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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DON WAGNER and THE AMERICAN INDEPENDENT PARTY OF CALIFORNIA,

Plaintiffs,

v.

SHIRLEY N. WEBER, in her official capacity as Secretary of State of California,

Defendant,

NAACP; NAACP CALIFORNIA-HAWAII STATE CONFERENCE; and SERVICES IMMIGRANT RIGHTS AND EDUCATION NETWORK,

Intervenor-Defendants.

Case No: 8:26-cv-1263-MCS-PVC

MOTION TO DISMISS OF NAACP; NAACP CALIFORNIA-HAWAII STATE CONFERENCE; AND SERVICES, IMMIGRANT RIGHTS AND EDUCATION NETWORK

Hearing Date: January 4, 2027

Time: 9:00 a.m.

Courtroom: 7C, 7th Floor

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on January 4, 2027, at 9:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 7C of the above captioned court, the National Association for the Advancement of Colored People ("NAACP"), the NAACP California-Hawaii State Conference ("NAACP-CA/HI"), and Services, Immigrant Rights and Education Network ("SIREN") (together, "Intervenors") will move to dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because Plaintiffs lack standing and because their Complaint fails to state a claim upon which relief can be granted. In support of their Motion, Intervenors submit and incorporate the below Memorandum of Points and Authorities, and the attached Proposed Order.

Pursuant to Local Rule 7-3, Intervenors met and conferred with the parties in advance of filing this motion via teleconference on October 13, 2026. *See* Dodge Decl. ¶4. Defendant Secretary of State Shirley Weber does not oppose the motion; Plaintiffs oppose the motion.

Dated: October 20, 2026

Respectfully submitted,

/s/ Lalitha D. Madduri

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INTRODUCTION

Congress enacted the National Voter Registration Act of 1993 ("NVRA") to make it easier for qualified voters to register and remain registered to vote. *See* 52 U.S.C. §20501. Plaintiffs distort that statute by demanding that California be ordered to more aggressively purge voters from its rolls, all without plausibly alleging a single deficiency in the State's list maintenance efforts.

Just months ago, similar plaintiffs—represented by the same counsel—dismissed a materially identical suit without establishing their claims. Now Plaintiffs have effectively refiled that same meritless case—a vain attempt to put old wine in a new bottle. Plaintiffs' suit does not come in a vacuum. Just days ago, the U.S. Department of Justice filed an equally meritless lawsuit—which it has noticed as related to this one—demanding that California purge its rolls and disenfranchise certain voters. *United States v. California*, No. 2:26-cv-12025 (C.D. Cal. filed Oct. 15, 2026). That Hail Mary lawsuit comes in the wake of DOJ bringing over 30 lawsuits in the past year casting baseless suspicion on the States' list maintenance activities, seeking to compel the removal of hundreds of thousands of voters from the rolls.[1] Every court thus far (27 and counting) has rejected those efforts, including one within this district. *See United States v. Weber*, 816 F. Supp. 3d 1168, 1195-96 (C.D. Cal. 2026). As *Weber* recognized, Congress enacted the NVRA "to combat the effects of discriminatory and unfair registration laws that cheapened the right to vote." *Id.* at 1175 (citations omitted). To that end, the list maintenance efforts required by the NVRA are deferential to States, and require only "reasonable"—not perfect—efforts. *Id.* at 1186. The NVRA also limits when States may remove voters

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[1] *See* AAG Harmeet Dhillon (@AAGHarmeetDhillon), X (Dec. 18, 2025, at 9:24 AM ET), https://x.com/AAGDhillon/status/2001659823335616795.

from the rolls, imposing waiting periods on several types of removals, to protect against wrongful removal. *Id.* at 1187.

In this case, Plaintiffs' suit fails both for lack of jurisdiction and because it does not plausibly allege an NVRA violation. First, Plaintiffs lack standing. Their concerns about the integrity of California's elections are abstract and generalized grievances. Their supposed pocketbook injuries—added campaign expenses due to imperfect voter rolls—cannot be traced to the Secretary. The NVRA *requires* States to wait before removing certain voters—no relief available from this Court will change that. Plaintiffs acknowledge as much through their amorphous request for relief, which does not seek any *specific* change in how the Secretary conducts list maintenance, but requests only an improper "obey the law" injunction not likely to provide meaningful redress to Plaintiffs' alleged harms.

Plaintiffs' Complaint fares no better on the merits. To state an NVRA violation, Plaintiffs must plausibly allege California is not making "reasonable effort[s]" at list maintenance. 52 U.S.C. §20507(a)(4). Yet Plaintiffs do not include a single factual allegation as to what specifically about California's process falls short. Indeed, Plaintiffs' counsel candidly acknowledged at the September 28 hearing that Plaintiffs require discovery "to ascertain where the deficiencies lie" in California's processes. Hr'g Tr. 33:6-7 (Sep. 28, 2026). That puts the cart before the horse: "plaintiffs must satisfy the pleading requirements of Rule 8 *before* the discovery stage, not after it." *Mujica v. AirScan Inc.*, 771 F.3d 580, 593 (9th Cir. 2014). Lacking allegations about any specific deficiency, Plaintiffs instead focus on the *results* of California's list maintenance efforts, offering *res ipsa loquitur*-like arguments to insist the State *must* be falling short. But Plaintiffs' statistical comparisons are misleading and, in any event, entirely consistent with "reasonable" efforts under the NVRA—which does not require immediate removal of all ineligible voters. *See RNC v. Benson*, 754 F. Supp. 3d 773, 791 (W.D. Mich. 2024)

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(dismissing similar claim under Rule 12(b)(6)); *see also Weber*, 816 F. Supp. 3d at 1192 (dismissing DOJ's NVRA claim in part because "a lag in removals is not indicative of any wrongdoing").

The NVRA's voter-friendly safeguards provide an "obvious alternative explanation" for Plaintiffs' allegations about registration and removal rates, requiring Plaintiffs to provide some factual allegation suggestive of lawless—rather than lawful—conduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 566-68 (2007). If simply pointing to the natural consequences of these safeguards were enough, pleading an NVRA "violation against almost any [State] would be a sure thing." *Id.* at 566. Courts have rejected such a notion, routinely dismissing suits like this one that reflect mere policy agreement with the NVRA. This Court should do the same.

BACKGROUND

I. The NVRA imposes modest list-maintenance obligations on States.

Congress enacted the NVRA to "increase the number of eligible citizens who register to vote in elections for Federal office." 52 U.S.C. §20501(b)(1)-(2). The NVRA requires States to ensure "simple means are available to register for federal elections and [that] those means are actively presented to voters by the states." *Fish v. Kobach*, 840 F.3d 710, 721 (10th Cir. 2016).

The NVRA also requires covered States to take modest steps to ensure their voter rolls are reasonably up to date. 52 U.S.C. §20507(a)(4). But it emphasizes that *States* bear principal authority over this task and requires only that they "conduct a general program" that "makes a reasonable effort" to remove names from the list that are ineligible because of either (1) "the death of the registrant" or (2) "a change in the residence of the registrant." *Id.* §20507(a)(4).

To further its pro-voter purposes, the NVRA imposes restrictions on how a State may remove a voter from its rolls. *See id.* §20507(a)(3)(4), (b)-(d). A State can immediately remove a voter only in rare circumstances, such as when a registrant

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requests to be deregistered or is convicted of a disenfranchising felony. *Id.* §20507(a)(3)(A)-(B). Otherwise, a State *cannot* remove voters without first complying with procedural minimums that Congress mandated to protect voters. *Id.* §20507(a)(3)(C). For example, a registrant may be removed from the rolls due to a change of residence, in most cases, only after confirming in writing that they have moved outside the jurisdiction or after not responding to a notice and not appearing to vote for two general elections following that notice. *Id.* §20507(d)(1).

Thus, by design "the NVRA does not require states to immediately remove every voter who may have become ineligible." *PILF v. Benson*, 721 F. Supp. 3d 580, 596 (W.D. Mich. 2024), *aff'd*, 136 F.4th 613 (6th Cir. 2025). Rather, Congress made the determination that some delay in removing voters is worthwhile to minimize the risk of wrongly removing qualified voters. As a result of these safeguards, a "snapshot" of a State's or county's voter rolls can "in no way be taken as a definitive picture of what a county's registration rate is." *Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019).

The NVRA also requires the publishing of a biennial election report, the Election Administration and Voting Survey ("EAVS"). *See* 52 U.S.C. §20508(a)(3). States are asked to provide certain election data, such as active and inactive voter registrations and new registrants, for the report. *See* 11 C.F.R. §9428.7(b). On June 30, 2025, the U.S. Election Assistance Commission published its "Comprehensive Report" for 2024 (the "2024 EAVS Report").[2] While the EAVS report sometimes includes high-level recommendations to Congress, it does not—and is not intended

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[2] Available at: https://perma.cc/6JQ9-5UVT. The 2024 EAVS Report is incorporated into the Complaint, Compl. ¶¶16-18, and therefore may be considered under Rule 12(b)(6), *see Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

to—identify state-specific deficiencies or shortcomings with list maintenance. *See Bellitto*, 935 F.3d at 1208.

II. California's procedures satisfy the NVRA.

Section 8 of the NVRA requires that the State "conduct a *general* program that makes a *reasonable* effort to remove the names of ineligible voters from the official lists of eligible voters" by reason of death or change of address. 52 U.S.C. §20507(a) (emphases added). The NVRA largely defers to States in how to carry out this mandate. California law includes a robust election code that provides several different methods for elections officials to confirm registrants' eligibility, including current residence, in compliance with NVRA requirements.

First, under California law, a voter notification card is sent to each voter registration applicant through non-forwardable, first-class mail to the address listed on the registration. Cal. Elec. Code §§2155, 2155.3. If a voter replies with an address change, the voter's record is updated accordingly. If the card is returned by the post office, a forwardable address confirmation mailing will be sent to the voter. If the address change is to another state, if there is no forwarding address, or if a returned mailing indicates that the voter does not live at that address, the county elections official shall update the voter's registration record to inactive and send a confirmation notice. *See id.* §§2225(c), (f), 2226(a)(2).

California law also requires county elections officials to conduct a residency confirmation procedure at least 90 days before a direct primary election. County officials can choose among several different methods to confirm residency. For example, officials can send registrants a postcard by non-forwardable first-class mail which states: "If the person named on this postcard is not at this address, please

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return this postcard to your mail carrier." *Id.* §2220(a).[3] Alternately, officials may use data from the National Change of Address System provided by USPS, which is obtained by the Secretary and forwarded to county officials through the statewide voter registration system. *Id.* §2222; *see also* 52 U.S.C. §20507(c)(1)(A). County officials also have the option of including a request on the outside of voter information guides sent in advance of elections that reads: "If the person named on the county voter information guide is not at the address, please help keep the voter rolls current and save taxpayer dollars by returning this county voter information guide to your mail carrier." Cal. Elec. Code §2223. County officials may also contract with a consumer credit reporting agency to obtain change-of-address data. *Id.* §2227. If officials receive information through any of these methods indicating a voter has moved, they send confirmation notices as provided in California law and the NVRA. *Id.* §§2155, 2225, 2226; 52 U.S.C. §20507(c), (d), (f).

California's procedures also ensure that the statewide voter registration list is reasonably updated to cancel the registration of ineligible voters upon proper notice, *see* Cal. Elec. Code §2201(c)(1), (2), which fully satisfies its obligations under the NVRA, *see* 52 U.S.C. §§21083(a)(4)(A), 20507(a)(4), (d)(3). If a voter does not return a confirmation notice, does not offer or appear to vote in any election within the next two federal general election cycles following the mailing of that confirmation notice, and does not notify a county election official of continued residency within California, the voter's registration record is cancelled. *See* Cal. Elec. Code §§2225(c), 2226(b).

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[3] If the voter still lives at the address noted in their registration, they are instructed to disregard the notice and notified that their voter registration will remain in effect. *Id.*

California also regularly updates its voter rolls to reflect deaths. The Secretary receives a weekly data file from the California Department of Public Health, which is processed through the statewide voter registration system to generate potential matches, which are then sent to the counties.[4] County election officials must review the decedent's record and the voter registration record (along with any other relevant information) to determine if there is a match. If the death record matches a voter's registration, the county official must send a notice to the contact information, and, if the voter does not respond, they must cancel the voter's registration. *Id.* §2201.

III. Plaintiffs' suit seeks to remove voters from California's rolls based on scattered and conclusory allegations.

Don Wagner, a member of the Orange County Board of Supervisors and candidate for California Secretary of State, and the American Independent Party of California ("AIP"), a political party in California, filed this lawsuit on May 20, 2026. Compl. ¶¶4-5. It comes shortly after a similar suit, also alleging violations of Section 8 of the NVRA, was voluntarily dismissed by a different plaintiff represented by the same counsel. *See Jud. Watch, Inc. v. Weber*, No. 2:24-cv-03750 (C.D. Cal. Mar. 31, 2026), ECF Nos. 1, 63. The current suit—which substitutes in new plaintiffs and updates the relevant time period—similarly asserts a single cause of action under Section 8 of the NVRA, alleging that the Secretary has failed "to conduct a general program that makes a reasonable effort" at removing voters "who have become ineligible by reason of a change of residence." Compl. ¶103. As relief, the Complaint requests a declaration that the Secretary is violating the NVRA and an injunction enjoining future violations, *id.* ¶103, Prayer for Relief (a), (b), though Plaintiffs

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[4] *See* Compl. ¶55; Cal. Sec'y of State, *Voter Registration Applications and Voter List Maintenance* (May 2026) ("NVRA Manual), https://perma.cc/D6ND-BBT3. The Court may take notice of the NVRA manual as a government record. *See Daniels-Hall*, 629 F.3d 992 at 998-99.

notably fail to say *what* that injunction would do beyond ordering the Secretary to follow the law, *but see* Fed. R. Civ. P. 65(d)(1)(C) (requiring any injunction "describe in reasonable detail" the "act or acts restrained or required"). The Complaint also seeks an order compelling the Secretary to engage in more aggressive voter removals, though this request is pled in vague and conclusory terms. *See* Compl., Prayer for Relief (c).

The Complaint ignores California's comprehensive statutory scheme for list maintenance, and instead contends the Secretary *could* be taking more aggressive voter removal actions—but not that the NVRA necessarily requires it. Compl. ¶¶37-54. The Complaint also points to what Plaintiffs deem to be insufficiently robust rates of voter removals by certain California counties between November 2022 and November 2024, based on leaping inferences drawn from selected public data sources, including the 2024 EAVS Report and Census Bureau figures. *See id.* ¶¶20-36. In other words, the Complaint relies upon snapshots of California's population trends and voter list maintenance efforts to insinuate that the State *must* be violating the NVRA, even though the NVRA requires only reasonable list-maintenance efforts by States, not perfect ones.

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IV. Plaintiffs allege generalized, speculative harms that are contingent on the actions of third parties.

The Complaint also sets forth diffuse allegations of harm to Plaintiffs. Wagner asserts a general interest in the "integrity" of the election for the office he seeks. Compl. ¶¶61-66. But the Complaint does not meaningfully allege how the State's purported failure to remove voters will impact the integrity of future elections. *See id.* For example, the Complaint asserts that "ballots mailed in Mr. Wagner's race will be mailed to ineligible registrants," but does not allege those ballots will be improperly returned or counted. *Id.* ¶66. Wagner also claims his campaign uses the voter list to identify voters to contact and that "the cost of campaign mailings is

higher than it would be if Defendant complied with the NVRA" so that he "is able to contact fewer voters." *Id.* ¶¶67-78. Wagner complains a mailing vendor used by his campaign charges a fee to "remove bad addresses." *Id.* ¶72. But given that the NVRA *requires* election officials to wait several election cycles before removing voters who have changed residency, Wagner says nothing about what judicial remedy could fix this routine aspect of campaign work.

AIP similarly alleges a general interest in election "integrity," *id.* ¶90, but makes no allegations suggesting the accuracy or integrity of California's elections are undermined by the State's list maintenance procedures. Nor does it identify instances where AIP candidates have been impacted by California's alleged failure to remove voters. *Id.* AIP also alleges that it uses the State's voter registration list to contact voters and will incur higher costs due to outdated addresses on that list. *Id.* ¶¶94-100. But as with Wagner, AIP does not allege *how* these costs are incurred or describe any judicial relief that would ameliorate them given the NVRA's safeguards.

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LEGAL STANDARD

Standing is a "threshold matter central to [the Court's] subject matter jurisdiction" under Rule 12(b)(1). *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). The "irreducible constitutional minimum" for standing requires that a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The plaintiff bears the burden of establishing each element, and where "a case is at the pleading stage, the plaintiff must 'clearly ... allege facts demonstrating' each element." *Id.* (quotation omitted).

A complaint must also be dismissed where it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Although a court must "take

all of the factual allegations in the complaint as true," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), those "[f]actual allegations must be enough to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)). Dismissal is also required when a complaint fails to allege "sufficient facts" "to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

ARGUMENT

I. Plaintiffs fail to allege standing.

Plaintiffs do not allege a sufficiently concrete or particularized injury, nor do they trace any injury to the Secretary or set forth how any injury could be redressed in a manner consistent with the NVRA. The Complaint thus falters at the outset for the same reason similar NVRA suits seeking voter purges have failed. *E.g.*, *Quinn v. Ga. Sec'y of State*, 175 F.4th 1309, 1314 (11th Cir. 2026) (dismissing NVRA suit for lack of redressable injury); *RNC v. Aguilar*, No. 2:24-CV-518, 2024 WL 4529358, at *5 (D. Nev. Oct. 18, 2024) (similar); *Benson*, 754 F. Supp. 3d at 786 (similar); *1789 Found., Inc. v. Schmidt*, 781 F. Supp. 3d 282, 310-21 (M.D. Pa. 2025) (similar).

A. Plaintiffs allege generalized and speculative injuries about the "integrity" of California's elections.

Both Wagner and AIP express an "interest in the integrity" of California's elections, Compl. ¶¶65, 90, a generalized concern common to all Californians. *See Quinn*, 175 F.4th at 1314-16 (explaining that "undermined confidence" in elections is not a particularized and concrete injury). But "a plaintiff must have more than merely an interest in seeing the law obeyed." *CFPB v. Gordon*, 819 F.3d 1179, 1187

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(9th Cir. 2016); *accord Allen v. Wright*, 468 U.S. 737, 754 (1984) ("This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court."). Plaintiffs' asserted "integrity" interest, standing alone, is thus far too generalized to support standing. *E.g.*, *Aguilar*, 2024 WL 4529358, at *4-5 (similar); *RNC v. Benson*, No. 24-1985, 2025 WL 2731704, at *2 (6th Cir. Sep. 25, 2025) (similar); *1789 Found.*, 781 F. Supp. 3d at 311-15 (similar); *cf. Lake v. Fontes*, 83 F.4th 1199, 1202-04 (9th Cir. 2023) (similar as to concerns about voting machines).

Plaintiffs' "election integrity" injuries are also speculative. Though the Complaint guesses that ballots might be sent to outdated addresses, Compl. ¶66, it does not purport to allege that anyone will cast illegal votes or otherwise impugn the process, *id.*, perhaps because any such suggestion would be guesswork and depend upon a third party's choice to cast an unlawful ballot, *see Lunn v. City of Los Angeles*, 629 F. Supp. 3d 1007, 1012-13 (C.D. Cal. 2022) ("It is well-established that an injury that results from [a] third party's voluntary and independent actions or omissions cannot serve to establish standing[.]").

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B. Plaintiffs' alleged pocketbook injuries are not traceable to the Secretary or redressable through an "obey the law" injunction.

"Perhaps recognizing the weakness" of these abstract integrity allegations, *Benson*, 2025 WL 2731704, at *2, Plaintiffs attempt to allege a pocketbook injury, asserting their various campaign activities would be less expensive if the Secretary removed more individuals from the rolls. *See* Compl. ¶¶71-79 (Wagner); *id.* ¶¶92-100 (AIP). But Plaintiffs fail to plausibly allege that such harm is traceable *to the Secretary's conduct*. Campaigns and parties will never have access to a perfect picture of any State's electorate, and nothing in the NVRA entitles them to that. Plaintiffs must plausibly allege their "injury-in-fact is … fairly traceable to the challenged action"—here, a failure by the Secretary to engage in reasonable list

maintenance efforts. *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018). The fact that a voter remains on the voter rolls after moving does not support an inference that election officials are violating the NVRA. Indeed, the opposite inference is more plausible because California *must* keep such voters on the rolls for at least two election cycles after they fail to respond to a confirmation notice. *See* 52 U.S.C. §20507(d). That Plaintiffs may pay to mail a campaign flyer to an out-of-date address—or choose to pay a third-party service to remove such a recipient—therefore cannot be imputed to any alleged violation of the NVRA. Nor does the Complaint satisfy this causal requirement, merely alleging that "[t]he higher cost of campaign mailings is due to Defendant's failure to comply with Section 8(a)(4) of the NVRA." Compl. ¶79. That is an unsupported legal conclusion dressed up as a factual allegation, and it is not entitled to a presumption of truth. *Iqbal*, 556 U.S. at 678. In short, the Complaint fails to explain how Plaintiffs' purported harm—outdated addresses on voter rolls—can be traced to the Secretary's actions rather than to the NVRA itself. *See Ecological Rts. Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1152 (9th Cir. 2000) (noting "the causal connection put forward for standing purposes cannot be too speculative, or rely on conjecture").

The same shortcoming is fatal for purposes of redressability. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024) (noting "causation and redressability … are often flip sides of the same coin" (quotation omitted)). The Complaint fails to identify specifically *what* action it would like the Secretary to take with respect to list maintenance. Instead—parroting the text of the NVRA itself—it seeks an injunction "[o]rdering Defendant to develop and implement a general program that makes a reasonable effort to remove the registrations of ineligible registrants from the voter rolls in California." Compl., Prayer for Relief (c). Such "obey-the-law" injunctions are improper. *Freeman v. Regents of Univ. of Cal.*, No. 2:25-CV-12432, 2026 WL 1366021, at *5 (C.D. Cal. May 6, 2026).

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This deficiency sits at the heart of the Complaint. Plaintiffs have failed to identify any "specific breakdown in [California's] voter registration system," *PILF v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020), which in turn leads them to seek only abstract relief telling the Secretary to "do better" in some unspecified way. But whether and how such relief would help Wagner is speculative. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (explaining it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision"). Regardless of any relief here, Wagner is still likely to pay a vendor to identify and remove outdated voter list entries because the NVRA requires keeping voters who have moved on the lists for years.

Compounding this redressability problem is the fact that Plaintiffs cannot obtain the relief they seek prior to the November 2026 election. The NVRA prohibits systematic removal programs within 90 days of a federal election, 52 U.S.C. §20507(c)(2)(A), meaning there is no prospect of relief that will affect mailing costs for the upcoming election. Sensing that problem, Wagner alleges he will run again in 2030. Compl. ¶64.[5] But any alleged harm about his mailing costs at *that* time requires this Court to guess at what California's voter rolls might look like *four years from now*, and to further assume that Wagner will campaign in the same manner. That fails to supply the "certainly impending" harm required for Article III standing. *Koller v. Harris*, 312 F. Supp. 3d 814, 826 (N.D. Cal. 2018) (dismissing claims "related to future elections" because plaintiff candidate had "not alleged a 'certainly impending' injury" given that "a 'speculative chain of possibilities' need[ed] to occur" before plaintiff could "be exposed to" purported harm); *see also Hassan v.*

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[5] AIP says even less than Wagner about *how* this alleged harm would be redressed by the "obey the law" injunction the Complaint seeks, or even how such harm *could* be remedied in advance of the November election—the only future election about which AIP makes allegations. Compl. ¶94.

FEC, 893 F. Supp. 2d 248, 255 (D.D.C. 2012) (similar), *aff'd*, No. 12-5335, 2013 WL 1164506 (D.C. Cir. Mar. 11, 2013). Courts reject standing founded upon such "some day" intentions, *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009), which require the Court to assume facts about events that "may not occur as anticipated, or indeed may not occur at all," *Texas v. United States*, 523 U.S. 296, 300 (1998).

II. Plaintiffs fail to state any claim upon which relief can be granted.

As Plaintiffs acknowledge, all the NVRA requires is that States "conduct a general program that makes a *reasonable effort* to remove the names of ineligible voters" from the rolls. Compl. ¶7 (citing 52 U.S.C. §20507(a)(4)) (emphasis added). Plaintiffs therefore must plausibly allege the Secretary has been *unreasonable* in her list maintenance—not simply imperfect. Plaintiffs fail to do so. They do not allege that California's statutory list-maintenance regimen fails to meet the floor set by the NVRA, nor do they allege the Secretary is failing to adhere to those requirements. Nothing in the Complaint "permit[s] the court to infer more than the mere possibility of misconduct," *Iqbal*, 556 U.S. at 679, thus the Complaint "has not 'shown that the pleader is entitled to relief,'" *id.* (quoting Fed. R. Civ. P. 8(a)(2)) (cleaned up).

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A. Plaintiffs fail to plausibly allege a violation of the NVRA's list-maintenance requirements related to residency.

Plaintiffs' central allegation—that California is violating the NVRA because it has eliminated too few registrations related to changes in residency—falls apart on closer inspection. Plaintiffs never allege any specific deficiency with California's list maintenance practices—they simply express a bare desire for *more* removals, but without tethering that wish to any NVRA requirement. In reality, California's detailed list maintenance provisions require election officials to monitor registrants' address changes and ultimately update or cancel registrations as appropriate. *See* Cal. Elec. Code. §§2220-2227; *supra* Background §II. Plaintiffs do not argue these

procedures are facially inadequate under the NVRA or allege these procedures are not followed. And "in the absence of clear evidence to the contrary, courts [are to] presume that [public officials] have properly discharged their official duties." *Hebrard v. Nofziger*, 90 F.4th 1000, 1009 (9th Cir. 2024) (citation modified).

"Without this sort of factual detail," this Court and the Secretary are "left in the dark" about how California supposedly violates the NVRA. *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1177 (9th Cir. 2021). Plaintiffs' vague assertion that California "removes too few registrations" pursuant to the Section 8(d)(1)(B) process, *see* Compl. at 5 (citation modified), does not give rise to a plausible inference that Defendant has failed to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters," *see* 52 U.S.C. §20507(a)(4). The NVRA *requires* delay before removing certain voters who have changed residence, so the presence of such voters on the rolls is "equally consistent with lawful conduct" and, "under *Twombly*, plaintiffs have not pleaded facts that would move their allegations from merely possible to plausible." *In re Graphics Processing Units Antitrust Litig.*, 527 F. Supp. 2d 1011, 1023 (N.D. Cal. 2007); *see also In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) ("To render their explanation plausible, plaintiffs must do more than allege facts that are merely consistent with both their explanation and defendants' competing explanation."). Plaintiffs provide none of the "factual context" that might "'nudge' their statutory violation claim 'across the line from conceivable to plausible.'" *Benson*, 754 F. Supp. 3d at 792 (quoting *Twombly*, 550 U.S. at 570).

Indeed, Plaintiffs recently admitted to the Court that discovery is necessary *before* they can "ascertain where the deficiencies lie" in California's program. Hr'g Tr. 33:6 (Sep. 28, 2026). The Federal Rules forbid such a "sue first, discover later" strategy, *see Mujica*, 771 F.3d at 593, and Rule 8 "does not unlock the doors of

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discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-79.

B. Plaintiffs' EAVS-based allegations fail to plausibly state an NVRA violation.

Instead of identifying any specific defect in California's list maintenance program, Plaintiffs attempt to construct an NVRA violation by pointing to the 2024 EAVS Report and claiming that certain counties' removal data "[can]not be possible" if Defendant was "conducting a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible because of a change in residence." Compl. ¶¶33-35. For three reasons, this "variation of *res ipsa loquitur*" fails to nudge Plaintiffs' allegations from possible to plausible. *Benson*, 754 F. Supp. 3d at 791. *First*, EAVS functions as a two-year "snapshot" that cannot capture a removal process that, by law, necessarily takes four years or more. *Second*, the NVRA does not require jurisdictions to track—and EAVS does not purport to authoritatively measure—removals conducted pursuant to Section 8(d)(1)(B). *Third*, because the NVRA permits jurisdictions to make residency-related updates to their voter lists in numerous ways beyond the Section 8(d)(1)(B) process, such removals may not be reported under this provision in EAVS.

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1. Data from a two-year window cannot plausibly establish whether a state made a "reasonable effort" to remove voters due to residency changes.

The Complaint wrongly assumes EAVS voter registration and removal data can be used to determine a States' compliance with the NVRA. *E.g.*, Compl. ¶¶16-18, 20-28, 33-36, 51, 56-57. But the 2024 EAVS Report from which the Complaint draws dispels this very notion: "Because registration removal can take up to two federal general election cycles to complete for some registration records, particularly in states that are subject to the NVRA, it is inevitable that voter lists will contain

some number of voter records for individuals who are no longer eligible to vote." 2024 EAVS Report at 150. The 2024 EAVS therefore warns that:

> [D]ata on registered and eligible voters as reported in the EAVS *should be used with caution*, as these totals can include registrants who are no longer eligible to vote in that state but who have not been removed from the voter lists *because the removal process laid out by the NVRA can take up to two election cycles to be completed*.

Id. at 131 (emphases added). Courts have cautioned against relying upon a so-called "EAVS snapshot" to supply a reliable understanding about the status of a State's voter rolls. *E.g.*, *Bellitto*, 935 F.3d at 1208; *Jud. Watch, Inc. v. North Carolina*, No. 3:20-CV-211-RJC-DCK, 2021 WL 7366792, at *10 (W.D.N.C. Aug. 20, 2021).

Moreover, the NVRA does not *require* a voter's removal immediately after they fail to vote in two consecutive elections; it merely *prohibits* removal of such a voter before that process occurs. 52 U.S.C.§20507(b)(2). Thus, a county reporting few, or even zero, Section 8(d)(1)(B) removals in a single two-year period is entirely consistent with the NVRA, so long as the state's efforts, overall, constitute a "reasonable effort" to remove voters based on a change in residence. *Id.* §20507(a)(4); *see Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021) (explaining EAVS's "two-year average" is "unhelpful" in alleging a claim about removal rates).

Plaintiffs' attempt to compare the number of Section 8(d)(1)(B) removals reported by different counties in 2024, *see* Compl. ¶¶23-24, is unavailing for a similar reason. Because counties are not required to remove any voters under Section 8(d)(1)(B) at any specified time, they certainly are not required to do so on the same schedule as other counties. Moreover, jurisdictions can choose among several ways to detect when a voter changes residence, each of which could result in the Section 8(d)(1)(B) process starting—and therefore ending—at a different time. *See* Cal. Elec. Code §2220(a) (mailing of a non-forwardable postcard); *id.* §2222 (use of

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National Change of Address System data); *id.* §2223(a) (mailing of a voter information guide with an address confirmation notice); *id.* §2227 (contracting with a credit reporting agency to obtain change-of-address data).

Finally, Plaintiffs' allegation that "eighteen California counties have more voter registrations than citizens over the age of eighteen" similarly fails because it relies on a comparison of inapposite time ranges. Compl. ¶56. Plaintiffs compare voter registration numbers reported to EAVS with the Census Bureau's "most recent five-year estimates of voting age citizenry." *Id.* But that is the *precise* misuse of data that EAVS cautions against. *See* 2024 EAVS Report at 131 (citing examples in footnotes). Like past reports, the 2024 EAVS Report warns that "states should expect to see high voter registration rates" but that "such information, without more, does not" provide a meaningful inference of "non-compliance with the NVRA." *Jud. Watch, Inc.*, 2021 WL 7366792, at *10. Indeed, the Eleventh Circuit criticized the approach Plaintiffs take here, explaining that the Census data at issue—drawn from the American Community Survey ("ACS")—"takes data drawn from the preceding five years and estimates the midpoint of that data." *Bellitto*, 935 F.3d at 1208. The 2024 ACS—the most recent ACS, upon which the Complaint apparently relies—provides population estimates for *mid-2022*, which the Complaint then compares to voter registration rates in *2026*. This mismatch undercuts Plaintiffs' allegations of excessively high registration rates in 18 California counties: Plaintiffs rely upon four-year old, "artificially low" population data to reach "an inflated registration rate." *Id.* This mixing and matching of different data sources fails to plausibly suggest any violation of the NVRA.

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2. EAVS's removal data cannot plausibly establish whether a state made a "reasonable effort" to remove voters due to residency changes.

The Complaint also fails to plausibly allege an NVRA violation because the NVRA does not require jurisdictions to specifically *categorize* removals. Thus, the number of Section 8(d)(1)(B) removals listed in the EAVS Report—in column A12e in the EAVS dataset—cannot support a plausible inference that a State has failed to make a "reasonable effort" to remove voters who have become ineligible due to a change in residency.

The NVRA does not require local jurisdictions to track removals of ineligible voters in a particular format. EAVS offers only "a general understanding of core aspects of the election process," rather than a perfect accounting of States' registration removals. 2024 EAVS Report at i. Indeed, the EAVS instructions contemplate that counties may not have data available in response to each query. *See* U.S. Election Assistance Comm'n, 2024 Election Administration and Voting Survey ("2024 EAVS Survey") 3 ("If the question is applicable to your state but your jurisdiction does not have the data necessary to answer the question, use the code -99 (negative 99, or 'Data not available') as your response.").[6]

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Because the NVRA does not mandate a particular tracking scheme, it is unremarkable that some counties may not collect data in a manner that maps onto the structure of the EAVS survey. For example, one county that Plaintiffs fault for reporting zero Section 8(d)(1)(B) removals included a note alongside its response explaining that its record management system "DOES NOT BREAKDOWN AND RECORD REASONS FOR SENDING CONFIRMATION NOTICES TO VOTERS." *EAVS Dataset Version 2.0,* U.S. Election Assistance Comm'n (Feb. 12, 2026), "EAVS Dataset") (choose "2024" from dropdown; then choose "Excel" for

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[6] Available at: https://perma.cc/7ESX-F4Y9.

"EAVS Dataset Version 2.0" to see data; view cell FE171).[7] Even those counties that do record removal categories are limited by the EAVS survey's structure. The Complaint focuses on Question A12, which asks jurisdictions to list the total "voter registration records removed" (Question A12a) and to divide that number among several "reasons for removal" (Questions A12b through A12k). 2024 EAVS Survey at 14. Because Question A12 requires that the numbers listed under each reason add up to the reported total, counties cannot indicate if a record was removed for multiple reasons. *See id.* It is no surprise, then, that several counties reported large values for Question A12b ("Voter moved outside of jurisdiction") and zero for Question A12e ("Voter failed to respond to a sent confirmation notice and failed to vote in the two most recent federal elections."). *See, e.g.*, EAVS Dataset, cell FG174 (Kings County reported 6,563 removals for Question A12b and zero for Question A12e); *id.* at cell FG194 (San Bernardino County reported 16,981 removals for Question A12b and zero for Question A12e). Because of this design, EAVS data does not indicate whether any of the removals categorized as "Voter moved outside of jurisdiction" occurred using the Section 8(d)(1)(B) process.

In view of these limitations, Plaintiffs' allegations regarding the values that certain counties reported for Question A12e, *see* Compl. ¶¶20-28, 33-36, do not give rise to a plausible inference that Defendant failed to make a reasonable effort to remove ineligible voters from the registration list. *See Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005) ("[U]nwarranted deductions of fact are not admitted as true in a motion to dismiss." (citation modified)).

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[7] Available at: https://www.eac.gov/research-and-data/studies-and-reports.

3. Section 8(d)(1)(B) removals alone do not capture a State's efforts to update its voter list to reflect residency changes.

The NVRA also does not mandate a particular manner by which jurisdictions must identify voters that have moved. Section 8(d)(1)(B) provides one mechanism, but jurisdictions can also identify such voters when they return a confirmation card, *see* 52 U.S.C. §20507(d)(1)(B), or self-report a change in address directly to the jurisdiction, *see id.* §20507(d)(1)(A). California law also requires that voter registration information be automatically updated when voters move in-state and provide forwarding address information to USPS, Cal. Elec. Cal. Elec. Code §§2225(b), 2226(a)(1)—the Section 8(d)(1)(B) removal process is not triggered for such voters.

For this reason, Plaintiffs' suggestion that the number of Section 8(d)(1)(B) removals reported in the EAVS data should match the Census Bureau's estimates of California residents who have recently moved makes no sense. *See* Compl. ¶¶31-32; *see also Jud. Watch, Inc.*, 524 F. Supp. 3d at 407 (granting motion to dismiss and rejecting the "implication … that, because the Section (d)(1)(B) removal rate for each county does not match or approach the estimated change-of-residence rate, the county defendants must be failing to meet their obligations under Section 8(a)(4)"). Plaintiffs "offer[] no factual context for [their] conclusory assertion that" allegedly high voter registration rates are traceable to a violation of the NVRA. *Id.* at 408.

Alleging that some counties use one type of removal method less frequently than Plaintiffs would prefer is a far cry from plausibly alleging that California is not making a reasonable effort to administer a removal program. If anything, the data Plaintiffs rely on demonstrates that Defendant is making a reasonable effort. The EAVS data indicates that California removed over 3 million voters from its rolls during the relevant reporting period—roughly 12.4% of its registered voters and one

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of the highest removal rates in the country. 2024 EAVS Report at 185-86. The NVRA "does not require a perfect effort, nor does it require the most optimal effort, nor does it even require a very good effort." *PILF*, 136 F.4th at 628. Viewed in context, Plaintiffs' allegations cannot plausibly support an inference that California has failed to make the "reasonable effort" required to cancel the registrations of voters who have become ineligible due to a change in residence.

C. Plaintiffs have not stated any other claim for relief.

Plaintiffs' remaining insinuations do not plausibly allege NVRA violations. First, Plaintiffs allege Defendant is "unable or unwilling" to comply with Section 8(d)(1)(B) because she has delegated some aspects of list maintenance to county officials. Compl. ¶¶37-54. Plaintiffs claim this delegation "is not consistent with the text of the NVRA," *id.* ¶52, but they fail to identify any statutory requirement that California has violated. "Nothing in the text of the NVRA … forbids delegating [the state's] responsibilities to local authorities." *Comm. for Mass. Voter Identification Ballot Question v. Galvin*, 790 F. Supp. 3d 1, 6 (D. Mass. 2025) (explaining that Congress "deliberately did not foreclose delegation to local entities"). While California cannot use delegation to "avoid responsibility if [a list maintenance] program is not reasonably conducted," *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008), it does not violate the NVRA to delegate aspects of that program.

Second, the Complaint fleetingly suggests California must consult an "out-of-state source" to identify deceased registrants. Compl. ¶55. But the NVRA imposes no such requirement. It simply requires that States "conduct a general program that makes a reasonable effort to remove the names of" voters who become ineligible "by reason of the death of the registrant." 52 U.S.C. §20507(a)(4)(A) (cleaned up). "Beyond this, Congress did not give any further guidance on what a 'reasonable effort' must look like." *PILF*, 136 F.4th at 624. Given the flexibility States have in

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determining how to remove deceased voters from the rolls, Plaintiffs' mere policy disagreement with how California does so fails to allege California's approach is not reasonable. *See Bellitto*, 935 F.3d at 1205 (explaining a "state is not required to exhaust all available methods for identifying deceased voters; it need only use reasonably reliable information to identify and remove such voters").

CONCLUSION

Accordingly, this Court should dismiss Plaintiffs' Complaint.

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Dated: October 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Intervenor-Defendants NAACP, NAACP-CA/HI, and SIREN certifies that this brief contains 6,967 words, which complies with the word limit of Local Rule 11-6.1.

Dated: October 20, 2026

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