

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

LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES, *et al.*,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, *et al.*,

Defendants.

Civil Action No. 25-CV-03777-ABA

NATIONAL COUNCIL OF JEWISH
WOMEN, GREATER NEW ORLEANS
SECTION,

Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, *et al.*,

Defendants.

Civil Action No. 25-CV-03675-ABA

**PLAINTIFF NATIONAL COUNCIL OF JEWISH WOMEN, GREATER NEW ORLEANS
SECTION'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

In August of last year, U.S. Citizenship and Immigration Services (“USCIS”) abruptly reversed a longstanding policy that allowed non-governmental organizations to help new citizens register to vote the moment they became American citizens—immediately following their administrative naturalization ceremonies. For years, NGOs filled that role when state and local election officials were unavailable, explaining the registration process, translating forms, and encouraging new citizens to vote. USCIS now categorically bans that assistance, effectively dismantling the voter-registration program that Plaintiff National Council of Jewish Women, Greater New Orleans Section has operated for years.

Defendants offered little explanation for the Voter Assistance Ban, but its context speaks for itself. The Ban arrived amid a series of measures burdening naturalized citizens’ participation in elections and alongside repeated public statements by Executive Branch officials—including Department of Homeland Security Secretary Kristi Noem and USCIS Director Joseph Edlow—casting immigrants as a threat precisely because they may become voters and have the power to influence American elections.

Officials have discretion to change their policies. But they may not do so for discriminatory reasons or to suppress a viewpoint they disfavor. Nor may they reverse longstanding policy without reasoned explanation or without completing the notice-and-comment process required by law. The Ban does not comply with these requirements. Plaintiff therefore challenges the Ban under the First Amendment, the Fifth Amendment, and the Administrative Procedure Act, and its Amended Complaint sets forth detailed factual allegations supporting each claim.

Defendants mount two primary lines of attack on Plaintiff’s claims, both of which fail. First, they argue Plaintiff lacks standing and that the APA bars review. But the Ban prevents Plaintiff from performing a core service central to Plaintiff’s mission. That injury is direct,

concrete, and redressable by an injunction. Nor can Defendants avoid this straightforward basis for standing by recasting Plaintiff's claims. Plaintiff challenges a categorical barrier imposed for unlawful reasons; it does not seek to vindicate others' rights or claim an absolute right to express itself on government property. And the policy reversal at issue falls squarely within the APA's strong presumption of reviewability, not the narrow exception Defendants invoke.

Second, Defendants incorrectly argue that Plaintiffs have failed to adequately state claims for relief. Defendants' arguments on this score are markedly narrow. The fundamentals of Plaintiff's First and Fifth Amendment claims are not in dispute: Defendants largely agree on the legal elements of those claims, and they do not contest the sufficiency of the allegations that satisfy them. Instead, Defendants attempt to rewrite Plaintiff's legal theories and graft extra pleading requirements onto settled law. Plaintiff's Fifth Amendment claims allege the Ban violates equal protection and substantive due process because it excludes NGOs for an illegal purpose: to discriminate against naturalized citizens. Plaintiff's well-supported allegations of discriminatory intent, which Defendants never contest, are more than sufficient to state these claims. Plaintiff alleges that the Ban violates the First Amendment because it is not supported by reasoned decisionmaking and discriminates based on viewpoint. Defendants respond with conclusory statements to the contrary, but they again sidestep the governing standards and ignore well-pleaded allegations showing the opposite. As to the Plaintiff's APA claims, Defendants offer a single meritless attack that attempts to shoehorn the Ban into an exemption from the notice-and-comment requirement. Aside from contending they are unreviewable, Defendants leave Plaintiff's other APA claims—alleging that the Ban is arbitrary and capricious and contrary to Plaintiff's constitutional rights—unchallenged.

Defendants’ efforts to blur the issues cannot overcome Plaintiff’s robust, well-pleaded allegations on each of its claims. The motion to dismiss should be denied.¹

BACKGROUND

Every year, hundreds of thousands of people become new American citizens through the naturalization process—that number was 800,000 in 2024 alone. Am. Compl. ¶ 26, No. 25-cv-3675-ABA, Dkt. No. 17 (“Compl.”). These new citizens have become an increasingly significant portion of the American electorate; by 2024, more than one in ten eligible voters were naturalized citizens. *Id.* ¶ 27. In most cases, the final step in the naturalization process is an “administrative” naturalization ceremony conducted by USCIS, where new citizens swear an oath of allegiance to the United States and become citizens. *Id.* ¶ 29. Upon doing so, they are conferred with the same rights as any American, chief among them the right to vote. *Id.* ¶¶ 29–30.

Yet naturalized citizens participate in the franchise at far lower rates than native-born citizens. *Id.* ¶ 31. The key driver of this gap is a significantly lower registration rate. *Id.* Once registered to vote, naturalized citizens turn out at similar rates as native-born citizens. *Id.* But for many new Americans, registration itself is a challenge. *Id.* ¶¶ 31–34. Voter registration forms, which often contain legalese and unfamiliar terms, can be daunting for new English speakers, and registration itself can be intimidating for naturalized citizens unfamiliar with the democratic process. *Id.* ¶¶ 33–34, 46–47.

¹ The arguments in Defendants’ motion are materially identical to those in their response in opposition to Plaintiff’s motion for a preliminary injunction. *See* Defs.’ Opp’n to Mot. for Prelim. Inj., Dkt. No. 27. Plaintiff has therefore also addressed those arguments in its reply in support of the motion. *See* Pl.’s Reply in Supp. of Prelim. Inj., Dkt. No. 31. Because Defendants’ motion leaves the merits largely unchallenged, Plaintiff’s opening brief in support of its preliminary injunction includes additional analysis of Plaintiff’s affirmative case for relief. *See* Pl.’s Mem. in Supp. of Mot. for Prelim. Inj., No. 25-cv-3675-ABA, Dkt. No. 20.

To help bridge this gap, in 2011, USCIS revised its policies for administrative naturalization ceremonies, committing to provide every new citizen the opportunity to register—and allow NGOs help them do so. *Id.* ¶ 35. Under the guidance, where feasible, state and local election officials would provide in-person voter-registration assistance at naturalization ceremonies. *Id.* ¶ 37. Where state and local election officials lacked capacity to provide this assistance, NGOs could fill the gap—distributing voter registration forms, helping new citizens complete them, collecting the forms for submission, and offering nonpartisan information about the voting process. *Id.* ¶ 38. Finally, where neither state and local officials nor NGOs were available to provide assistance, USCIS would distribute voter registration forms—but it would not collect them or offer any guidance for completing them. *Id.* ¶ 39.

Pursuant to that 2011 guidance, the National Council of Jewish Women, Greater New Orleans Section launched a program in partnership with other local organizations to help naturalized citizens register to vote at administrative naturalization ceremonies. *Id.* ¶ 44. Plaintiff and its members attended ceremonies at least two or three times every month—sometimes as often as once a week—and registered 30 to 50 voters each time. *Id.* ¶ 45. There, they guided new citizens through the registration forms (which Plaintiff had translated into four different languages), answered their questions, and encouraged them to vote, greeting new citizens with American flags and registration forms the moment they were naturalized. *Id.* ¶¶ 46–51. This program became a core service Plaintiff provided in the community, and an opportunity to express a message, consistent with Jewish values, that new citizens should be welcomed into our democracy as voters. *Id.* ¶¶ 12–19.

In August 2025, however, USCIS abruptly halted Plaintiff's efforts—and those of organizations like it—to help new Americans register at the moment they become citizens. *Id.*

¶ 54. A new policy alert announced a sudden reversal: despite years of successful partnership, NGOs would no longer be permitted to provide voter registration assistance at administrative naturalization ceremonies. *Id.* ¶¶ 54–55; *see* Attach. B at 2, No. 25-cv-3675-ABA, Dkt. No. 1-3 (the “Voter Assistance Ban”) (USCIS Policy Alert announcing: “Nongovernmental entities are not permitted to provide voter registration services at USCIS facilities during naturalization ceremonies”).

This policy change surgically targeted new citizens and their exercise of the franchise. Compl. ¶ 57. In other federal facilities that do not primarily serve naturalized citizens, like post offices and military bases, NGOs are still permitted to help people register to vote. *Id.* And while the revised policy bars NGOs from providing voter-registration assistance at administrative naturalization ceremonies, it still allows them to participate in other ways, such as providing entertainment. *Id.* ¶ 58. In other words, NGOs can still participate in naturalization ceremonies—just not to help new citizens become full participants in our democracy. *Id.*

USCIS offered little explanation for its decision. Its policy alert included only two paragraphs of boilerplate—none of which plausibly explained the Ban. *Id.* ¶¶ 85–96. The alert stated, for instance, that USCIS implemented the Ban because it “does not primarily rely on nongovernment organizations for voter registration services,” so “the use of nongovernmental organizations was sporadic and varied based upon the location.” *Id.* ¶ 87 (citation omitted). But the very purpose of cooperating with NGOs was to allow them to provide registration assistance when state and local officials could not. *Id.* The alert also asserts that the Ban was adopted to relieve the “administrative burden” imposed by vetting NGOs for nonpartisanship. *Id.* ¶ 88. But many NGOs have already been vetted by USCIS and granted standing approval. *Id.* ¶ 89. Plus, any burdens vetting imposes also apply when NGOs provide *other* services at naturalization

ceremonies—which USCIS still permits—only voter registration services are singled out for exclusion. *Id.* ¶ 90; *see also id.* ¶¶ 88–91.

The context in which the Ban was implemented offers a better explanation. In recent years, as naturalized citizens have increased their share of the electorate, officials who now hold key roles in the Executive Branch have cast immigrants as an existential threat to the United States, *particularly because they may become voters.* *Id.* ¶ 63. Secretary Noem has described immigration as an “invasion happening on purpose . . . to remake the foundation of this country.” *Id.* ¶ 64. And just weeks before USCIS adopted the Ban, its director, Joseph Edlow publicly warned of a purported plan to grant amnesty to “[the] illegal population[,] . . . make them all citizens, and then spread them out to try to change demographics elsewhere in the country.” *Id.* ¶ 65.

Against this backdrop, the Ban is one in a cascade of recent actions that make it harder for new citizens to access the franchise and make their citizenship more precarious. In addition to the Ban, USCIS has implemented aggressive vetting for voters that disproportionately flags naturalized citizens as potentially unqualified and an unprecedented denaturalization initiative that seeks to strip foreign-born Americans of their citizenship. *Id.* ¶¶ 66–84. In the same policy revision, USCIS jettisoned a requirement that new citizens receive, among other things, “A Voter’s Guide to Federal Elections” and a copy of the U.S. Constitution. *Id.* ¶ 83 & n.5. Meanwhile, the policy alert announcing the Ban incorrectly refers to new Americans as “aliens” rather than recognizing them as citizens, with the same rights in our democracy as native-born Americans. *Id.* ¶ 84.

After the Ban was adopted in August 2025, Plaintiff looked for other ways to reach naturalized citizens and help them register to vote, but none of these efforts were successful. *Id.* ¶ 60. Outside of rare judicial ceremonies, there is no equivalent place where naturalized citizens are likely to gather—and thus, no straightforward way to help new Americans register *en masse*.

Id. ¶ 59. As a result, the Ban effectively bars organizations like Plaintiff from any targeted efforts to register naturalized citizens. *Id.* ¶¶ 61.

In November 2025, Plaintiff filed this lawsuit, alleging that the Ban violates the U.S. Constitution and the APA. *See* Compl., No. 25-cv-3675-ABA, Dkt. No. 1; Am. Compl., No. 25-cv-3675-ABA, Dkt. No. 17. In December, Plaintiff moved for a preliminary injunction, asking this Court to halt the Ban while this case proceeds. NCJW Pl.’s Mot. for Prelim. Inj., No. 25-cv-3675-ABA, Dkt. No. 20; Pl.’s Mem. in Supp. of Prelim. Inj., No. 25-cv-3675-ABA, Dkt. No. 20-1. Defendants now move to dismiss, arguing that this Court lacks subject matter jurisdiction and that Plaintiff has failed to state a claim on the merits. *See* Defs.’ Mot. to Dismiss, Dkt. No. 33; Defs.’ Mem. in Supp. of Mot. to Dismiss, Dkt. No. 33-1. Plaintiff now files its response, explaining why Defendants’ motion should be denied.

LEGAL STANDARD

A motion to dismiss brought under Rule 12(b)(1) challenges the court’s subject-matter jurisdiction. *Foster v. Howard Cmty. Coll.*, CIV.A. No. RDB-13-1395, 2014 WL 758027, at *1 (D. Md. Feb. 24, 2014). Where, as here, Defendants challenge only the legal sufficiency of the Complaint, without disputing the truth of the jurisdictional allegations, the Court should treat the motion as a facial challenge and accept the allegations in the Amended Complaint as true. *Tsubaki v. Balt. City Cmty. Coll.*, No. 24-cv-3584-ABA, 2026 WL 254428, at *1 (D. Md. Jan. 30, 2026) (Abelson, J.); *see also Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). Though the burden is on the plaintiffs to establish standing, “[a]t the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss [the court] ‘presum[es] that general allegations embrace those specific facts that are necessary to support the claim.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (citation omitted).

A Rule 12(b)(6) attack tests the legal sufficiency of a complaint, not the merits of the dispute. *Megaro v. McCollum*, 66 F.4th 151, 157 (4th Cir. 2023). At the pleading stage, the Court must accept the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Kornegay v. United States*, 802 F. Supp. 3d 767, 779 (D. Md. 2025) (Abelson, J.) (quoting *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016)). To survive dismissal, a complaint does not require detailed factual allegations; it simply must allege facts that make the claim for relief plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. Plaintiff has alleged sufficient facts to establish standing.

Article III standing requires: (1) a “concrete” and “particularized” injury that is (2) “caused by the defendant” and (3) “likely would be redressed by the requested judicial relief.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380–81 (2024). To satisfy its burden at the pleading stage, a plaintiff must allege facts that, if true, satisfy each element. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Plaintiff has done that. The Voter Assistance Ban categorically bars Plaintiff from providing voter registration services at all administrative naturalization ceremonies—services Plaintiff has long provided and that are central to its mission. Compl. ¶¶ 11–21, 44–53. That straightforward injury supplies Plaintiff’s standing for each claim. Compl. ¶¶ 97–134. Moreover, by excluding Plaintiff, Defendants necessarily exclude their members, depriving them of the chance to help new citizens vote and express the message doing so conveys. Plaintiff therefore also has standing to raise each claim on behalf of its members, one of whom has submitted a declaration in this case. *See* App.6–12 (Decl. ¶¶ 5–11, 19–42), No. 25-cv-3675-ABA, Dkt. No. 20-2.

Defendants’ attempt to reframe this case as one based on a generalized policy disagreement or an effort to litigate others’ rights fail. The Amended Complaint alleges a direct injury to Plaintiff

and its members. That sort of harm plainly supports standing. *See Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 395 (4th Cir. 2024).

A. Plaintiff has adequately alleged organizational standing.

Organizations have standing when an official action directly injures them. *See id.* (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n. 19 (1982)). Here, Plaintiff is the target of the policy it challenges: a categorical ban on NGOs providing voter-registration services at administrative naturalization ceremonies. Attach. B at 2, No. 25-cv-3675-ABA, Dkt. No. 1-3 (USCIS Policy Alert announcing: “Nongovernmental entities are not permitted to provide voter registration services at USCIS facilities during naturalization ceremonies”); *see* Compl. ¶¶ 11–21, 44–53. When the plaintiff “is [itself] an object” of an official action, “there is ordinarily little question” that the action has caused plaintiff’s injury and that “a judgment [enjoining] . . . the action will redress it.” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025) (internal quotation marks omitted) (quoting *Lujan*, 504 U.S. at 561–62); *see also Food & Drug Admin.*, 602 U.S. at 382 (“Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements.”).

Plaintiff also pleads a classic organizational injury under *Havens*: the Ban “perceptibly impair[s]” Plaintiff’s ability to carry out a core service—indeed, in the relevant setting, it bars that service outright. *Havens*, 455 U.S. at 379; *see* Compl. ¶¶ 54–61; *see also Food & Drug Admin.*, 602 U.S. at 395 (organizations have standing when an action “directly affect[s] and interfere[s] with [its] core business activities”). Courts in this circuit routinely find standing based on similar facts. *See, e.g., Republican Nat’l Comm.*, 120 F.4th 390 (plaintiff organization had standing where it alleged that defects in state voter rolls impeded its voter outreach efforts); *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 657 (M.D.N.C. 2024) (organization had standing to challenge restriction that would disenfranchise voters because it would hinder its voter registration and advocacy efforts).

Notably, Defendants do not dispute the sufficiency of Plaintiff's core standing allegations: that the Ban bars Plaintiff's services at administrative naturalization ceremonies and that this work is central to Plaintiff's mission. Defendants rely instead on the boilerplate proposition that generalized grievances are insufficient to confer standing. Defs.' Mem. at 14, 16–18. But Plaintiff does not assert a generalized grievance; it alleges exclusion from a government program in which it previously participated, Compl. ¶¶ 11–25, 44–53, which is a concrete and particularized injury, *see Havens*, 455 U.S. at 379.²

B. Plaintiff has adequately alleged associational standing.

Associational standing provides an independent basis for jurisdiction. An organization can sue on behalf of its members when (1) at least one member would have standing to sue in their own right; (2) the interests at stake are germane to the organization's purpose; and (3) the claims and relief do not require individual members' participation. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023).

Defendants challenge only the first requirement, arguing that Plaintiff must name a particular member in the Amended Complaint. Defs.' Mem. at 20. But that level of specificity is not required where “all the members of the organization are affected by the challenged [action].” *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). Those are the circumstances here. Plaintiff's members carry out its voter-registration program at administrative naturalization ceremonies. Compl. ¶¶ 17–21. By barring the organization, the categorical Ban necessarily deprives all of Plaintiff's members the opportunity to provide these services and engage in the expressive conduct it entails. In other words, all of Plaintiff's members are subject to the barrier

² Defendants' arguments based on *Food & Drug Administration*, 602 U.S. 367, are inapplicable. Plaintiff does not claim standing based on voluntary diversion of resources to oppose the Ban, but because the Ban directly impairs its mission. *See id.* at 395.

Plaintiff challenges, so there is no question Plaintiff's members suffer the injury at stake. *See* Attach. B at 2, No. 25-cv-3675-ABA, Dkt. No. 1-3; *see also Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 665 (D.C. Cir. 2019) (per curiam) (finding organization need not identify individual members in a challenge to environmental regulation because all of them were part of the regulated industry; this conclusion was consistent with “the real purpose of the [standing] inquiry—that is, for the court to be satisfied that the requisite injury really has occurred or will occur in the future to members of the organization” (alteration in original)).

In any event, Plaintiff has identified a member with standing and submitted her declaration. *See* App.6–12, No. 25-cv-3675-ABA, Dkt. No. 20-2. Joy Willig, who has been a member of NCJW since 2018, attests that she helped develop Plaintiff's program, volunteered at ceremonies; and conveyed a message—rooted in Plaintiff's mission and the Jewish faith—that new citizens' voices matter. App.6–12 (Decl. ¶¶ 5–11, 19–42). The Ban now bars her from doing so, *id.* ¶ 48, and Ms. Willig has standing to challenge it. *See, e.g., Fla. Decides Healthcare, Inc. v. Byrd*, 790 F. Supp. 3d 1335, 1349 (N.D. Fla. 2025) (member who would otherwise participate in organization's petition circulation efforts had standing to challenge restrictions that stymied those efforts). Courts considering a facial standing challenge may consider undisputed record evidence alongside the complaint. *See People for the Ethical Treatment of Animals, Inc. v. Perdue*, 464 F. Supp. 3d 300, 307 (D.D.C. 2020). Ms. Willig's declaration therefore confirms Plaintiff's standing to sue on behalf of its members.

C. Plaintiff has adequately alleged standing to assert its Fifth Amendment claims.

Plaintiff's Fifth Amendment claims arise from the same injury as its other claims: the Voter Assistance Ban categorically bars Plaintiff from providing a core service. Compl. ¶ 13; *see id.* ¶¶ 11–21, 44–53. Plaintiff alleges that Defendants implemented the Ban for an unconstitutional reason—to discriminate against naturalized citizens. *See id.* ¶¶ 62–84. That is sufficient to confer

standing. As courts have long recognized, a plaintiff who is denied a benefit for discriminatory reasons has “suffered injury to [its] right to be free from official discrimination,” regardless of whether the plaintiff is a member of the disfavored group. *Scott v. Greenville County*, 716 F.2d 1409, 1415 (4th Cir. 1983).

Defendants do not address the Fifth Amendment claims Plaintiff actually pleaded. Instead, they insist—without citation—that Plaintiff “raises these claims *on behalf of* the new citizens they seek to engage at naturalization ceremonies.” Defs.’ Mem. at 18. From that false premise, they contend that Plaintiff must “identify” a naturalized citizen who was “prevented from voting or registering to vote by their organization’s absence at naturalization ceremonies.” *Id.* But Plaintiff does not base its standing on injuries to unnamed third parties. It asserts standing based on *its own* exclusion from a government forum for discriminatory reasons. Compl. ¶¶ 11–21, 44–53. That is a cognizable Fifth Amendment injury. Courts have repeatedly recognized that a plaintiff can challenge an official action that injures it as a means of discriminating against the people plaintiff serves. *See, e.g., Scott*, 716 F.2d at 1413–15 (developer had standing to challenge a permit denial that was “motivated by a racially discriminatory intent to prevent him from building housing for and renting to members of racial minorities”); *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581 (2d Cir. 2016) (nonprofit housing developer could challenge a zoning decision motivated by an intent to exclude racial minorities under the Equal Protection Clause); *Des Vergnes v. Seekonk Water Dist.*, 601 F.2d 9, 17 (1st Cir. 1979) (“[A] State may not . . . discriminate against a corporation for its willingness, past or present, to make contracts with blacks. And if it does so, then the [corporation] . . . has a § 1983 cause of action.”); *see also Havens*, 455 U.S. at 379 (organization had standing to sue a company that discriminated against Black renters, which “perceptibly impaired” the organization’s services).

Defendants repeat the same mistake with respect to redressability. They argue that Plaintiff must allege that a “permanent injunction would prevent the government from interfering in newly naturalized citizens’ exercise of the franchise.” Defs.’ Mem. at 19. But Plaintiff seeks relief that remedies its *own* injury—by removing the barrier the Voter Assistance Ban imposes—not a guarantee of downstream effects on naturalized citizens’ right to vote. Compl. ¶ 133 (asking this Court to enjoin the Ban); *id.* ¶¶ 128–29 (seeking declaration that the Ban “violates *Plaintiff’s*” rights to equal protection and due process rights (emphasis added)); *id.* at 131 (seeking declaration that the Ban violates the APA because it is “contrary to [*Plaintiff’s*] constitutional right[s]” (alterations in original) (emphasis added)); *see also Voto Latino*, 712 F. Supp. 3d at 657 (“[T]he court must consider standing with respect to the requested relief.” (citing *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017))). That an injunction would *also* benefit new citizens does not convert Plaintiff’s direct claims into vicarious ones. Organizations routinely establish standing to challenge restrictions that impede their ability to help others exercise their constitutional rights, including the right to vote. *See, e.g., Coal. for Open Democracy v. Scanlan*, 794 F. Supp. 3d 28, 40–42 (D.N.H. 2025) (organizations had standing to challenge voting restrictions as unlawful burden on voters’ rights under First and Fourteenth Amendments because, by imposing those burdens, the restrictions interfered with their voter registration program); *Voto Latino*, 712 F. Supp. 3d at 656–58 (organization had standing to challenge restriction that would disenfranchise voters because it would hinder its voter registration and advocacy efforts); *League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 75–76 (D.S.C. 2020) (organization had standing where officials failed to provide notice and process when rejecting voters’ absentee ballots, which impeded the organization’s ability to assist those voters).

The nature of Plaintiff’s injury—a direct harm to the organization itself—also defeats Defendants’ reliance on *Kowalski v. Tesmer*, 543 U.S. 125 (2004). *Kowalski* concerned plaintiffs who were not subject to the challenged policy and instead sought to assert the rights of absent third parties. *Id.* at 127–34. Plaintiff here is the *object* of the Voter Assistance Ban, not a collateral bystander. And even if third party standing principles applied—which they do not—*Kowalski* expressly distinguishes cases like this one, where the challenged restriction is enforced “*against the litigant.*” *Id.* at 130; *see also June Med. Servs., LLC v. Russo*, 591 U.S. 299, 316–20 (2020) (plurality opinion) (confirming that *Kowalski* does not bar suits by plaintiffs who are themselves regulated by the challenged law), *abrogated on other grounds by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).³

D. Plaintiff has adequately alleged standing to assert its First Amendment claim.

Plaintiff has standing to assert its First Amendment claims for the same reason it has standing on all of its claims: the Ban excludes Plaintiff from providing a core service. That exclusion also inflicts a distinct First Amendment harm. Plaintiff alleges that participation in administrative naturalization ceremonies was a primary means of conveying its message of civic inclusion and “welcoming the stranger,” rooted in the Jewish faith. Compl. ¶¶ 12–21, 50. The loss of that opportunity to reach its intended audience is a cognizable injury under the First

³ Although *Kowalski* is inapplicable, Plaintiff would satisfy its requirements. Plaintiff has a “close” relationship with the naturalized citizens it serves because enforcement of the Voter Assistance Ban against Plaintiff “result[s] indirectly in the violation of [naturalized citizens’] rights” by denying them assistance they would receive absent the discriminatory policy. *Kowalski*, 543 U.S. at 131 (citation omitted); *see also* Compl. ¶¶ 18–19, 44–53. And there is certainly a “hindrance” to suit for prospective new Americans, who would need to seek prospective relief *before* they are naturalized, and may be chilled from doing so for fear that challenging the very agency processing their application could compromise their naturalizations, particularly in the current climate. *See Singleton v. Wulff*, 428 U.S. 106, 117–18 (1976) (plurality opinion); *see also* Compl. ¶¶ 63–66, 72–75, 78–82.

Amendment. *See White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 461 (4th Cir. 2005) (organization had standing to challenge a law limiting its ability to disseminate its message under the First Amendment).

Defendants address none of this. Instead, they argue that Plaintiff lacks standing because the First Amendment does not guarantee a right to speak “at all times and places.” Defs.’ Mem. at 2, 13 (quoting *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981)). That argument misses the point. Plaintiff is not claiming a freestanding right to access to all government property; it challenges a specific categorical barrier to engaging in protected expression on government property that was enacted for discriminatory reasons. When the government unlawfully “erects a barrier” to participation, the injury is the barrier itself, not the inability to secure particular outcome. *Ne. Fla. Chapter of Assoc. Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993); accord *Village of Arlington Heights v. Metro. Hous. Dev.*, 429 U.S. 252, 261 (1977) (finding that “[t]here can be little doubt” that plaintiff had standing when the challenged action “st[ood] as an absolute barrier” to a housing construction project, and an injunction would remove the barrier).

Defendants also suggest that because Plaintiff may still express its message in other locations, Plaintiff’s exclusion from administrative naturalization ceremonies is not a cognizable injury. *See* Defs.’ Mem. at 13–14. That is not the law. Denial of a particular opportunity to speak—or even the reduction of the speaker’s audience—constitutes a cognizable First Amendment injury, even if the plaintiff may spread its message elsewhere. *See White Tail Park, Inc.*, 413 F.3d at 461; *Meyer v. Grant*, 486 U.S. 414, 424 (1988) (“The First Amendment protects appellees’ right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.”). And in any event, Plaintiff has alleged that there is no comparable alternative to reach

new citizens and help them register to vote. *See* Compl. ¶¶ 20, 59–60. The theoretical existence of other ways to express Plaintiff’s message does not negate the injury caused by eliminating the single most effective—and arguably, the only—setting where organizations can reach large numbers of newly naturalized citizens at once. *See id.* ¶¶ 50, 57, 59.

II. This Court has jurisdiction to review Plaintiff’s APA claims.

Plaintiff alleges that the Voter Assistance Ban violates the APA because it is arbitrary and capricious, contrary to Plaintiff’s constitutional rights, and was adopted without the required notice-and-comment procedures. *See id.* ¶¶ 110–27. Defendants contend that this Court lacks subject matter jurisdiction to review these claims because they concern an action “committed to agency discretion by law,” and are therefore unreviewable. *See* Defs.’ Mem. at 21–25. This argument misunderstands both the law and the nature of the Ban.

The APA creates “a ‘strong presumption’ in favor of judicial review of agency action.” *Speed Mining, Inc. v. Fed. Mine Safety & Health Rev. Comm’n*, 528 F.3d 310, 316 (4th Cir. 2008) (citation omitted). Section 701(a) creates limited exceptions to that presumption, including when the “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). But “judicial review of a final agency action . . . will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress.” *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 140 (1967).

To determine whether an agency action falls within the scope of § 701(a)(2)’s “very narrow exception” to judicial review, *Speed Mining*, 528 F.3d at 317 (citation omitted), courts examine whether the agency action is “of the sort that is traditionally unreviewable,” *Holbrook v. Tenn. Valley Auth.*, 48 F.4th 282, 289 n.7 (4th Cir. 2022). The textbook example of such an agency action is where an agency that has authority to assert enforcement power declines to assert it over a particular individual or entity, since a decision *not* to enforce “generally do[es] not involve the exercise of ‘coercive power over an individual’s liberty or property rights.’” *Casa de Md. v. U.S.*

Dep't of Homeland Sec., 924 F.3d 684, 698 (4th Cir. 2019) (emphasis omitted). Even in these cases, courts distinguish between “single-shot non-enforcement decisions”—which courts generally find unreviewable—and agency actions that, like here, “express[] a broad or general . . . policy”—which courts consistently find subject to judicial review. *Id.* at 699; *see also, e.g., Kenney v. Glickman*, 96 F.3d 1118, 1123 (8th Cir. 1996) (concluding that the exception in § 702(a)(2) applies “to individual, case-by-case determinations . . . rather than permanent policies or standards”).

The Voter Assistance Ban is not a one-off decision, a non-enforcement policy, or any other agency action that falls within a tradition of nonreviewability; it is a categorical reversal of a longstanding, broadly applicable policy that directly impacts individual rights. *See* Compl. ¶¶ 54, 112. Courts routinely review such reversals under the APA. *See, e.g., Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (“When an agency changes its existing position, it . . . [must] show that there are good reasons for the new policy.” (citation modified)). Even “[w]hen the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to . . . ensur[e] the agency has engaged in reasoned decisionmaking,” in order to “uphold[] the traditional conception of the judicial function that the APA adopts.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395–96 (2024) (citation modified).

Defendants’ reliance on *Holbrook* underscores the point. *See* Defs.’ Mem. at 22–24. There, the Fourth Circuit found that the agency action at issue fell within § 702(a)(2)’s exception only when three factors were met: [1] the “action[] involve[d] complicated balancing of a number of factors which are peculiarly within [the agency’s] expertise;” [2] the action “d[id] not involve the use of coercive power, which means [it] will not trigger the traditional rights-protecting duties of

the federal courts”; and [3] “most importantly,” the action “enjoy[s] a tradition of nonreviewability.” *Holbrook*, 48 F.4th at 290 (third alteration in original) (citation modified).

Beginning with the third and “most important” factor, Defendants quote *Heckler v. Chaney* to argue that the Ban falls within the tradition of nonreviewability because it involves a “complicated balancing” of various factors that are “peculiarly within [the agency’s] expertise.” Defs.’ Mem. at 23 (alteration in original) (quoting *Holbrook*, 48 F.4th at 290). But *Heckler* does not say that decisions are unreviewable whenever the government claims they are “complicated”; the *Heckler* Court was referring to the complexity of *non-enforcement decisions*, which are traditionally unreviewable. See *Casa de Md.*, 924 F.3d at 698. In any event, the illogical, contradictory, and transparently pretextual justifications USCIS offered for the Ban belie any suggestion that it was adopted based on any “complicated” decision-making process. Compl. ¶¶ 85–96.

Nor do *Holbrook*’s remaining factors aid Defendants. This is not a case in which the agency action at issue “d[oes] not involve the use of coercive power.” 48 F.4th at 290. On the contrary, the Ban violates Plaintiff’s constitutional rights, see *infra* Sections III.A–B, “trigger[ing] the . . . rights-protecting duties of the . . . courts.” *Holbrook*, 48 F.4th at 290. And apart from Defendants’ unsupported assertions of administrative burden, see Defs.’ Mem. 23–24, nothing about the Ban is “peculiarly [i]n the agency’s expertise.” *Holbrook*, 48 F.4th at 290 (alteration omitted). Defendants therefore cannot duck behind § 701(a)(2) to evade judicial review.

III. Plaintiff has alleged valid claims on the merits.

A. Plaintiff has adequately alleged its Fifth Amendment claims.

Plaintiff alleges that the Voter Assistance Ban violates the Fifth Amendment’s equal protection guarantee because it was motivated by discriminatory intent. Compl. ¶¶ 97–101. The Fifth Amendment forbids decisions motivated by discriminatory intent on the basis of race or

national origin. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Mayor of Balt. v. Trump*, 416 F. Supp. 3d 452, 511 (D. Md. 2019). This principle holds whether an official action announces its discriminatory purposes or not; a neutral action “motivated by invidious racial discrimination” is “just as unconstitutional” as one that discriminates on its face. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 220 (4th Cir. 2016).

To determine whether a facially neutral action was motivated by discriminatory intent, courts apply the framework from *Arlington Heights*, which looks to the totality of the evidence—including the historical background; the sequence of events leading to the decision; and the decision’s impact, including “whether it ‘bears more heavily on one race than another.’” 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). If a plaintiff can show that discrimination was “a motivating factor”—even if not the “sole[]” or “primary” motive—the burden shifts to the government to show that it would have taken the same action anyway. *McCrory*, 831 F.3d at 221 (alteration in original) (emphasis omitted) (quoting *Arlington Heights*, 429 U.S. at 265–66).

Plaintiff’s allegations are more than sufficient to establish intent. The Voter Assistance Ban surgically targets naturalized citizens and the NGOs that seek to help them vote. Compl. ¶¶ 97–101. It was adopted by officials who cast immigrant voters as a threat. *Id.* ¶¶ 64–65. And it arrived as part of a cascade of close-in-time measures premised on unfounded concerns about noncitizen voting that predictably burden naturalized citizens. *Id.* ¶¶ 62–84. Viewed together, these allegations plausibly establish that Defendants adopted the Ban “because of,” and not “in spite of” its predictable effects. *McCrory*, 831 F.3d at 220 (quoting *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279(1979)); *see also CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 325–26 (D. Md.

2018) (finding that plaintiffs had plausibly pleaded discriminatory intent based solely on President Trump’s statements).

Defendants do not dispute that Plaintiff’s allegations support an inference of discriminatory intent. Indeed, they do not grapple with these allegations at all. Their sole overture is to contend that *Arlington Heights* requires a showing of disparate impact, and that to satisfy it, Plaintiff must “identify” a newly naturalized citizen who was “prevented” or “discouraged from voting or registering” because of the Ban. Defs.’ Mem. at 30. That is not the law. Under *Arlington Heights*, the impact of official action may be *probative* of discriminatory intent, but disparate impact is not itself an *element* of an equal protection violation. 429 U.S. at 265–66; *McCrorry*, 831 F.3d at 220. To that end, *Arlington Heights* instructs courts to consider whether “the impact of the official action . . . bears more heavily on one [protected group] than another.” 429 U.S. at 265–66 (citation modified). The Ban does so: it eliminates voter registration assistance provided exclusively to naturalized citizens.

Plaintiff also alleges that the Ban violates the Fifth Amendment’s guarantee of substantive due process, which guards against the arbitrary exercise of government power. *See City of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998); *see* Compl. ¶¶ 102–05. Executive action crosses the constitutional line when it is so unjustified and egregious that it “shock[s] the contemporary conscience.” *Lewis*, 523 U.S. at 848 n.8. Discriminatory intent satisfies that standard: when the government acts to single out a disfavored group, it exercises power in its most arbitrary form. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Bolling*, 347 U.S. at 499–500; *see also MARJAC, LLC v. Trent*, 380 F. App’x 142, 147–48 (3d Cir. 2010) (per curiam). As one court in this District explained, “[O]ne can hardly think of a more arbitrary motivation for executive action than . . . discrimination.” *CASA de Md., Inc.*, 355 F. Supp. 3d at 327. That is

exactly what happened here. Defendants instituted the Voter Assistance Ban to discriminate against naturalized citizens by silencing the voices that encourage and assist their use of the franchise.

Once again, Defendants ignore Plaintiff's actual claim. They recast the Ban as a neutral "decision not to seek the assistance of a particular outside organization," then declare that such a decision does not shock the conscience. Defs.' Br. at 31. But Plaintiff alleges something different: that Defendant excluded NGOs in order to discriminate against naturalized citizens. That is more than sufficient to plausibly allege an official action that shocks the conscience. *See CASA de Md., Inc.*, 355 F. Supp. 3d at 327.

B. Plaintiff has adequately alleged its First Amendment claim.

Plaintiff alleges that the Voter Assistance Ban violates its First Amendment rights by excluding it from administrative naturalization ceremonies on an unreasonable and discriminatory basis. Comp. ¶¶ 106–09. Plaintiff's voter registration efforts sent a message: new Americans belong in our democracy and should participate in it as voters. *Id.* ¶¶ 11–21, 50, 52, 108–109. That is expressive conduct protected by the First Amendment. *See Texas v. Johnson*, 491 U.S. 397, 303 (1989). And the First Amendment prohibits the government from restricting speech or expressive conduct "because of disapproval of the ideas expressed." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). Viewpoint discrimination is thus "presumptively unconstitutional" and triggers strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *see also Rosenberger v. Rector & Victors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

This prohibition extends even into locations the government tightly controls. In *any* government-created forum—even a non-public one—officials cannot impose restrictions that discriminate based on viewpoint or that are unreasonable in light of the forum's purpose. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985); *see Child Evangelism*

Fellowship of S.C. v. Anderson Sch. Dist. Five, 470 F.3d 1062, 1067 (4th Cir. 2006) (“The ban on viewpoint discrimination is a constant.”).

The Ban violates both of these principles. It discriminates based on viewpoint by “singl[ing] out a [certain] message[] for disfavor based on the views expressed.” *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring in part and concurring in the judgment); see *Cornelius*, 473 U.S. at 806; see also Compl. ¶¶ 57–58. It was motivated by an intent to suppress Plaintiff’s message of welcome to new Americans. See *Sons of Confederate Veterans, Inc. ex rel. Griffin v. Comm’r of Va. Dep’t of Motor Vehicles*, 288 F.3d 610, 623–24 (4th Cir. 2002) (stating that even content-neutral restrictions can constitute viewpoint discrimination when motivated by an intent to suppress a certain message); Compl. ¶¶ 57–58. And it is not reasonable “in the light of the purpose of the forum and all the surrounding circumstances.” *Cornelius*, 473 U.S. at 809; see *Multimedia Publ’g Co. of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir. 1993) (“[I]t isn’t enough simply to establish that the regulation is rationally related to a legitimate governmental objective” when the challenged restriction “affects protected First Amendment activity that is entitled to special solicitude even in [a] nonpublic forum.”); Compl. ¶¶ 85–96.

Defendants contest little about the merits of Plaintiff’s claim. They concede that, even in a nonpublic forum, restrictions must be reasonable and viewpoint neutral. Defs.’ Mem. at 28. They do not dispute that Plaintiff’s voter-registration efforts are protected expression. And they do not dispute that Plaintiff sufficiently alleges that the Ban is both unreasonable and discriminates based on viewpoint. Indeed, Defendants do not address Plaintiff’s allegations at all. Instead, Defendants offer two reasons of their own that the Ban is “permissible,” neither of which is rooted in Plaintiff’s allegations or the law.

First, Defendants state that the Ban constitutes a “permissible restriction” because it excludes *all* NGOs from assisting with voter registration and therefore creates no “confusing line-drawing problems.” Defs.’ Mem. at 28 (citation omitted). That is not the test. The reasonableness determination requires a holistic assessment of the restriction, its context, and the burden it imposes. *Multimedia Publ’g Co.*, 991 F.2d at 159. Nor does it bear on viewpoint discrimination, since even content-neutral restrictions can be motivated by discriminatory intent. *See Sons of Confederate Veterans*, 288 F.3d at 623–24.

Second, Defendants restate the *exact same* justifications that appear in the Policy Alert announcing the Ban. *See* Defs.’ Mem. at 28–29. Again, Defendants make no effort to tether their argument to the governing law. Regardless, Plaintiff’s allegations show that these justifications do not offer even a logical rationale for the Ban. A “preference for ‘state or local government election officials,’” *id.* at 29 (alterations omitted), cannot justify banning a policy designed to fill the gap *when those officials are unavailable*. *See* Compl. ¶ 87. Defendants’ concerns about an “administrative burden” make little sense; many NGOs—like Plaintiff—received standing approval to provide services at administrative naturalization ceremonies. *Id.* ¶ 89. And if vetting were truly burdensome, it makes little sense that Defendants continue to allow NGOs to participate in naturalization ceremonies for *other* purposes, which still requires vetting. *Id.* ¶ 90. Those faulty justifications neither rebut the well-pleaded inference of viewpoint discrimination nor show that the Ban is reasonable in light of the forum’s purpose.

C. Plaintiff has adequately alleged its APA claims.

Plaintiff alleges three claims under the APA: that the Voter Assistance Ban (1) is arbitrary and capricious; (2) contrary to Plaintiff’s constitutional rights; and (3) failed to undergo the required notice and comment procedures. *See* Compl. ¶¶ 110–27 (Counts IV–VI). Defendants’

motion is focused only on the notice-and-comment claim; they make no arguments that would support dismissal of Plaintiff's other two APA claims, and indeed, there are none.

Defendants contend that the Ban is exempt from the APA's notice-and-comment requirements. *See* Defs.' Mem. 31–34. They are wrong. Because the Ban constitutes a fundamental change in the agency's position, it is a legislative rule for which notice and comment procedures were required. The APA requires notice-and-comment rulemaking for “legislative” rules—those that “effect[] a substantive change in existing law or policy,” *Child. 's Hosp. of the King's Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018) (citation omitted); or affect “individual rights and obligations,” *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (citation omitted). The Ban is “legislative in nature” because it is “inconsistent with prior agency policy.” *J.O.P. v. DHS*, 409 F. Supp. 3d 367, 377 (D. Md. 2019); *Child. 's Hosp.*, 896 F.3d at 623; *see also* Compl. ¶¶ 124–27. The Ban also affects “individual rights,” another hallmark of legislative rules. *Chrysler Corp.*, 441 U.S. at 302.

Defendants do not argue otherwise—but they contend that the Ban is exempt from notice-and-comment anyway because it is merely a “general statement[] of policy,” meant to “advise the public” about how it will exert its discretionary power. Defs.' Mem. at 32 (alteration in original) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 197 (1993)). The “critical question” in distinguishing general statements of policy from legislative rules is “whether the statement ‘is of present binding effect; if it is, then the APA calls for notice and comment.’” *Casa de Md.*, 924 F.3d at 702 (quoting *Elec. Priv. Info. Ctr. v. DHS*, 653 F.3d 1, 7 (D.C. Cir. 2011)); *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1341 (4th Cir. 1995). The Ban's effects are immediate and binding. Compl. ¶ 112. And the Ban does not leave room for discretion; it *eliminates* the discretion agency officials could previously exercise when deciding whether to permit an NGO to provide voter registration

assistance. *Chen Zhou Chai*, 48 F.3d at 1341. Compare Attach. A, No. 25-cv-3675-ABA, Dkt. No. 1-2 at 8 (granting USCIS Field Leadership authority to determine which NGOs are “deemed qualified” to assist with naturalization), with Attach. B, No. 25-cv-3675-ABA, Dkt. No. 1-3 at 1 (“[O]nly state and local election officials will be permitted to offer voter registration services at the end of administrative naturalization ceremonies.”).

Finally, Defendants argue that the Ban is exempt from notice-and-comment procedures because the 2011 policy it reverses was not promulgated through formal notice and comment. Defs.’ Mem. at 33. That argument skirts the nature of the Ban, which is fundamentally different from the policy it reversed. The 2011 rule formalized a practice that was already ongoing—allowing NGOs to provide voter registration at immigration naturalization ceremonies. *See, e.g.*, LWV Compl. ¶¶ 34–35, Dkt. No. 2. By contrast, the Ban fundamentally altered the existing status quo. And rules that “effect[] a substantive change in existing law or policy” must undergo notice and comment. *Child. ’s Hosp.*, 896 F.3d at 620 (citation omitted).

CONCLUSION

For the foregoing reasons, the Court should deny the Motion to Dismiss.

Dated: February 13, 2026

Respectfully submitted,
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