS must seek assistance. *See id.* Nothing in the statute provides a clear limit or guideline as to how USCIS is to carry out the requirement to "seek the assistance" of outside organizations. *Id.* As such, the presumption that USCIS's decision not to seek Plaintiffs' specific assistance with respect to voter information and registration is presumptively unreviewable.



Similarly, 8 U.S.C. § 1448 provides no judicially enforceable limitations on how USCIS conducts administrative naturalization ceremonies. Congress has simply provided that such ceremonies must be "public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion." *Id.* § 1448(d). Congress left the manner in which ceremonies are conducted entirely to the discretion of USCIS. Whether USCIS invites guest speakers, plays certain music, or enlists outside authorities to distribute information about voter registration are matters that fall exclusively within the exercise of the agency's discretion. Congress's silence with respect to those issues "leaves th[e] [C]ourt with no manageable

standard to apply[]" in assessing how ceremonies should be conducted. *Speed Mining, Inc. v. Fed. Mine Safety and Health Review Comm'n*, 528 F.3d 310, 317 (4th Cir. 2008) (citation omitted) (concluding that the Federal Mine Safety and Health Act provided no manageable standard to apply to the Secretary's exercise of enforcement discretion because the Act provided "no direction" regarding which mine operator (*i.e.* owner-operator, lessee-operator, supervisor, independent contractor, etc.) should receive a citation for a violation of the Act).

## II. PLAINTIFFS HAVE FAILED TO SUFFICIENTLY PLEAD THEIR FIRST AND FIFTH AMENDMENT AND APA CLAIMS

### A. Plaintiffs Have Failed to State a Claim that the 2025 Policy Manual Update and Alert Violate the First Amendment.

Plaintiffs' complaints fail to state a violation of the First Amendment. Accordingly, Counts 3-4 of LWV's Complaint, and Count 3 NCJW-NO's Amended Complaint, should be dismissed.

"It is uncontested and uncontestable that government officials may not exclude from public places persons engaged in peaceful expressive activity solely because the government actor fears, dislikes, or disagrees with the views those persons express." *Wood v. Moss*, 572 U.S. 744, 756-57 (2014). "It is equally plain that the fundamental right to speak secured by the First Amendment does not leave people at liberty to publicize their views 'whenever and however and wherever they please.'" *Id.* at 757 (quoting *United States v. Grace*, 461 U.S. 171, 177-78 (1983)). "Even protected speech is not equally permissible in all places and at all times." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985).

"The Government, 'no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Grace*, 461 U.S. at 178 (quoting *Adderley v. Florida*, 385 U.S. 39, 47 (1966)). "Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their

right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities." *Cornelius*, 473 U.S. at 799-800.

The Supreme Court employs a "forum-based approach" to "assess[] restrictions that the government seeks to place on the use of its property." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11 (2018) (quoting *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992)). This approach "recognize[s] three types of government-controlled spaces: traditional public forums, designated public forums, and nonpublic forums." *Id.* "In a traditional public forum – parks, streets, sidewalk, and the like – the government may impose reasonable time, place, and manner restrictions on private speech, but restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited." *Id.* "The same standards apply in designated public forums – spaces that have 'not traditionally been regarded as a public forum' but which the government has 'intentionally opened up for that purpose.'" *Id.* (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 469-70 (2009)). "In a nonpublic forum, on the other hand – a space that 'is not by tradition or designation a forum for public communication' – the government has much more flexibility to craft rules limiting speech." *Id.* at 11-12 (quoting *Perry Educ. Ass'n v. Perry Loc. Educators Ass'n*, 460 U.S. 37, 46 (1983)). "The government may reserve such a forum 'for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Id.* at 12 (quoting *Perry Educ. Ass'n*, 460 U.S. at 46). "'Public property which is not by tradition or designation a forum for public communication' is a nonpublic forum, where the government has wider latitude to limit speech." *See White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 196 (4th Cir. 2022) (quoting *Perry Educ. Ass'n*, 460 U.S. at 46).

"Limitations on expressive activity conducted on this last category of property" thus "must survive only a much more limited review." *Krishna Consciousness*, 505 U.S. at 679. "The Government's decision to restrict access to a nonpublic forum need only be *reasonable*; it need not be the most reasonable or the only reasonable limitation." *Cornelius*, 473 U.S. at 808. "The First Amendment does not demand unrestricted access to a nonpublic forum merely because use of that forum may be the most efficient means of delivering the speaker's message." *Id.* at 809.

"Control over access to a nonpublic forum can be based," moreover, "on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." *Id.* at 806. The government thus "may impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude political advocates and forms of political advocacy." *Minn. Voters*, 585 U.S. at 12. What the government must avoid in imposing such restrictions is "confusing line-drawing problems." *Id.* at 18. "Although there is no requirement of narrow tailoring in a nonpublic forum, the State must be able to articulate some sensible basis for distinguishing what may come in from what must stay out." *Id.* at 16. A statute prohibiting "political apparel" at polling places is thus invalid if the statute does not define the term "political" and the "interpretations the State has provided in official guidance and representations to this Court" are "haphazard." *Id.* at 16-17. A policy of a local agency prohibiting "political ads" on public buses is likewise invalid if, "[w]hen taken together, [the agency's] vaguely defined policies and even vaguer unwritten rules make it impossible for a reasonable person to identify what violates their advertising policy and what does not." *White Coat Waste Project*, 35 F.4th at 201.

Administrative naturalization ceremonies are nonpublic forums. "The government creates a designated public forum 'only by intentionally opening a nontraditional forum for

public discourse.'" *Id.* at 197 (quoting *Cornelius*, 473 U.S. at 802). Here, USCIS has not intentionally opened up administrative naturalization ceremonies to general public discourse. The only member of the public permitted to speak at an administrative naturalization ceremony is a guest speaker selected by USCIS to provide keynote remarks.[28] The content of the ceremony is tightly scripted and controlled by USCIS. An administrative naturalization ceremony is therefore "a space that 'is not by tradition or designation a forum for public communication,'" *see Minn. Voters*, 585 U.S. at 11 (quoting *Perry Educ. Ass'n*, 460 U.S. at 46). Accordingly, it is nonpublic forum. *See Ashby v. Isle of Wight Cnty. Sch. Bd.*, 354 F. Supp. 2d 616, 629 (E.D. Va. 2004) (holding that high school graduation ceremony is a non-public forum because school tightly controlled the content of the ceremony, preventing it from being a public fora where a multiplicity of views on various topics can be expressed and exchanged).

The 2025 Alert constitutes a permissible restriction on expression at a nonpublic forum because the 2025 Alert does not create any "confusing line-drawing problems." *See Minn. Voters*, 585 U.S. at 18. No one has to wonder whether a particular nongovernmental organization is permitted under the 2025 Alert to "provide voter registration services" at administrative naturalization ceremonies because the 2025 Alert does not permit any nongovernmental organization to provide those services.[29] Further, the 2025 Alert is viewpoint neutral, prohibiting all nongovernmental organizations from participation regardless of any particular political views such organizations may have.

The 2025 Alert is also a permissible restriction on expression at a nonpublic forum because the 2025 Alert is "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *See Minn. Voters*, 585 U.S. at 12 (quoting *Perry*

[28] *See* 2011 Mem. at 5-6.
[29] *See* 2025 Alert at 1.

*Educ. Ass'n*, 460 U.S. at 46). Three things support this conclusion. First, the 2011 Memorandum expressed a preference for "[s]tate or local government election offic[ials]" over "[n]on-governmental organizations" as a mechanism for distributing voter applications at administrative naturalization ceremonies.[30] The 2025 Alert retains that preference by providing henceforth that "only state and local election officials are permitted to provide voter registration services at the conclusion of an administrative naturalization ceremony."[31]

Second, USCIS said when it issued the 2025 Alert that "ensur[ing] that those nongovernmental organizations who provide voter registration services are nonpartisan" had created an "administrative burden" for USCIS.[32] That statement is supported by the complexity and incompleteness of the definition of "political activity" contained in the 2011 Memorandum[33] and by the observation of the Supreme Court that "the term 'political' . . . can be expansive." *Minn. Voters*, 585 U.S. at 17.

Third, USCIS said when it issued the 2025 Alert that the use of nongovernmental organizations to "provide voter registration applications and general information at administrative naturalization ceremonies" has been "sporadic and varied based upon the location" and that "USCIS does not primarily rely on nongovernment organizations for voter registration services."[34] The League confirms the accuracy of those assertions by pointing to limited areas of the country in which its affiliates allegedly have provided "voter registration and education services at administrative naturalization ceremonies" and by pointing to the varying periods of time during which they allegedly have done so.[35]



[30] 2011 Mem. at 7.
[31] *See* 2025 Alert at 1.
[32] *Id.* at 2.
[33] *See* 2011 Mem. at 8.
[34] *Id.* at 2.
[35] *See* LWV Compl., ¶¶ 10, 18, 20, 22, 24, 26.

The 2025 Alert thus controls "access to a non-public forum" through the use of distinctions in "subject matter and speaker identity" that are "reasonable in light of the purposes served by the forum and are viewpoint neutral." *See Cornelius*, 473 U.S. at 806. No merit therefore exists to Plaintiffs' contention that the 2025 Alert is invalid under the First Amendment.

### B. The 2025 Policy Manual Update and Alert Do Not Violate the Fifth Amendment.

NCJW-NO's Fifth Amendment claims (Counts 1 & 2) should be dismissed because they lack third-party standing to bring them. *See supra* 18-20. NCJW-NO's lack of standing fully disposes of these claims and the Court need not go further. However, even if the Court were to consider the merits, NCJW-NO fails to state either an equal protection or a substantive due process violation.



Plaintiffs attempt to demonstrate that the underlying motivation for the 2025 Alert is unconstitutionally discriminatory but completely fail to identify how the new policy burdens the ability of naturalized citizens to vote. A Fifth Amendment equal protection claim requires claimants demonstrate both that the official action was motivated by "racially discriminatory intent or purpose" and has a "racially disproportionate impact[.]" *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-65 (1977). The NCJW-NO Plaintiff makes the conclusory statement that the 2025 Alert "targets naturalized citizens' access to voter registration services" and is intended to "discourage naturalized citizens' civic participation." *See* NCJW-NO Am. Compl. ¶ 101. Assuming newly naturalized citizens are a protected class, NCJW-NO's blanket assertion fails to explain how the 2025 Alert has disparately impacted newly naturalized citizens in any way. Plaintiffs fail to identify any instance in which a newly naturalized citizen has been prevented, inhibited, or even discouraged from voting or registering to vote. Nor do they explain how such an occurrence would be the direct result

of their organization's absence at an administrative naturalization ceremony, particularly when other governmental entities are available to provide voter services and information regarding voting is widely available to the public. Such conclusory allegations, unsupported by any facts, are insufficient and demonstrate that Plaintiffs are unlikely to succeed on their Fifth Amendment equal protection claim, notwithstanding the reality that they do not have standing to bring it.

Next, the NCJW-NO Plaintiff's Fifth Amendment substantive due process claim is also unlikely to succeed on the merits as the agency action at issue here does not constitute an action so arbitrary that it "shock[s] the contemporary conscience." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998). "[I]n a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Id.* The decision not to seek the assistance of a particular outside organization to disseminate voter registration information or provide assistance at naturalization ceremonies clearly does not rise to this level. *See id.* at 848, n. 8; *cf. Rochin v. California*, 342 U.S. 165, 172 (1952) (holding that "[i]llegally breaking into the privacy of the petitioner, [] struggl[ing] to open his mouth and remove what was there, [] forcibl[y] extract[ing] [] his stomach's contents—this course of proceeding by agents of government to obtain evidence" is "conduct that shocks the conscience.").



As such, the NCJW-NO Plaintiff's Fifth Amendment claims are unlikely to succeed for a multitude of reasons, including lack of standing.

### C. Plaintiffs Fail to State an APA Claim Because the Policy Change Reflected in the 2025 Alert is Committed to Agency Discretion by Law and Notice-and-Comment Rulemaking Was Not Required

All of Plaintiffs APA claims can be resolved as a matter of law because the decision to allow or not allow Plaintiffs to participate in naturalization ceremonies is committed to

USCIS's discretion by statute, as explained above. *See supra* 21-25. Additionally, Plaintiffs' procedural APA claims should also be dismissed because USCIS was not required to engage in notice-and-comment rulemaking pursuant to 5 U.S.C. § 706(2)(D). *See* LWV Compl. (Count 1); NCJW-NO Am. Compl. (Count 6).

The APA requires agencies issuing substantive rules except in certain situations to publish "[g]eneral notice of proposed rule making . . . in the Federal Register," 5 U.S.C. § 553(b), and, subsequently, to give "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." *Id.* § 553(c). Plaintiffs contend that the 2025 Alert is invalid because USCIS did not comply with "the notice and comment requirements" of §§ 553(b) and (c) before issuing the 2025 Alert.[36] Plaintiffs are mistaken for two reasons.



First, the APA provides that 5 U.S.C. § 553(b)(A) "does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." "[G]eneral statements of policy" are "statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power." *Lincoln*, 508 U.S. at 197 (quoting *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 n.31 (1979)). The 2025 Alert was a document by which USCIS "advise[d] the public prospectively of the manner in which [it] propose[d] to exercise [its] discretionary power" over administrative naturalization ceremonies. *See id.* at 197 (quoting *Chrysler Corp.*, 441 U.S. at 302 n.31). The 2025 Alert was therefore a "general statement[] of policy" for which USCIS was not required to publish a general notice of proposed rulemaking in the Federal Register. *See id.*

[36] LWV Compl. ¶ 4.

Second, "the APA 'make[s] no distinction . . . between initial agency action and subsequent agency action undoing or revising that action.'" *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015) (quoting *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)). The APA is therefore "correctly read . . . to mandate that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance." *Id.* USCIS did not publish a general notice of proposed rulemaking in the Federal Register for the 2011 Memorandum, and Plaintiffs do not allege otherwise. USCIS therefore had no duty to publish a general notice of proposed rulemaking in the Federal Register for the 2025 Alert.

The APA, moreover, "sets forth the full extent of judicial authority to review executive agency action for procedural correctness." *Id.*. at 101 (quoting *Fox Television Stations*, 566 U.S. at 513). "Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them." *Id.* at 102. (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 524 (1978)). The discretion "to grant additional procedural rights" that USCIS possessed, *see id.,* means that USCIS had no duty to public comment before issuing the 2025 Alert.



Indeed, if 2025 Alert is a "substantive rule" subject to notice and comment, then *a fortiori* so was enacting the 2011 policy in the first place. Critically, though, the 2011 policy also was not adopted through notice and comment procedures. So even on Plaintiffs' own theory, the 2011 policy would be void *ab initio*—leaving Plaintiffs without a remedy. *See Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1341 n.9 (4th Cir. 1995) (noting that if the interim rule at issue were a substantive rule, as the plaintiff claimed, then it would have been invalid from the date of its issuance for failure to comply with the APA's notice requirements; finding that interim rule was a policy statement not subject to notice and comment). Accordingly, an agency's

decision to change its position does not subject the agency's new decision to a higher procedural standard than the initial policy. *See Perez*, 575 U.S. at 101 ("Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.").

## CONCLUSION

For these reasons, this Court should dismiss both the LWV Plaintiffs' Complaint and the NCJW-NO Plaintiff's Amended Complaint in their entirety.

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Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

ANDREW I. WARDEN
Assistant Branch Director
Civil Division, Federal Programs Branch

*/s/ Ryan Underwood*
RYAN M. UNDERWOOD
(D.C. Bar No. 1656505)
DAVID M. GLASS
(D.C. Bar No. 544549)
*Trial Attorneys*
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel. (202) 305-1952
Email: ryan.m.underwood2@usdoj.gov

*Attorneys for Defendants*