IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHIGAN WELFARE RIGHTS ORGANIZATION, *et al.*,	)	
Plaintiffs,	)	No. 1:20-cv-3388-EGS
v.	)	
DONALD J. TRUMP, *et al.*,	)	
Defendants.	)	

REPUBLICAN NATIONAL COMMITTEE'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

David A. Warrington (1616846)
Gary M. Lawkowski (VA125)
Harmeet K. Dhillon
Mark P. Meuser
DHILLON LAW GROUP INC.
2121 Eisenhower Ave, Suite 608
Alexandria, Virginia 22314
(703) 574-1206
dwarrington@dhillonlaw.com
glawkowski@dhillonlaw.com
harmeet@dhillonlaw.com
mmeuser@dhillonlaw.com

Cameron T. Norris (VA083)
Tyler R. Green (982312)
Patrick Neilson Strawbridge*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com
tyler@consovoymccarthy.com
patrick@consovoymccarthy.com

* Admitted pro hac vice

Counsel for Defendant Republican National Committee

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INTRODUCTION

This lawsuit is not about the RNC. Throughout Plaintiffs' Opposition Response (ECF No. 75), and throughout the second amended complaint, Plaintiffs repeatedly obscure their claims behind general references to "Defendants." But nearly every time Plaintiffs use the term "Defendants" in their Opposition, they cite allegations that have nothing to do with the RNC. The Court should not entertain Plaintiffs' deliberate ambiguity.

To state a claim against the RNC, Plaintiffs must point to specific allegations against the RNC. They don't. Instead, Plaintiffs repeatedly point to allegations against the other Defendants, hoping the Court will adopt their imprecision. But the Court should not embrace Plaintiffs' error. The federal pleading standard demands specific factual allegations against *each defendant*. Just last week, this Court dismissed nearly identical election-interference claims against Roger Stone and Ali Alexander as barred by the First Amendment, despite reaching "a different conclusion" as to the other defendants. *See Smith v. Trump*, No. 1:21-cv-2265, 2023 WL 417952, at *3 (D.D.C. Jan. 26, 2023). The Court should be similarly demanding here.

Compounding their imprecise drafting, Plaintiffs continue to use hyperbolic language to obfuscate the dearth of allegations against the RNC. But "[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). The only conduct Plaintiffs allege to be committed *by the RNC* falls well within the category of protected political speech. The Court should dismiss Plaintiffs' second amended complaint because the First Amendment bars Plaintiffs' action,

Plaintiffs allege no cognizable intimidation, threat, or coercion under either statute, and they allege no conspiracy to deprive anyone of their rights.[1]

ARGUMENT

I. The Complaint Fails to Allege Actionable Conduct by the RNC.

Plaintiffs admit that they do not allege the RNC engaged in "private coercion and intimidation of election officials." Opp. at 2. According to Plaintiffs, only "the Trump Defendants" engaged in private coercion. Opp. at 2. But that admission exposes the flaw in Plaintiffs' suit: as a matter of law, the RNC is not responsible for the conduct of others.

The allegations that Plaintiffs *don't* attribute to the RNC severely undercut their case. For example, the RNC is not responsible for "two Republican canvassers" in Michigan who agreed not to certify Wayne County's results in response to a phone call from President Trump. Opp. at 2-3. The RNC is not responsible for President Trump's "phone calls to the Governor of Georgia, the Chair of the Maricopa County, Arizona Board of Supervisors, and the speaker of the Pennsylvania House of Representatives pressuring them to overturn election results." Opp. at 3. The RNC is not responsible for a meeting between President Trump, his lawyers, and "leaders of the Michigan State Senate and State House to the White House" to overturn the election results. Opp. at 3. The RNC is not responsible for the Trump Campaign "pressuring the Governor of

[1] On December 6, 2022, President Trump filed a notice of appeal at the D.C. Circuit, appealing this Court's denial of absolute immunity. On December 12, President Trump moved in this Court to stay pretrial proceedings pending resolution of his appeal, which the RNC joined. *See* Docs. 66, 67. This Court has not yet ruled on the motion to stay. On January 30, 2023, the D.C. Circuit issued a sua sponte order holding the case in abeyance. *See* Doc. 1983762, Appeal No. 22-7164. The D.C. Circuit ordered to parties to file motions to govern further proceedings within 30 days of either the D.C. Circuit's disposition of *Blassingame v. Trump*, No. 22-5069, or this Court's disposition of Defendants' pending motions to dismiss, whichever occurs first. *See* Doc. 1983762, Appeal No. 22-7164.

Arizona" to support claims of election fraud. Opp. at 3. And the RNC is not responsible for President Trump's calls to the Georgia Secretary of State to "find 11,780 votes." Opp. at 3.

Plaintiffs attribute all that conduct only to "the Trump Defendants" because neither President Trump, nor the Trump campaign, nor any of the Republican leaders involved in those allegations were acting as agents of the RNC. Opp. at 2-3. Although Plaintiffs refuse to admit it, their other allegations are just as distant from the RNC. For example, with respect to challenges and "other intimidation," Plaintiffs cite only unnamed "Trump Campaign observers" and a single state Republican Party chairman's vague reference to a "GOP Strategy." Opp. at 3-4. But Plaintiffs already recognize that the RNC is not responsible for statements made by the Trump Campaign or Republican leaders. Opp. at 2-3. And Plaintiffs do not allege that the chairman acted on behalf of the RNC, or even that he *thought* he was acting on behalf of the RNC when he made that statement. Plaintiffs have failed to carry their burden to allege facts to "plausibly support an inference that would justify … a finding of an agency relationship." *Kiobel v. Royal Dutch Petrol. Co.*, 621 F.3d 111, 195 (2d Cir. 2010), *aff'd*, 569 U.S. 108 (2013).

Plaintiffs' allegations about "public intimidation causing others to target election officials" suffers from the same defect. Opp. at 3. Within this category, Plaintiffs' only allegations against the RNC are that (1) Rudolph Giuliani and Sydney Powell held a speech at RNC headquarters, and (2) the RNC periodically retweeted content from President Trump, the Trump campaign, and individuals associated with the Trump Campaign. *See* Opp. at 3-4. But hosting a live press conference at the RNC's headquarters does not transform everyone in attendance into agents of the RNC. Those individuals are responsible for "their own independent discretion" in making the statements they made. *George v. Rehiel*, 738 F.3d 562, 583 (3d Cir. 2013). And Plaintiffs allege no facts indicating the RNC directed, supported, or endorsed those statements. Much less is the

RNC liable for retweeting statements by third parties that allegedly "caus[ed] *others* to target election officials." Opp. at 3 (emphasis added). The chain of association is far too attenuated to "plausibly support an inference … of an agency relationship." *Kiobel*, 621 F.3d at 195. Plaintiffs' allegations against the RNC are "based solely on [their] conclusory assertions that [the RNC] had either the legal or functional control over the decisions and actions" of others. *George*, 738 F.3d at 584 (dismissing plaintiffs' complaint for failing to allege facts supporting an inference of an agency relationship).

In a last-ditch effort to keep the RNC in this case, Plaintiffs attempt to incorporate "additional evidence" of the RNC's involvement. Opp. at 7. Plaintiffs allege that the Final Report of the January 6 Committee shows the "RNC's involvement in former President Trump's efforts to organize fake slates of electoral college votes in seven states." Opp. at 7. But this is not new—Plaintiffs already alleged that "Defendants, including members of former President Trump's administration, campaign team, and legal team, in addition to state Republican committees under the organizational supervision of the RNC" were involved in setting up the "alternate slates of electors." Doc. 60 ¶72. All the Final Report adds is that President Trump and John Eastman called Ronna McDaniel to describe "the importance of the RNC helping the campaign to gather these contingent electors in case any of the legal challenges that were ongoing changed the results in any States." House of Representatives, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol* (Dec. 22, 2022) at 346. McDaniel responded that RNC staffers "were already assisting." *Id*. The Final Report shows only that RNC's involvement with the "alternate slates of electors" was to preserve a slate of electors should the legal landscape change in the coming weeks. Plaintiffs proposed new evidence does not show that the RNC was involved in an unlawful scheme to deprive voters of their lawfully cast ballots. Rather, the report

shows only that the RNC was willing to preserve a *constitutionally enforced deadline* should the courts make any rulings that required an alternative slate of electors. The Final Report says as little about the RNC as Plaintiffs' complaint.

The Court should dismiss the RNC as a defendant. Plaintiffs' claims against the RNC rest on a handful of thin allegations about what other people said. Plaintiffs fail to tie those statements to the RNC. This Court can easily resolve half this case by simply recognizing that this lawsuit is not about the RNC.

II. The First Amendment Protects the Few Statements Plaintiffs Attribute to the RNC.

Plaintiffs ignore decades of First Amendment law. Because Plaintiffs "would impose liability on the basis of a public address—which predominantly contained highly charged political rhetoric lying at the core of the First Amendment," the Court must "approach this suggested basis of liability with extreme care." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926-27 (1982). Even if the RNC were responsible for the statements of others, those statements are "speech on matters of public concern," which "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection" from civil liability. *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) (cleaned up). The statutes at issue thus "must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech." *Watts v. United States*, 394 U.S. 705, 707 (1969). Plaintiffs entirely ignore these and other controlling Supreme Court decisions. Instead, Plaintiffs rely on questionable district court decisions, inviting reversible error on this Court.

A. Plaintiffs have failed to allege threats directed at their members.

To salvage their second amended complaint, Plaintiffs rely heavily on an out-of-circuit district court opinion for the notion that "true threats" include a wide range of "nonphysical and

nonviolent harm." Opp. at 10 (citing *Nat'l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457 (S.D.N.Y. 2020)). Notably, Plaintiffs cite no other decision adopting that expansive view of the true-threats doctrine. That's because the Supreme Court has made clear that "'[t]rue threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an *act of unlawful violence* to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (emphasis added).

The district court in *Wohl* believed that "[t]he Supreme Court has not squarely addressed whether threats of nonviolent or nonphysical harm can constitute true threats." *Wohl*, 498 F. Supp. 3d at 479. But decades of Supreme Court decisions expressly tie true threats to violence: the "prohibition on true threats 'protect[s] individuals from the fear of *violence*' and 'from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened *violence* will occur.'" *Black*, 538 U.S. at 360 (emphases added) (quoting *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992)); *see also Watts*, 394 U.S. at 707 (coining the "true threats" doctrine to ensure First Amendment freedoms "without interference from threats of physical violence"); *Claiborne Hardware*, 458 U.S. at 916 ("The First Amendment does not protect violence."). Even the Second Circuit decision on which *Wohl* relies notes that courts "must distinguish between threats and other forms of speech that may intimidate, menace, or coerce but are protected…. Political advocacy must be a form of speech that stands outside the true threats analysis." *United States v. Turner*, 720 F.3d 411, 431 (2d Cir. 2013).

In any event, even *Wohl* would not support a true-threat argument here. In *Wohl*, the defendants sent robocalls to the plaintiff associations' members falsely claiming that if they vote by mail, their "personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect

outstanding debts." *Wohl*, 498 F. Supp. 3d at 465. *Wohl* recognized that the "test for identifying a true threat" requires "a showing that a reasonable recipient 'would interpret [the message] as a *threat of injury*.'" *Id.* at 480 (alteration in original) (quoting *Turner*, 720 F.3d at 420). But by plaintiffs' own admission, all allegedly threatening statements were "directed at election officials," *not at Plaintiffs*. Opp. at 12. Even under *Wohl*'s improper interpretation of the First Amendment, Plaintiffs' true-threat argument fails.

Finally, Plaintiffs' discussion of true threats does not point to any allegations concerning the RNC. They complain of "private intimidation" and "call[s] to action" by President Trump without even mentioning the RNC. Plaintiffs say that "Defendants intimidated and threatened election officials," but they cite Paragraph 58 of the second amended complaint, with discusses only tweets by President Trump. Opp. at 11. The Court should not entertain this sleight of hand. Just as "group pleading" against all Defendants "does not satisfy the pleading standard of *Ashcroft v. Iqbal*," Plaintiffs cannot obscure their failed claims against the RNC behind allegations against all "Defendants." *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1274 (11th Cir. 2019). Rather, Plaintiffs "must make 'specific factual allegations' against each defendant." *Walsh v. City of New York*, No. 1:19-cv-9238, 2021 WL 1226585, at *14 (S.D.N.Y. Mar. 31, 2021); *see also Kimple v. Sacramento Police Dep't*, No. 2:15-cv-1703, 2016 WL 1592978, at *2 (E.D. Cal. Apr. 20, 2016) ("Plaintiff is required to allege specific facts linking each defendant to his claim.").

The bar for true threats is high. None of the speech at issue in this case is of the immediate, specific kind that is a "true threat" under the First Amendment. Since Plaintiffs have not alleged any "true threats" made by the RNC or directed towards Plaintiffs' members, the claims against the RNC must be dismissed.

B. The alleged RNC statements do not meet the high standard for incitement.

Plaintiffs' Opposition does not point to any statement by the RNC that was "directed to inciting or producing imminent lawless action and [was] likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). According to Plaintiffs, all the statements even remotely associated with the RNC were directed at election officials. Most of them were about ongoing litigation, and all the RNC statements highlighted by Plaintiffs in their Opposition occurred at least 48 days prior to January 6, 2021. None of those statements comes close to the First Amendment standard for incitement.

To preserve the fundamental freedom of speech, the Supreme Court has drawn "vital distinctions between words and deeds, between ideas and conduct." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002). The Supreme Court found that the statement, "We'll take the fucking street later," did not have a "tendency to lead to violence" because the statement was not directed to any person or group of persons and since there was no evidence or rational inference that the statements would produce "imminent disorder." *Hess v. Indiana*, 414 U.S. 105, 108-09 (1973). Even a Ku Klux Klan leader's threat of "revengeance" was protected speech because the statement was not "incitement to imminent lawless action." *Brandenburg*, 395 U.S. at 449.

None of the statements that could be attributed to the RNC advocated that anyone riot or commit an unlawful act. And none of the statements were directed towards any identifiable group asking them to commit an unlawful act. Once again, Plaintiffs' claims against the RNC rely on nonactionable guilt-by-association allegations: "the RNC hosted a press conference," "retweeted remarks," and "communicated" with election officials. Opp. at 14-15. But the RNC "uttered no words that resembled a call to action." *Thompson v. Trump*, 590 F. Supp. 3d 46, 105 (D.D.C. 2022). Plaintiffs have alleged "no more than a remote connection between speech that might

encourage thoughts or impulses and any resulting" behavior by others. *Free Speech Coal.*, 535 U.S. at 253. The First Amendment bars their claims.

C. The Court should reject Plaintiffs' made-up exception for "reckless" false statements.

Plaintiffs desperately attempt to escape the broad protections of the First Amendment by claiming Defendants statements about voter fraud "fall outside the scope of protections for the First Amendment" because "they were made with reckless disregard for their truth." Opp. at 11. The Supreme court has already rejected this made-up test.

In *United States v. Alvarez*, the Court stated that "[a]bsent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements." 567 U.S. 709, 718 (2012) (plurality op.). That is because "some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to protect." *Id.* And absent "persuasive evidence that a novel restriction on content is part of a long … tradition of proscription," *id.* at 722 (citation omitted), the "Court has 'been reluctant to mark off new categories of speech for diminished constitutional protection,'" *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2372 (2018) (citation omitted).

Tellingly, Plaintiffs do not even cite *Alvarez* even though it directly rejects their unsupported exception to the First Amendment. According to Plaintiffs, "[d]eliberate or recklessly false statements are presumed to be unprotected by the First Amendment." Opp. at 11 (citing *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 755 (1985)). But the citations Plaintiffs rely on "all derive from cases discussing defamation, fraud, or some other legally cognizable harm associated with a false statement." *Alvarez*, 567 U.S. at 719. In other words, the Court applies the "knowing or reckless falsehood"

standard only in cases in which falsity is *an element of an offense*. *Id.* In such cases, plaintiffs must make a *heightened* showing of falsity because of the First Amendment concerns involved. *See N.Y. Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

The Supreme Court has already rejected Plaintiffs' tactic. "The requirements of a knowing falsehood or reckless disregard for the truth as the condition for recovery in certain defamation cases exists to allow more speech, not less." *Alvarez*, 567 U.S. at 719-20. Like the Government in *Alvarez*, Plaintiffs "seek[] to convert a rule that *limits liability* even in defamation cases where the law permits recovery for tortious wrongs into a rule that *expands liability* in a different, far greater realm of discourse and expression." *Id.* at 719 (emphasis added). But "[t]hat inverts the rationale for the exception." *Id.* "A rule designed to tolerate certain speech ought not blossom to become a rationale for a rule restricting it." *Id.* The "knowing or reckless falsehood" standard does not apply here. *Id.*

Regardless, Plaintiffs don't meet even their made-up standard. Plaintiffs' arguments are nothing more than conclusory assertions that "Defendants"—not any specific Defendant—made "general statements of fraud … with reckless disregard for the truth" and "intended to undermine the outcome of the 2020 election by invalidating millions of lawfully cast ballots." Opp. at 12. They point to no specific allegations *showing* knowledge of falsity or reckless disregard for the truth. The First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (citation omitted); *see also Smith*, 2023 WL 417952, at *3 (dismissing nearly identical election-interference claims against Roger Stone and Ali Alexander as barred by the First Amendment). Since Plaintiffs have failed to allege statements by the RNC that could objectively

be interpreted to fall within any unprotected category, the Court should dismiss the RNC as a defendant.

III. Plaintiffs' Opposition Does Not Revive a Claim Under the Voting Rights Act.

A. Plaintiffs do not point to anything in the text of the Voting Rights Act indicating they have a cause of action to enforce §11(b).

Unable to point statutory text to show a private cause of action, Plaintiffs rely on *Allen v. State Board of Elections*, 393 U.S. 544 (1969), and *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996) (plurality op.). While freely admitting those cases concerned "other provisions of the VRA," Plaintiffs argue that they nevertheless require this Court to recognize a new cause of action to enforce §11(b). Opp. at 20. Neither case does.

To begin, Plaintiffs don't dispute that the Supreme Court has explicitly "abandoned" the approach in *Allen*. *Alexander v. Sandoval*, 532 U.S. 275, 276 (2001). But Plaintiffs continue to invoke the "broad purposes" and "laudable goal" of the VRA to infer a cause of action that doesn't exist. Opp. at 18 (quoting *Allen*, 393 U.S. at 555-56). The approach in *Allen* is "a different approach to recognizing implied causes of action than [the Court] follows now." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855 (2017) (citing *Allen*, 393 U.S. at 557). Plaintiffs invite reversible error by invoking that outdated approach. *See Alexander*, 532 U.S. at 287.

The other decision Plaintiffs rely on, *Morse*, was a plurality opinion concerning §10 of the VRA—not §11(b). Plaintiffs urge this Court to "apply the holding of the majority of the Court in *Morse*." Opp. at 18-19. But that argument suffers from two fundamental errors. First, there was no majority opinion in *Morse*. Second, the only result that could be described as a holding in *Morse* is that §10 contains a private cause of action. Justice Breyer agreed with the plurality that §10 implied a private right of action, but he did so by applying "the rationale of *Allen*." *Morse*, 517 U.S. at 240 (op. of Breyer, J.). Subsequent *majority* decisions from the Court foreclosed the

rationale of *Allen*, which belongs to the "*ancien regime*" the Court has left behind. *Ziglar*, 137 S. Ct. at 1855. *Morse* thus stands only for the proposition that §10 contains a private right of action.

Plaintiffs' Opposition also misrepresents the RNC's arguments. Contrary to Plaintiffs' suggestion, the RNC's position does not require this Court to question or deviate from Supreme Court precedent. *See* Opp. at 20-21. No authority binding on this Court holds that private parties have a cause of action to enforce §11(b). More recent binding authority prohibits this Court from creating new causes of action using the approach endorsed by Plaintiffs. Thus, the only result consistent with all the binding authorities is rejecting Plaintiffs invitation to create a new cause of action.[2]

Finally, Plaintiffs' Opposition ignores the text. All Plaintiffs' arguments are entirely consistent with a congressional intent to recognize *existing* causes of action. Nothing in the text indicates that Congress created an express cause of action under §11(b). Plaintiffs fall back on broad notions of congressional intent that are inappropriate for courts to consider. *Alexander*, 532 U.S. at 287; *Ziglar*, 137 S. Ct. at 1855-56. This Court must "assume that Congress will be explicit if it intends to create a private cause of action." *Ziglar*, 137 S. Ct. at 1856. And this Court has already concluded that Congress did *not* explicitly create a private right of action under §11(b). *See* Doc. 49 at 31. Applying Supreme Court precedent to this Court's premise, the necessary conclusion is that §11(b) contains no private right of action.

[2] Plaintiffs also misquote the RNC's brief: "No case has 'overrule[d]' the private rights of action identified in *Allen* and *Morse.* (*Contra* RNC Mem. at 11.)." Opp. at 20. The RNC never argued that the Supreme Court overruled the private rights of action identified in *Allen* and *Morse*. In fact, neither the RNC's motion nor the Trump Defendants' motion even contains the word "overrule."

B. Plaintiffs all but admit they do not allege future harm, which means they lack standing under the VRA.

The Court dismissed Plaintiffs' VRA claim once before because Plaintiffs did not allege future harm. Plaintiffs do not distinguish the Court's reasoning in that decision. Their second amended complaint suffers from the same defect and requires the same result.

Besides rote recitations of the governing legal standard, Plaintiffs' Opposition is devoid of legal authority regarding their standing to seek prospective relief. Plaintiffs point only to "Defendants' alleged past conduct" in support of their claim for prospective relief. Opp. at 22. But "a plaintiff seeking prospective declaratory and injunctive relief 'may not rest on past injury' alone." *Jibril v. Mayorkas*, 20 F.4th 804, 814 (D.C. Cir. 2021) (quoting *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)). Plaintiffs don't distinguish *Jibril*. They don't even cite it.

Moreover, Plaintiffs implicitly recognize their complaint lacks any allegations of future harm. Unable to point to any *allegations* concerning upcoming elections, Plaintiffs scoured their 182 footnotes for a news article that discusses the RNC's role in the 2024 elections. They found one. *See* Opp. at 22 (citing Doc. 60 ¶118, nn.173, 176). But that article, like Plaintiffs' complaint, is concerned almost entirely with the already-completed 2022 elections.[3] The article contains a single, conclusory claim about "GOP" goals for 2024. But Plaintiffs' oblique reference to a third party speculating about GOP goals for the 2024 election falls far short of the requirement to plead that "the [RNC]'s allegedly wrongful behavior will likely occur or continue, and that the 'threatened injury [is] certainly impending.'" *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (second alteration in original) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

[3] https://www.politico.com/news/2022/06/01/gop-contest-elections-tapes-00035758

Plaintiffs also try burden shifting. They argue "the RNC does not even contend that the wrongful behavior will not be repeated." Opp. at 23. But at this stage, the RNC does not "bear[] the burden" of showing it will or will not do anything. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Plaintiffs, as "[t]he party invoking federal jurisdiction[,] bear[] the burden of demonstrating Article III standing … for each claim that is being pressed and for each form of relief that is being sought." *Jibril*, 20 F.4th at 813. The second amended complaint contains allegations concerning only past elections. But to obtain prospective relief, it must also allege facts indicating that "the defendant's allegedly wrongful behavior *will likely occur or continue*." *Friends of the Earth*, 528 U.S. at 190 (emphasis added). Plaintiffs' conclusory assertions that events will repeat themselves are insufficient. *See Jibril*, 20 F.4th at 813. This court should dismiss Plaintiffs' VRA claim against the RNC for lack of standing.

C. None of the alleged conduct violates the Voting Rights Act.

Even if the Court finds that Plaintiffs have a cause of action and standing under the VRA, Plaintiffs have not alleged wrongful behavior. Plaintiffs twist the meaning of "intimidate, threaten, or coerce" in the statute. 52 U.S.C. §10307(b). But the cases they cite distinguish themselves. The RNC did not condone, let alone engage in, a "pattern of baseless arrests and prosecutions" of voters. *United States v. McLeod*, 385 F.2d 734, 740-41 (5th Cir. 1967). The RNC did not employ "economic intimidation in the nature of eviction," or anything of the sort. *United States v. Bruce*, 353 F.2d 474, 477 (5th Cir. 1965). Nor did the RNC "link[] Plaintiffs' names and personal information to a report condemning felonious voter registration … to subject the named individuals to public opprobrium," or anything remotely similar. *League of United Latin Am. Citizens v. Pub. Int. Legal Found.*, No. 1:18-cv-423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018).

Plaintiffs' Opposition is also short on facts. Plaintiffs complain that the RNC created a "climate of pressure." Opp. at 28. That doesn't come close to alleging coercion or intent. The

Opposition also contains vague references to "statements and other actions by the RNC described in the [second amended complaint]." Opp. at 30. But "mere 'labels and conclusions,' and 'a formulaic recitation of the elements of a cause of action' will not suffice; a plaintiff must offer specific factual allegations to support each claim." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiffs' only "specific factual allegations" against the RNC concern alleged "election integrity" efforts. Opp. at 27. However, Plaintiffs don't connect those vague efforts to acts of intimidation or violence. And they ignore the RNC's argument that Michigan law, like many states, explicitly endorses efforts such as poll watching. *See, e.g.*, Mich. Comp. Laws §168.730(1). Plaintiffs' allegations of voter intimidation are "alleged generally and in conclusory terms" and thus fail to state a claim. *Twombly*, 550 U.S. at 583.

Moreover, Plaintiffs' expansive definition of "coercion" is absurd. Every election "nullif[ies] individual will or desire" of voters who don't see their chosen candidate sworn into office. Opp. at 28. But that doesn't mean elections "coerce" the voters who voted for a losing candidate. Indeed, the *full* definition of "coerce" that Plaintiffs rely on is to "*restrain, control, or dominate*, nullifying individual will or desire (as by *force, power, violence, or intimidation*)." *Coerce, Webster's Third New Int'l Dictionary* (1966) (emphasis added). Plaintiffs allege nothing resembling "force, power, violence, or intimidation" by the RNC.

Finally, Plaintiffs fail to show specific allegations supporting an inference of agency. As an initial matter, Plaintiffs misstate the law. They claim agency is a "'factual inquiry' [that] must be determined after trial, not on a motion to dismiss." Opp. at 32. But to survive a motion to dismiss, Plaintiffs must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662,

678 (2009). And the RNC as a matter of law cannot be "liable for the misconduct alleged" if it was *other people* who engaged in the misconduct. *Id.* Thus, to "satisfy the *Iqbal* requirement," Plaintiffs must "plead facts that plausibly support an inference that would justify … a finding of an agency relationship." *Kiobel*, 621 F.3d at 195. They have not done so.

Plaintiffs point to only two allegations that they say show the RNC controlled the actions of individual actors in the complaint. First, Plaintiffs allege that the RNC "oversees" the activities of state parties. Doc. 60 ¶¶2, 16, 66; *see* Opp. at 31. But that "conclusory allegation" does not plausibly support "a finding of an agency relationship." *Kiobel*, 621 F.3d at 195 (dismissing similar allegations that the defendant "dominated and controlled" a subsidiary). Second, Plaintiffs point to "the RNC's organizational structure," in which its members include the heads of state parties. Opp. at 31-32. But corporate structure is "likewise insufficient" to plead an agency relationship, "even when the directors are common" between the parties involved. *Kiobel*, 621 F.3d at 195. The RNC "d[oes] not have a 'right of control over other state party committees, county committees, or other national, state and local political organizations of the same party, and their agents, servants and employees.'" *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. 2:81-cv-3876, 2016 WL 6584915, at *15 (D.N.J. Nov. 5, 2016).

Critically, Plaintiffs point to no facts regarding the *individuals* whose actions they complain of. Plaintiffs' attempt to frame agency as a "factual inquiry" thus does not save their complaint. Opp. at 32. The "factual inquiry" is whether the individuals named in the complaint were "acting in their capacity as RNC members" when engaging in the alleged actions. *Democratic Nat'l Comm.*, 2016 WL 6584915, at *16. But Plaintiffs do not allege any of those kinds of facts. Instead, their complaint "merely states that [the individuals] are RNC members without further analysis." *Id.* Facts regarding organizational structure are not enough. *Kiobel*, 621 F.3d at 195. Absent factual

allegations that the individuals in the complaint "were acting in their roles as RNC members," RNC membership alone is insufficient to state a claim against the RNC. *Id.*

IV. Plaintiffs Fail on Every Element of Civil Conspiracy Under 42 U.S.C. §1985(3).

A. Plaintiffs misstate their burden under 42 U.S.C. §1985(3).

Plaintiffs' understanding of 42 U.S.C. §1985(3) is confused. Because §1985(3) is a form of civil conspiracy, Plaintiffs must allege "(1) an agreement between two or more persons; (2) to participate in an unlawful act, or in a lawful act in an unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme." *Youming Jin v. Ministry of State Sec.*, 335 F. Supp. 2d 72, 79 n.2 (D.D.C. 2004) (citation omitted). Plaintiffs get that much correct. Opp. 33-34. There are three avenues to show a violation of §1985(3), which Plaintiffs refer to as the Deprivation Clause, the Hindrance Clause, and the Support or Advocacy Clause. While they acknowledge that a claim under the Deprivation Clause or Hindrance Clause requires a violation of a substantive federal right, Plaintiffs incorrectly insist that the Support or Advocacy Clause relieves them of that burden.

"There can be no recovery under §1985(3) absent a violation of a substantive federal right." *Bush v. Butler*, 521 F. Supp. 2d 63, 68 (D.D.C. 2007). Contrary to Plaintiffs' assertion, Opp. at 36-38, "§1985(3) provides no substantive rights itself; it merely provides a remedy for violations of the rights it designates," *Great Am. Fed. Savings & Loan Assn. v. Novotny*, 442 U.S. 366, 372 (1979). That is true of all of its clauses, including the Support or Advocacy Clause. *See Federer v. Gephardt*, 363 F.3d 754, 760 (8th Cir. 2004) (explaining that "the substantive federal right that [the plaintiff] wishes to vindicate [under the Support and Advocacy Clause] is a First Amendment right" and noting that plaintiff's "claim based on the support and advocacy provision of §1985(3) was properly dismissed" for failure to allege state action); *Cockrum v. Donald J. Trump for President, Inc.*, 365 F. Supp. 3d 652, 663 (E.D. Va. 2019) (ruling that Plaintiffs' interpretation of

the Support or Advocacy Clause "is flawed because it diverges significantly from the Supreme Court's interpretation of §1985(3), specifically by asserting that §1985(3) creates its own substantive right to 'support or advocate' for a political candidate" (citing *Ex parte Yarbrough*, 110 U.S. 651 (1884)). But Plaintiffs don't allege an independent violation of a substantive right. Opp. at 38.

Plaintiffs' claim fares no better under the Deprivation and Hindrance Clauses. Here, at least, Plaintiffs accept their burden to allege "*inter alia*, (1) that some racial, or perhaps otherwise class-based, invidiously discriminatory animus lay behind the conspirators' action, and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 267-68 (1993) (cleaned up). But they fail to carry the burden. Once again, Plaintiffs' Opposition fails to distinguish among the Defendants. Plaintiffs point to no specific allegations against the RNC indicating racial animus, and their claims can be dismissed on that ground alone.

Plaintiffs also incorrectly argue that "[o]n a motion to dismiss, this Court may not credit Defendants' assertions that they were trying to protect ballot integrity or election integrity." Opp. at 40. To the contrary, the Court *must* credit those assertions because they provide an "obvious alternative explanation" for the RNC's lawful actions. *Twombly*, 550 U.S. at 567. And those explanations are not merely innocent—they are endorsed by statute. *E.g.*, Mich. Comp. Laws §168.730(1). Plaintiffs' allegations of racial animus consist of nothing more than "naked assertions of unlawful motive," which fail to state a claim. *Reid v. Hurwitz*, 920 F.3d 828, 837 (D.C. Cir. 2019). In any event, regardless of whether the Support or Advocacy Clause requires that Plaintiff prove a class-based animus motive to Defendants' actions, Plaintiffs claims under §1985(3) still fail because they cannot prove any of the agreed-upon three elements.

B. Plaintiffs allege at most "parallel conduct," not a conspiracy.

This Court has dismissed claims under §1985(3) that alleged the engagement of "parallel conduct" but did not "adequately allege a conspiratorial agreement." *US Dominion, Inc. v. MyPillow, Inc.*, No. 1:21-cv-445, 2022 WL 1597420, at *7 (D.D.C. May 19, 2022); *see also Wilson v. DNC Servs. Corp.*, 831 Fed. App'x 513, 516 (D.C. Cir. 2020) (rejecting §1985(3) claims that the Democratic National Committee conspired with the Hillary Clinton Campaign). The Court should do so again here. Plaintiffs urge the Court to "infer" a conspiracy from their deficient allegations, but they point to no facts justifying such an inference. Opp. 34 n.24. To be sure, Plaintiffs need not produce an express agreement such as a written contract. But "[t]o survive a motion to dismiss, a plaintiff usually must point to some 'events, conversations, or documents' indicating an 'agreement or a meeting of the minds' among the alleged co-conspirators." *US Dominion*, 2022 WL 1597420, at *7.

The Supreme Court has made it abundantly clear that "[t]o state a claim under §1985(3), a plaintiff must first show that the defendants conspired—that is, reached an agreement—with one another." *Ziglar*, 137 S. Ct. at 1868. The mere fact that Defendants were involved in joint recruitment, fundraising, and training efforts does not mean that there is a conspiracy. It is not enough for a plaintiff to allege the defendants "acted in concert" or shared a "common goal." *Todd v. City of Natchitoches*, 238 F. Supp. 2d 793, 803 (W.D. La 2002). This Court routinely dismisses complaints where plaintiffs offer such conclusory allegations of an agreement. *See, e.g.*, *Busby v. Cap. One. N.A.*, 932 F. Supp. 2d 114, 141 (D.D.C. 2013).

Failure to allege "the existence of any events, conversations, or documents indicating that there was ever an agreement or meeting of the minds between any of the defendants to violate Plaintiffs' civil or constitutional rights," amounts to "a conclusory and purely speculative assertion that Defendants entered into a conspiracy." *McManus v. Dist. of Columbia*, 530 F. Supp. 2d 46,

75 (D.D.C. 2007) (cleaned up). Plaintiffs' allegations against the RNC are few and far between. That Ronna McDaniel held a press conference on November 6, 2020, asking the media to help investigate irregularities in Detroit shows neither agreement nor communications with the other Defendants. Likewise, that the RNC tweeted out a statement made by one of the Trump Campaign's lawyers that was made at the RNC headquarters during litigation over the 2020 election arguably shows "parallel conduct," but certainly not "a conspiratorial agreement." *US Dominion*, 2022 WL 1597420, at *7.

Moreover, the agreement must be "for the purpose" of depriving someone of a right. 42 U.S.C. §1985(3). That is, "[t]he right must be *aimed at*; its impairment must be a conscious objective of the enterprise." *Bray*, 506 U.S. at 275 (citation omitted). And because "a protected right" must be more than "incidentally affected," Plaintiffs' allegations of joint fundraising, training, and recruitment fall far short of showing an agreement "for the purpose" of depriving someone of a right. 42 U.S.C. §1985(3); *see Bray*, 506 U.S. at 275. Plaintiffs "point[] to no event, no conversation, no document—really, nothing at all" indicating even an implied agreement among Defendants. *US Dominion*, 2022 WL 1597420, at *7. As a matter of law, no conspiracy exists.

C. Plaintiffs fail to point to any illegal acts.

Section 1985(3) requires Plaintiffs to allege an "act in furtherance of the object of [the] conspiracy." At most, Defendants' acts as alleged in the complaint indicated that Defendants were seeking "to prevent what they perceive to be widespread illegal voting and ballot harvesting." *Ariz. All. for Retired Ams. v. Clean Elections USA*, --- F. Supp. 3d ---, 2022 WL 15678694, at *31 (D. Ariz. 2022) (dismissing §1985(3) claim). Hosting press conferences about investigating potential voting irregularities and tweeting during intense election litigation do not indicate that the RNC had some nefarious desire to stop lawful votes from being counted. Alleging "false and misleading

tweets about the election and publicly criticiz[ing] officials" does not state a claim for conspiracy. *Thompson*, 590 F. Supp. 3d at 106 (dismissing conspiracy claims against Rudolph Giuliani and Donald Trump, Jr. for events surrounding the 20202 election).

CONCLUSION

For these reasons, the Court should dismiss the claims against the RNC.

Dated: January 31, 2023

Respectfully submitted,

/s/ Cameron T. Norris

Cameron T. Norris (VA083)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com

Tyler R. Green (982312)
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
(703) 243-9423
tyler@consovoymccarthy.com

Patrick Neilson Strawbridge*
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
617-227-0548
patrick@consovoymccarthy.com

* Admitted pro hac vice

David A. Warrington (1616846)
Gary M. Lawkowski (VA125)
Harmeet K. Dhillon
Mark P. Meuser
DHILLON LAW GROUP INC.
2121 Eisenhower Ave, Suite 608
Alexandria, Virginia 22314
(703) 574-1206
dwarrington@dhillonlaw.com
glawkowski@dhillonlaw.com
harmeet@dhillonlaw.com
mmeuser@dhillonlaw.com

Counsel for Defendant Republican National Committee

CERTIFICATE OF SERVICE

I e-filed the foregoing with the Court via CM/ECF, which will notify everyone requiring notice.

Dated: January 31, 2023

/s/ Cameron T. Norris
Cameron T. Norris
Counsel for Republican National Committee