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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DONALD J. TRUMP FOR PRESIDENT, INC.,
et al,

Plaintiff(s),

v.

BARBARA CEGAUSKE,

Defendant(s).

Case No. 2:20-CV-1445 JCM (VCF)

ORDER

Presently before the court is defendant Barbara Cegavske, Nevada Secretary of State’s, motion to dismiss the first amended complaint. (ECF No. 37). Plaintiffs Donald J. Trump for President, Inc. (“Trump campaign”), the Republican National Committee, and the Nevada Republican Party responded. (ECF No. 42). Defendant replied. (ECF No. 45).

I. Background

On August 3, 2020, Nevada joined the growing ranks of states that have expanded mail-in voting due to the COVID-19 pandemic.¹ See Assembly Bill No. 4 of the 32nd Special Session (2020) of the Nevada Legislature, Act of August 3, 2020, ch. 3, 2020 Nev. Stat. 18, §§ 1–88 (“AB 4”). The Nevada State Legislature passed Assembly Bill 4 (“AB 4”), which codified procedures for elections impacted by emergencies or disasters.² Specifically, the law directs city

¹ Prior to the COVID-19 pandemic, Nevada voters could request an absentee ballot without providing an excuse or justification, and certain voters in rural areas could be grouped together in “mailing precincts” and “automatically mailed their paper ballots.” (See ECF No. 37 at 7 (citing NRS §§ 293.3038-.340; 293.343-.355)).

² “[I]f a state of emergency or declaration of disaster is proclaimed by the Governor or by resolution of the Legislature pursuant to NRS 414.070 for the entire State of Nevada, the following elections are deemed to be affected elections.” AB 4 at § 8. Governor Steve Sisolak declared a state of emergency due to the COVID-19 pandemic on March 12, 2020. (ECF No. 29 at ¶ 103).

1 and county election officials to mail paper ballots to all active registered voters in Nevada. AB 4
2 at § 15.

3 The next day, plaintiffs filed this instant suit.³ (ECF No. 1). They challenge several key
4 provisions of AB 4:

5 Section 20(2) of AB 4 establishes a presumption that a ballot was cast in time, as long as
6 it is received by election officials before 5 p.m. on the third day after the election, even if it lacks
7 a postmark.⁴ AB 4 at § 20(2). Plaintiffs allege that section 20(2) is preempted by federal laws
8 that set the date of the general election,⁵ because the provision allegedly permits election
9 officials to count ballots cast after election day. (ECF No. 29 at ¶¶ 104–123). Plaintiffs theorize
10 that, due to the speed of the United States Postal Service, a ballot mailed in Clark or Washoe
11 county “in a state-provided, postage prepaid first-class envelope on the Wednesday or Thursday
12 after Election Day will likely be received [by election officials] before 5:00pm on the Friday
13 after the election” and “almost certainly will arrive without bearing a postmark.” (*Id.* at ¶ 96).

14 Sections 11 and 12 of AB 4 require election officials to establish a minimum number of
15 in-person voting locations for early voting and election-day voting, respectively. AB 4 at §§ 11,
16 12. A county with a population of “700,000 or more” must establish at least 100 voting centers
17 for election day. *Id.* at § 12. A county with a population of “100,000 or more but less than
18 700,000” must establish at least 25 voting centers. *Id.* And a county with a population of “less
19 than 100,000” may establish one or more voting center. *Id.* Plaintiffs allege that sections 11 and
20 12 authorize the disparate treatment of rural voters in violation of the Equal Protection Clause,
21 because there will be “more in-person voting places per capita for voters in urban counties than
22 in rural counties.” (ECF No. 29 at ¶ 100). Plaintiffs speculate that rural Nevada counties will

23 ³ This suit is one of several that the Trump campaign has filed challenging expansions of
24 mail-in voting during the COVID-19 pandemic. *See Donald J. Trump for President, Inc. v.*
25 *Bullock*, No. CV 20-6-H-DLC (D. Mont. filed Sept. 2, 2020); *Donald J. Trump for President,*
26 *Inc. v. Murphy*, No. 3:20-cv-10753 (D.N.J. filed Aug. 18, 2020); *Donald J. Trump for President,*
27 *Inc. v. Boockvar*, No. 2:20-cv-00966 (W.D. Pa. filed Jun. 29, 2020). This court only takes notice
28 of the existence of these lawsuits, and not the disputed facts therein. Fed. R. Evid. 201.

⁴ Section 20(2) of AB 4 duplicates NRS § 293.317, a statute that has been in effect since
January 1, 2020, but makes it applicable to affected elections. (ECF No. 37 at 8, 15).

⁵ U.S. Const. art. I, §4, cl. 1 (Elections Clause); U.S. Const. art. II, §1, cl. 4 (Electors
Clause); U.S. Const. art. VI, §2 (Supremacy Clause); 3 U.S.C. § 1 (“Time of appointing
electors”); 2 U.S.C. § 7 (“Time of election”); 2 U.S.C. § 1 (“Time for election of senators”).

1 have substantially higher numbers of registered voters per in-person voting location than urban
2 counties such as Washoe. (*Id.* at ¶¶ 130–138).

3 Section 22 of AB 4 requires election officials to establish “procedures for the processing
4 and counting of mail ballots” for any affected election.⁶ AB 4 at § 22. Section 25 provides that
5 “if two or more mail ballots are found folded together to present the appearance of a single
6 ballot” and “a majority of the inspectors are of the opinion that the mail ballots folded together
7 were voted by one person, the mail ballots must be rejected.”⁷ AB 4 at § 25(2). Plaintiffs allege
8 that sections 22 and 25 violate the Equal Protection Clause, because they authorize
9 “‘standardless’ procedures” across counties and cities for processing, inspecting, and counting
10 mail ballots with no “specific rules designed to ensure uniform treatment” and no “‘minimal
11 procedural safeguards.’” (ECF No. 29 at ¶¶ 145, 159 (quoting *Bush v. Gore*, 531 U.S. 98, 105–
12 106 (2000) (per curiam)).

13 And finally, plaintiffs allege that all of the aforementioned provisions of AB 4, along
14 with section 21,⁸ “facilitate fraud and other illegitimate voting practices” and “dilute the value of
15 honest, lawful votes” in violation of the Fourteenth Amendment. (ECF No. 29 at ¶ 169).

16 On August 20, 2020, plaintiffs amended their complaint without altering the parties or
17 their claims. (ECF No. 29). Defendant now moves to dismiss the amended complaint pursuant
18 to Federal Rule of Civil Procedure 12(b)(1). (ECF No. 37).

19 **II. Legal Standard**

20 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
21 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case

22 ⁶ Section 22 is read together with other provisions in AB 4 that establish procedures for
23 processing and counting mail ballots. For example, section 17 requires election officials to
24 secure proof of identification from certain first-time voters before counting their mail ballots.
25 AB 4 at § 17. Section 23 requires election officials to verify the signature on mail ballots. *Id.* at
26 § 23. Section 26 requires election officials to verify that the voter did not vote in person before
27 counting the mail ballot. *Id.* at § 26. And Section 22(b) forbids election officials from
28 establishing any procedures that conflict with sections 2 to 27 of AB 4. *Id.* at § 22.

⁷ Section 25 of AB 4 duplicates NRS § 293.363, a statute that has been in effect since
1960, but makes it applicable to affected elections. (ECF No. 37 at 9, 21).

⁸ Section 21 allows for “a person authorized by the voter may return the mail ballot
on behalf of the voter by mail or personal delivery to the county or city clerk, as applicable,
or any ballot drop box established in the county or city, as applicable.” AB 4 at § 21.

1 unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of Colville*
2 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

3 **A. Federal Rule of Civil Procedure 12(b)(1)**

4 Federal Rule of Civil Procedure 12(b)(1) allows defendants to seek dismissal of a claim
5 or action for a lack of subject matter jurisdiction. Dismissal under Rule 12(b)(1) is appropriate if
6 the complaint, considered in its entirety, fails to allege facts on its face sufficient to establish
7 subject matter jurisdiction. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546
8 F.3d 981, 984–85 (9th Cir. 2008).

9 Plaintiffs bear the burden of proving that the case is properly in federal court to survive a
10 Rule 12(b)(1) motion. *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing
11 *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). They must plead “the
12 existence of whatever is essential to federal jurisdiction, and, if [plaintiffs] do[] not do so, the
13 court, on having the defect called to its attention or on discovering the same, must dismiss the
14 case, unless the defect be corrected by amendment.” *Smith v. McCullough*, 270 U.S. 456, 459
15 (1926).

16 **B. Article III Standing**

17 Standing to sue is a “doctrine rooted in the traditional understanding of a case or
18 controversy.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The doctrine “limits the
19 category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal
20 wrong.” *Id.* In this way, standing “serves to prevent the judicial process from being used to
21 usurp the powers of the political branches.” *Id.* (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S.
22 398, 408 (2013)); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576–77 (1992).

23 To establish standing, plaintiff must plead three elements: (1) an injury in fact; (2) a
24 causal connection between the injury and the alleged misconduct; and (3) a likelihood that the
25 injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61. The party invoking
26 federal jurisdiction bears the burden of demonstrating that it has standing to sue. *Id.* at 561.
27 “[A]t the pleading stage, the plaintiff must ‘clearly . . . allege facts demonstrating’ each element”
28 of standing. *Spokeo*, 136 S. Ct. at 1547 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a
legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent[.]’”

1 *Spokeo*, 136 S. Ct. at 1548. Moreover, a concrete injury must actually exist and affect the
 2 plaintiff in a personal and individual way. *Id.* As the Supreme Court noted in *Spokeo*:

3 Congress' role in identifying and elevating intangible harms does not mean that a
 4 plaintiff automatically satisfies the injury-in-fact requirement whenever a statute
 5 grants a person a statutory right and purports to authorize that person to sue to
 6 vindicate that right. Article III standing requires a concrete injury even in the
 7 context of a statutory violation. For that reason, [plaintiff] could not, for example,
 8 allege a bare procedural violation, divorced from any concrete harm, and satisfy
 9 the injury-in-fact requirement of Article III.

10 *Id.* at 1549 (citing *Summers v. Earth Island Institute*, 555 U.S. 488, 496 (2009) (“[D]eprivation
 11 of a procedural right without some concrete interest that is affected by the deprivation . . . is
 12 insufficient to create Article III standing.”)).

13 **III. Discussion**

14 Defendant argues that plaintiffs do not have standing to bring their claims for relief.
 15 (ECF Nos. 37, 45). This court agrees.

16 Plaintiffs attempt to establish standing in three ways: (1) associational standing to
 17 vindicate harms to their member voters, (2) direct organizational standing due to their need to
 18 divert resources, and (3) direct and associational standing to vindicate competitive injuries to
 19 their candidates. (ECF No. 42).

20 This court will address each of plaintiffs' theories in turn.

21 **A. Associational Standing for Voters**

22 Plaintiffs argue that they have associational standing to vindicate the injuries caused to
 23 their member voters by AB 4. (ECF No. 42 at 10–13). These injuries are two-fold: an individual
 24 “right under the Constitution to have [your] vote fairly counted, without being distorted by
 25 fraudulently cast votes”—vote dilution—and an “arbitrary and disparate treatment of the
 26 members of its electorate”—violations of the Equal Protection Clause. (ECF No. 29 at ¶¶ 33,
 27 35).

28 An entity may establish associational standing to bring suit on behalf of its members
 when: (1) “its members would otherwise have standing to sue in their own right;” (2) “the
 interests it seeks to protect are germane to the organization’s purpose;” and (3) “neither the claim
 asserted nor the relief requested requires the participation of individual members in the lawsuit.”
Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 343 (1977).

1 This court finds that the Trump campaign fails to satisfy the second prong of
2 associational standing: the interests of the voters are not “germane to the organization’s
3 purpose.” *Id.* The Trump campaign does not represent Nevada voters. The Trump campaign
4 represents only Donald J. Trump and his “electoral and political goals” of reelection. (ECF No.
5 29 at ¶ 11). By statutory definition, a federal election candidate’s “principal campaign
6 committee” is simply a reserve of funds set aside for that campaign. *See* 52 U.S.C. § 30102
7 (“Organization of political committees”). Although the Trump campaign may achieve its
8 “organization’s purpose” through Nevada voters, the individual constitutional interests of those
9 voters are wholly distinct. (ECF No. 29 at ¶ 11).

10 In contrast to the Trump campaign, the Republican National Committee and Nevada
11 Republican Party satisfy the second prong; the interests of their member voters are germane to
12 their “organization’s purpose.” *See Hunt*, 432 U.S. at 343. Still, however, plaintiffs’ member
13 voters would not “otherwise have standing to sue in their own right.” *Id.* Plaintiffs’ alleged
14 injury of vote dilution is impermissibly “generalized” and “speculative” at this juncture. *Drake*
15 *v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011). To establish these future injuries, plaintiffs must
16 plead facts that establish a “‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v.*
17 *Driehaus*, 573 U.S. 149, 158 (2014) (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5
18 (2013)). Plaintiffs’ allegations of equal protection violations are also generalized and
19 speculative. However, plaintiffs’ claim against sections 11 and 12 fail to satisfy redressability as
20 well—“a likelihood that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at
21 560.

22 To demonstrate the substantial risk of voter fraud, plaintiffs cite studies and news articles
23 on the subject. (ECF No. 29 at ¶¶ 63–81). The news articles describe a parade of administrative
24 problems in Wisconsin, New Jersey, Connecticut, and New York, states that “hurriedly”
25 implemented mail-in voting for elections during the COVID-19 pandemic. (*Id.* at ¶¶ 63–75).
26 Plaintiffs also point to reported irregularities in Nevada’s June 2020 mail-in primary elections.
27 (*Id.* at ¶¶ 57–62).

28 Even if accepted as true, plaintiffs’ pleadings allude to vote dilution that is impermissibly
generalized. The alleged injuries are speculative as well, *see Lujan*, 504 U.S. at 560, but their
key defect is generality. As a court in this district has already recognized, plaintiffs’ claims of a
substantial risk of vote dilution “amount to general grievances that cannot support a finding of

1 particularized injury as to [p]laintiffs.” *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC,
 2 2020 WL 2748301, at *4 (D. Nev. May 27, 2020). Indeed, the key provisions of AB 4 apply to
 3 all Nevada voters. Plaintiffs never describe how their member voters will be harmed by vote
 4 dilution where other voters will not. As with other “[g]enerally available grievance[s] about the
 5 government,” plaintiffs seek relief on behalf of their member voters that “no more directly and
 6 tangibly benefits [them] than it does the public at large.” *Lujan*, 504 U.S. at 573–74; *see Valley*
 7 *Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464,
 8 485 (1982) (“The proposition that all constitutional provisions are enforceable by any citizen
 9 simply because citizens are the ultimate beneficiaries of those provisions has no boundaries.”).
 10 Plaintiffs’ allegations are “precisely the kind of undifferentiated, generalized grievance about the
 11 conduct of government” that fail to confer Article III standing. *Lance v. Coffman*, 549 U.S. 437,
 442 (2007).

12 As to plaintiffs’ equal protection claims, plaintiffs first argue that “[s]ections 11 and 12
 13 of AB4 authorize disparate treatment of voters in rural counties” due to the law’s differences in
 14 *minimum* number of in-person voting locations across counties and lack of further guidance on
 15 how election officials should make their determinations. (ECF No. 29 at ¶ 126). However,
 16 plaintiffs fail to demonstrate how these harms are redressed by their requested relief. “The
 17 proposition that plaintiffs must seek relief that actually improves their position is a well-
 18 established principle.” *Townley v. Miller*, 722 F.3d 1128, 1134 (9th Cir. 2013). AB 4 simply
 19 establishes a minimum number of in-person voting locations. AB 4 at §§ 11, 12. Removing this
 20 one safeguard does not alleviate plaintiffs’ concerns. In fact, it “worsen[s] plaintiffs’ injury
 21 rather than redressing it.” *Townley*, 722 F.3d at 1135 (“[I]f plaintiffs were to prevail in this
 22 lawsuit, . . . voters would no longer have the opportunity to affirmatively express their opposition
 23 at the ballot box at all. The relief plaintiffs seek will therefore *decrease* their (and other voters’)
 24 expression of political speech rather than increase it, worsening plaintiffs’ injury rather than
 25 redressing it.”). An injunction against the enforcement of AB 4 would not address plaintiffs’
 26 issues with the discretion that Nevada election officials have to establish in-person voting
 27 locations from all counties.⁹

28 ⁹ During the pendency of this motion, Nevada election officials established polling places
 and voting centers for the 2020 general election. *2020 General Election & Polling Locations*,

1 Plaintiffs also claim that “AB 4’s three-day, post-election receipt deadline for non-
 2 postmarked ballots—coupled with its deeming rule, the faster average mailing time in urban
 3 districts such as Clark County, and the postal service’s practice of not postmarking prepaid
 4 mail—will likely result in significantly more untimely ballots being counted from urban areas.”
 5 (ECF No. 42 at 12). These injuries are too speculative to establish standing. Plaintiffs offer a
 6 patchwork theory of harm that does not rely on AB 4, but on the speed of the United States
 7 Postal Service, an entity out of defendant’s control. (ECF No. 29 at ¶¶ 73–81, 90–97). A
 8 “future injury may suffice if the threatened injury is ‘certainly impending,’ or there is a
 9 ‘substantial risk’ that the harm will occur.” *Susan B. Anthony List*, 573 U.S. at 158. Even
 10 among the segment of voters who vote by mail, plaintiffs offer no indication that the alleged
 11 future injury is “certainly impending” or “substantial[ly]” likely. *Id.*

12 This court finds that plaintiffs do not have associational standing to represent their
 13 member voters.

14 **B. Direct Organizational Standing**

15 Plaintiffs next allege that they have direct organizational standing to bring their claims.
 16 (ECF No. 42 at 3–8). Organizational standing is recognized where the alleged misconduct of the
 17 defendant causes “a drain on [plaintiffs’] resources from both a diversion of its resources and
 18 frustration of its mission.” *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*,
 19 666 F.3d 1216, 1219 (9th Cir. 2012) (quotation omitted); see *Havens Realty Corp. v. Coleman*,
 20 455 U.S. 363, 379 (1982) (“Such concrete and demonstrable injury to the organization’s
 21 activities—with the consequent drain on the organization’s resources—constitutes far more than
 22 simply a setback to the organization’s abstract social interests.”). Plaintiffs allege that AB 4
 23 forces them “to divert resources and spend significant amounts of money educating Nevada
 24 voters . . . and encouraging them to still vote.” (ECF No. 29 at ¶ 17). Plaintiffs also briefly
 25 allege a need to divert resources to counteract voter fraud. (ECF No. 42 at 5 (citing *Am. Civil*
 26 *Rights Union v. Martinez Rivera*, 166 F. Supp. 3d 779, 800 (W.D. Tex. 2015)).

27 This court is unpersuaded by plaintiffs’ theory of organizational standing. Plaintiffs
 28 argue that AB 4 would “confuse” their voters and “create incentive to remain away from the
 29 polls.” (ECF No. 29 at ¶ 17). Outside of stating “confus[ion]” and “discourage[ment]” in a

30 Nevada Secretary of State (2020), <https://www.nvsos.gov/sos/elections/election-day-information>
 31 (presenting this information by county). This does not impact this court’s finding on
 32 redressability.

1 conclusory manner, plaintiffs make no indication of how AB 4 will discourage their member
2 voters from voting. (ECF No. 29); *see Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951
3 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008) (holding that a “new law injures” a political party
4 when it compels it “to devote resources to getting to the polls those of its supporters who would
5 otherwise be discouraged by the new law from bothering to vote.”). If plaintiffs did not expend
6 any resources on educating their voters on AB 4, their voters would proceed to vote in-person as
7 they overwhelmingly have in prior elections. (ECF No. 29 at ¶¶ 43–47). AB 4 does not abolish
8 in-person voting. An organization cannot “simply choos[e] to spend money fixing a problem
9 that otherwise would not affect the organization at all. It must instead show that it would have
10 suffered some other injury if it had not diverted resources to counteracting the problem.” *Valle*
11 *del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013) (quoting *La Asociacion de*
12 *Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)). Plaintiffs
13 make no showing of their voters’ confusion. Indeed, voters exercised their ability to vote by
14 mail in Nevada’s 2020 primary election. NRS §§ 293.343-.355; *see Paher v. Cegavske*, No.
15 320CV00243MMDWGC, 2020 WL 2089813, at *2 (D. Nev. Apr. 30, 2020) (“[A]ll active
16 registered voters will be mailed an absentee ballot (mail-in ballot) for the primary election.”).

17 In making this fact-intensive finding, this court also notes the substantive differences
18 between AB 4 and the laws challenged in plaintiffs’ cited authority. *Compare* AB 4, *with Pavek*
19 *v. Simon*, No. 19-CV3000 (SRN/DTS), 2020 WL 3183249, at *14 (D. Minn. June 15, 2020)
20 (finding organizational standing to challenge a state law which “requires that in Minnesota
21 general elections, major political party candidates must be listed, on the ballot, in reverse order
22 based on the average number of votes that their party received in the last state general election”);
23 *Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018), *rev’d on other*
24 *grounds sub nom. Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc)
25 (finding organizational standing to challenge a state law that prohibits third-party ballot
26 collection); *Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1258 (N.D.
27 Ga. 2018) (finding organizational standing to challenge a state voter identification and
28 registration law); *Feldman v. Arizona Sec’y of State’s Office*, 208 F. Supp. 3d 1074, 1080–81 (D.
Ariz. 2016) (finding organizational standing to challenge a state law that “limits who may
possess another’s early ballot”); *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th
Cir. 2007), *aff’d*, 553 U.S. 181 (2008) (finding organizational standing to challenge a state voter

1 identification law). In these cases with organizational standing, the challenged law has a direct
 2 and specific impact on a voter’s ability to vote. Indeed, a diversion of resources for education
 3 would be required in such situations. But here, the challenged law expands access to voting
 4 through mail without restricting prior access to in-person voting. Thus, as detailed above,
 5 plaintiffs need not *divert* resources to enable or encourage their voters to vote.

6 Plaintiffs also briefly argue that they will need to divert resources to fight voter fraud.
 7 (ECF No. 42 at 4–5). This court repeats its prior finding on vote dilution: it is a speculative and
 8 “generalized grievance” in this case. *See Paher*, 2020 WL 2748301, at *4 (finding no standing
 9 where plaintiffs failed to “state a particularized injury” and did no more than “speculatively
 10 connect the specific conduct they challenge . . . and the claimed injury [of] vote dilution”); *Am.*
 11 *Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (“[T]he risk
 12 of vote dilution[is] speculative and, as such, [is] more akin to a generalized grievance about the
 13 government than an injury in fact.”). Plaintiffs note in their response to defendant’s motion to
 14 dismiss that they will need to divert resources to combat voter fraud. (ECF No. 42 at 4–5).
 15 Plaintiffs cannot divert resources to combat an impermissibly speculative injury. *See Susan B.*
 16 *Anthony List*, 573 U.S. at 158. Not only have plaintiffs failed to allege a substantial risk of voter
 17 fraud, the State of Nevada has its own mechanisms for deterring and prosecuting voter fraud.
 18 *See* NRS §§ 293.700-.840 (“unlawful acts and penalties” in the context of an election). Here,
 19 plaintiffs do not allege that those mechanisms would fail and that they would need to divert
 20 resources accordingly. This court finds that plaintiffs have again failed to show that they would
 “suffer[] some other injury if [they] had not diverted resources to counteracting the problem.”
Valle del Sol, 732 F.3d at 1018.

21 **C. Direct and Associational Standing for Candidates**

22 Finally, plaintiffs argue that they have both direct and associational standing to challenge
 23 “competitive harms” to their electoral candidates. (ECF No. 42 at 8). “Competitive standing”
 24 can exist when a state action will lead to the “potential loss of an election.” *Drake*, 664 F.3d at
 25 783 (quoting *Owen v. Mulligan*, 640 F.2d 1130, 1132–33 (9th Cir. 1981)).

26 Plaintiffs seek to vindicate the rights of their candidates, because AB 4 will undermine
 27 the ability of “Republican candidates to receive[] effective votes in Nevada” by “confus[ing]
 28 voters, undermin[ing] confidence in the electoral process, and creat[ing] incentives to remain
 away from the polls.” (ECF No. 29 at ¶¶ 16–17). The pleadings make no showing of “an unfair

1 advantage in the election process.” *Drake*, 664 F.3d at 783. Plaintiffs rely on conclusory
 2 statements on confusion and disincentives that this court has already found unpersuasive. *See*
 3 *supra* III.B. Plaintiffs seek to muster “*competitive standing*,” yet their candidates face no harms
 4 that are unique from their electoral opponents. *Owen*, 640 F.2d at 1132–33 (finding competitive
 5 standing where the postal service gave plaintiff’s opponent a preferential mailing rate).

6 As to AB 4’s disparate treatment of rural voters, this court repeats its prior findings:
 7 plaintiffs’ requested relief fails to satisfy redressability and the alleged harm is too speculative.
 8 *See supra* III.A. Enjoining Nevada election officials from enforcing AB 4 would not apparently
 9 improve the odds for plaintiffs’ candidates. *See Drake*, 664 F.3d at 783 (quoting *Owen*, 640 F.2d
 10 at 1132–33 (9th Cir. 1981)). Plaintiffs make no such allegations. Election officials would
 11 operate without the guidance of AB 4’s minimum number of in-person voting locations. On
 12 plaintiffs’ theory as to Sections 20 and 22 of AB 4, plaintiffs have not established a “substantial
 13 risk” that their alleged harm will occur. *Susan B. Anthony List*, 573 U.S. at 158. Thus, neither
 14 plaintiffs nor their member candidates “have standing to sue in their own right.” *Hunt*, 432 U.S.
 15 at 343.

16 Ultimately, as plaintiffs concede, they hold “policy disagreements” with proponents of
 17 AB 4. (ECF No. 42 at 2). Although they purport to allege constitutional harms that go beyond
 18 these policy disagreements, at this juncture, plaintiffs’ allegations remain just that. (*Id.*). Since
 19 initiating this matter on August 4, 2020, (ECF No. 1), plaintiffs have not requested an injunction
 20 or expedited review. Plaintiffs ask for a remedy to cure the “confusion” caused by AB 4, yet
 21 they have positioned this case for last minute adjudication before the general election.¹⁰

22 This court grants defendant’s motion to dismiss due to plaintiffs’ lack of standing. (ECF
 23 No. 37). Plaintiffs’ amended complaint is hereby dismissed. (ECF No. 29). The remaining
 24 motions before the court are denied as moot. (ECF Nos. 10, 40, 41, 43).

25 ...

26 ...

27 ...

28 ¹⁰ The Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, No. 19A1016, — U.S. —, 140 S.Ct. 1205, 2020 WL 1672702, at *1 (U.S. Apr. 6, 2020) (citing *Purcell*; *Frank v. Walker*, 574 U.S. 929 (2014); and *Veasey v. Perry*, 574 U. S. —, 135 S. Ct. 9 (2014)).

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IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant’s motion to dismiss the amended complaint (ECF No. 37) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that defendant’s motion to dismiss the original complaint (ECF No. 10) be, and the same hereby is, DENIED as moot.


IT IS FURTHER ORDERED that intervenor-defendants DNC Services Corporation/Democratic National Committee, Democratic Congressional Campaign Committee, and the Nevada State Democratic Party’s motion to dismiss the amended complaint (ECF No. 40) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that plaintiff’s motion for partial summary judgment (ECF No. 41) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that non-parties Walker River Paiute Tribe and Pyramid Lake Paiute Tribe’s motion to intervene (ECF No. 43) be, and the same hereby is, DENIED as moot.

The clerk is instructed to close the case.

DATED September 18, 2020.


UNITED STATES DISTRICT JUDGE