

David R. Fox (NV Bar No. 16536)
Christopher D. Dodge (*pro hac vice*)
Marisa A. O’Gara (*pro hac vice*)
Elias Law Group LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
(202) 968-4490
dfox@elias.law
cdodge@elias.law
mogara@elias.law

Bradley S. Schrager (NV Bar No. 10207)
Daniel Bravo (NV Bar No. 13078)
Bravo Schrager LLP
6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113
(702) 996-1724
bradley@bravoschrager.com
daniel@bravoschrager.com

Attorneys for Intervenor-Defendants
Rise Action Fund, Institute for a Progressive Nevada, and Nevada Alliance
for Retired Americans

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

REPUBLICAN NATIONAL COMMITTEE,
NEVADA REPUBLICAN PARTY, and
SCOTT JOHNSTON,

Plaintiffs,

v.

FRANCISCO AGUILAR, in his official
capacity as Nevada Secretary of State;
LORENA PORTILLO, in her official capacity
as the Registrar of Voters for Clark County;
WILLIAM “SCOTT” HOEN, AMY
BURGANS, STACI LINDBERG, and JIM
HINDLE, in their official capacities as County
Clerks,

Defendants.

Case No. 2:24-cv-00518-CDS-MDC

**INTERVENOR-DEFENDANTS’
MOTION TO DISMISS PLAINTIFFS’
SECOND AMENDED COMPLAINT**

TABLE OF CONTENTS

POINTS AND AUTHORITIES 3

BACKGROUND 4

 I. Nevada’s obligations under the National Voter Registration Act 4

 II. Procedural History and Plaintiffs’ Second Amended Complaint 6

LEGAL STANDARD..... 8

ARGUMENT 9

 I. Plaintiffs fail to plausibly allege standing..... 9

 A. Plaintiffs fail to allege organizational standing. 9

 B. Plaintiffs’ speculative concerns about election integrity and vote dilution fail
 to satisfy Article III. 12

 II. Plaintiffs have failed to plausibly allege any violation of the NVRA. 12

CONCLUSION..... 20

CERTIFICATE OF SERVICE 21

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Intervenor-Defendants Rise Action Fund (“RISE”), the Institute for a Progressive Nevada (“IPN”), and the Nevada Alliance for Retired Americans (the “Alliance”) (collectively, “Intervenors”), file this motion to dismiss the Second Amended Complaint filed by Plaintiffs Republican National Committee (“RNC”), Nevada Republican Party (“NVGOP”), and Scott Johnston (collectively, “Plaintiffs”).

POINTS AND AUTHORITIES

This Court has now twice dismissed Plaintiffs’ complaints for lack of standing. The third time is not the charm. The Second Amended Complaint does not resolve the fundamental standing problems that led the Court to dismiss both their prior complaints. Even with their amended allegations, Plaintiffs still rely on purported injuries—concerns about the integrity of Nevada elections, the dilution of their votes, and the expenditure of resources in response to those generalized grievances—that fall well short of what Article III demands. And while the latest complaint adds a few superficial details about how Plaintiffs use voter registration lists, Plaintiffs continue to fail to plead facts plausibly showing asserted injuries that are traceable to Nevada’s alleged violations of the National Voter Registration Act of 1993 (“NVRA”). That is particularly so given that the NVRA does not require, or even allow, the immediate removal of all voters who move or become ineligible, so it cannot possibly entitle Plaintiffs to perfect voter rolls.

Plaintiffs’ latest complaint also continues to fail to state a claim on the merits. The Second Amended Complaint offers few new allegations on this score, simply suggesting that two additional counties now have had “inordinately high” registration rates for some number of months. 2d Am. Compl. ¶¶ 3, 83, ECF No. 131 (“SAC”). Despite now having had three opportunities to do so, Plaintiffs still fail to include a single factual allegation specifically alleging what aspect of Defendants’ list maintenance efforts falls short of the NVRA’s requirements. To plausibly allege a violation of the NVRA, Plaintiffs must plead facts which, taken as true, suffice to show that Nevada is not making “reasonable effort[s]” at list maintenance. *See* 52 U.S.C. § 20507(a)(4). Rather than doing this, Plaintiffs focus exclusively on the results, contending that the numbers of registered voters in some Nevada counties are too high, or that too few voters have

1 been removed. But Plaintiffs’ statistical comparisons are misleading, and they are, in any event,
 2 entirely consistent with Defendants’ compliance with the NVRA’s discrete, balanced requirements
 3 for list maintenance, which do not demand—and would not be expected to produce—immediate
 4 removal of all ineligible voters. *E.g., Pub. Int. Legal Found. v. Benson*, 721 F. Supp. 3d 580, 597
 5 (W.D. Mich. 2024) (“*PILF*”) (explaining the NVRA does not require a “perfect effort[] to remove
 6 registrants”). If the Second Amended Complaint were enough, “pleading [an NVRA] violation
 7 against almost any [state] would be a sure thing.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 566
 8 (2007). The Federal Rules require more than such a “naked assertion” devoid of “further factual
 9 enhancement,” *id.* at 557, particularly where Plaintiffs could have, but chose not to, engage in pre-
 10 suit discovery under the NVRA to confirm what, exactly, Nevada did to comply with the statute.

11 The Court should dismiss the Second Amended Complaint for lack of subject matter
 12 jurisdiction and failure to state a claim.

13 BACKGROUND

14 I. Nevada’s obligations under the National Voter Registration Act

15 The NVRA is a federal law that requires states to provide simplified, voter-friendly systems
 16 for registering to vote. Congress enacted the NVRA specifically to *increase* access to the franchise
 17 by establishing “procedures that will increase the number of eligible citizens who register to vote
 18 in elections for Federal office” and by making it “possible for Federal, State, and local
 19 governments to implement [the NVRA] in a manner that enhances the participation of eligible
 20 citizens as voters in elections for Federal office.” 52 U.S.C. § 20501(b)(1)–(2). Congress also made
 21 a finding in the NVRA that “discriminatory and unfair registration laws and procedures can have
 22 a direct and damaging effect on voter participation in elections for Federal office and
 23 disproportionately harm voter participation by various groups, including racial minorities.” *Id.*
 24 § 20501(a)(3).

25 To further those pro-voter purposes, the NVRA imposes strict restrictions on whether,
 26 when, and how a state may cancel a voter registration. *See id.* § 20507(a)(3)–(4), (b)–(d). Outside
 27 of a limited and carefully delineated list of exceptions, a state may not remove a voter from its
 28

1 rolls until that voter has (1) failed to respond to a notice and (2) not appeared to vote for two
 2 general elections—or roughly four years—following delivery of the notice. *Id.* § 20507(d)(1).¹
 3 Congress therefore purposefully “limited the authority of states to encumber voter participation by
 4 permitting states to only remove registrants” in a carefully prescribed manner. *Am. C.R. Union v.*
 5 *Philadelphia City Comm’rs*, 872 F.3d 175, 182 (3d Cir. 2017).

6 Congress also mandated that states maintain a “general program that makes a reasonable
 7 effort to remove the names of ineligible voters from the official lists of eligible voters,” 52 U.S.C.
 8 § 20507(a)(4). But Congress did not demand perfection from the states. The “NVRA requires only
 9 a ‘reasonable effort,’ not a perfect effort, to remove registrants,” *PILF*, 721 F. Supp. 3d at 597,
 10 and states need not “use duplicative tools or [] exhaust every conceivable mechanism” to comply
 11 with the NVRA’s “reasonable effort” requirement, *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th
 12 Cir. 2019). This balanced approach reflects the twin policy objectives of the NVRA—to
 13 “enhance[] the participation of eligible citizens as voters” and also “to protect the integrity of the
 14 electoral process.” 52 U.S.C. § 20501(b). And it further reflects Congress’s judgment that it is
 15 better to tolerate some ineligible voters remaining on the rolls past their point of ineligibility than
 16 permit the erroneous removal—and potential disenfranchisement—of eligible voters.

17 In an effort to comply with its list-maintenance obligations, Nevada has codified into state
 18 law the NVRA’s requirement that—prior to having their registration cancelled—a voter must first
 19 (1) receive a written notice, (2) not respond to that written notice, and (3) subsequently fail to
 20 appear to vote in the following two general elections. *See* NRS 293.530(1)(c). Nevada has also
 21 enacted a robust set of laws for identifying and removing registered voters who are no longer
 22 qualified to vote in a given county. Among other requirements, county clerks must update a voter’s
 23 registration in the Secretary of State’s database when they receive information that a voter has
 24 moved to a new jurisdiction, *id.* 293.527; remove voters from the rolls when they have personal
 25 knowledge of an individual’s death or if an authenticated certificate of the death of the person is

26 ¹ A state may immediately cancel a person’s registration only where the voter requests to be
 27 removed from the rolls or if the voter is convicted of a disenfranchising felony under state law. 52
 28 U.S.C. § 20507(a)(3)(A)–(B).

1 filed in the county clerk's office, *id.* 293.540(2)(a); remove voters upon a determination that they
 2 have been convicted of a felony or receipt of a court order directing the cancellation to be made,
 3 *id.* 293.540(2)(c); and use "any information regarding the current address of an elector . . . to
 4 correct information in the statewide voter registration list," *id.* 293.525(4). Nevada also permits
 5 county clerks to enter into an agreement to "obtain the data compiled by the United States Postal
 6 Service concerning changes of addresses of its postal patrons" so that clerks can update the
 7 statewide voter registration list when voters move, *id.* 293.5303, and was one of the first seven
 8 states to form the Electronic Registration Information Center ("ERIC"), which permits states to
 9 share motor vehicle registration and Social Security Administration data, among other sources, to
 10 maintain voter rolls.²

11 **II. Procedural History and Plaintiffs' Second Amended Complaint**

12 On March 18, the RNC, NVGOP, and Scott Johnston filed suit against the Secretary of
 13 State, the Registrar of Voters for Clark County, and the clerks for Carson City and Douglas, Lyon,
 14 and Storey Counties ("Defendants"), alleging that Defendants have violated their list maintenance
 15 obligations under Section 8 of the NVRA. Compl. ¶¶ 93–97, ECF No. 1. Intervenor moved to
 16 intervene just a few days later on March 21, ECF No. 7, and the Court granted their motion on July
 17 12, ECF No. 99. Meanwhile, on April 15, the State moved to dismiss, and the county defendants
 18 each joined that motion. *See* ECF Nos. 26–28, 30–31, 38. Intervenor filed a proposed motion to
 19 dismiss that same day. *See* ECF No. 21. The Court held oral argument on the State's motion on
 20 June 18 and issued an oral ruling granting the State's motion to dismiss because Plaintiffs lacked
 21 standing. ECF No. 97. The Court allowed Plaintiffs to file an amended complaint, which they did
 22 on July 2. ECF No. 98 ("FAC"). The State and Intervenor again moved to dismiss on July 16, and
 23 the county defendants again joined the State's motion. *See* ECF Nos. 101–107 ("2d MTD"). The
 24 Court granted Defendants' motions to dismiss on October 18, again holding that Plaintiffs lack
 25 standing. Order Granting 2d MTD, ECF No. 121 ("2d MTD Order"). Plaintiff Scott Johnston's

26
 27 ² *See Voter Registration List Maintenance*, Nev. Sec'y of State, <https://www.nvsos.gov/sos/elections/voters/voter-record-maintenance> (last accessed Dec. 17, 2024).
 28

claims were dismissed with prejudice, and Plaintiffs Republican National Committee and Nevada Republican Party's claims were dismissed without prejudice. *Id.* at 19–20. Plaintiffs moved to amend, ECF No. 124 (“MTA”), and on November 26, the Court granted Plaintiffs’ motion to amend. ECF No. 130. Plaintiffs filed their Second Amended Complaint on December 3. ECF No. 131.

As with the Plaintiffs’ first two complaints, the assumption underlying Plaintiffs’ Second Amended Complaint is that Defendants must be violating the NVRA because several Nevada counties have what Plaintiffs believe to be “abnormally” or “impossibly high” registration rates. SAC ¶ 66. But nowhere does the complaint identify any specific example of Nevada improperly keeping someone on the voter rolls whom the NVRA actually required be removed, or any particular procedure that Nevada fails to use that the NVRA requires. Nor do Plaintiffs grapple with Nevada’s numerous statutory provisions which describe, in detail, the state’s “reasonable efforts” to comply with the NVRA. Plaintiffs just assume that Nevada must be violating the NVRA somehow.

Despite its additional allegations, the Second Amended Complaint continues to say very little about how Nevada’s current list-maintenance practices concretely injure Plaintiffs. And Plaintiffs continue to fail to explain how the imperfect reality of campaigning—which inevitably includes misdirected mailers—confers on them a cognizable injury to bring a federal claim under the NVRA. Plaintiffs further acknowledge, *see* MTA at 3, that Scott Johnston’s fears that Defendants are violating their list maintenance obligations, undermining his confidence in Nevada elections, and causing him to worry that ineligible voters will dilute his legitimate vote, have already been dismissed with prejudice by this Court because they are “too generalized and speculative to confer standing under Article III.” 2d MTD Order at 11, 19.

Plaintiffs RNC and NVGOP’s allegations about election integrity and vote dilution remain unchanged as well. *Compare* SAC ¶ 117, *with* FAC ¶ 104. Plaintiffs now allege that Nevada’s inaccurate voter rolls render them “unable to determine whether [they] need[] to prioritize voter registration or voter turnout.” SAC ¶ 17. And they further allege that they use voter rolls to “adjust

the size, scope, and audience” for their voter contact efforts, *id.* ¶ 18, and to assist Republican candidates with effectively “target[ing] eligible voters” in order to help those candidates win elections. *Id.* ¶ 19. But the Second Amended Complaint says nothing about how any of these purported injuries are traceable to any specific list maintenance practices by Defendants, nor how different list maintenance practices might redress such alleged injuries—because it continues to allege nothing about what, exactly, it is about Defendants’ procedures that supposedly violate the law. The Second Amended Complaint simply states as a conclusory matter that “[p]roper voter roll maintenance would redress each of these injuries.” *Id.* ¶ 24.

Based on these vague and conclusory allegations, Plaintiffs ask this Court to enter far ranging relief: in addition to a declaratory judgment that Defendants are violating Section 8 of the NVRA, Plaintiffs demand an order instructing Defendants to develop “reasonable and effective” registration list-maintenance programs to cure the violations they believe must exist, and to enter a permanent injunction barring Defendants from violating the NVRA in the future. *Id.* at 22.

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). To establish standing under Article III, a plaintiff must sufficiently allege (1) a “concrete” and “particularized” injury-in-fact, actual or imminent, (2) that is fairly traceable to the defendant’s conduct, and (3) is likely to be redressed by a favorable decision from the court. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016). Plaintiffs, as “[t]he party invoking federal jurisdiction[,] bear[] the burden of establishing these elements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Organizations, like individuals, may have standing to sue on behalf of their members, or “to sue on their own behalf for injuries they have sustained.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982) (citing *Warth v. Seldin*, 442 U.S. 490, 511 (1975)). However, organizations “cannot spend [their] way into standing simply by expending money to gather information and advocate against the defendant’s action.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 370 (2024).

“Rule 12(b)(6) permits dismissal on the basis of either (1) the ‘lack of a cognizable legal

theory,’ or (2) ‘the absence of sufficient facts alleged under a cognizable legal theory.’” *Newlands Asset Holding Tr. v. SFR Invs. Pool 1, LLC*, No. 3:17-cv-00370-LRH-WGC, 2017 WL 5559956, at *2 (D. Nev. Nov. 17, 2017) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F. 2d 696, 699 (9th Cir. 1990)). To survive a motion to dismiss under Rule 12(b)(6), a complaint must “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Although a court must “take all of the factual allegations in the complaint as true,” *id.* (citing *Twombly*, 550 U.S. at 555), “[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)).

ARGUMENT

I. Plaintiffs fail to plausibly allege standing.

The Second Amended Complaint should be dismissed because Plaintiffs fail to plausibly allege any “concrete and particularized” injuries-in-fact that are “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560–61 (cleaned up).

A. Plaintiffs fail to allege organizational standing.

The Second Amended Complaint adds a handful of new details about how Plaintiffs use voter rolls, including “to determine whether [they] need[] to prioritize voter registration or voter turnout,” SAC ¶ 17, to “adjust the size, scope, and audience” for their voter contact efforts, *id.* ¶ 18, and to assist Republican candidates with effectively “target[ing] eligible voters,” *id.* ¶ 19. They suggest that when voter rolls are less accurate, this results in “contacts with registered voters who are no longer eligible to vote” and “mail pieces being printed and sent but never properly delivered,” *id.* ¶ 18, and ultimately impacts their ability to help Republican candidates win elections. But despite these new details, the gist of Plaintiffs’ allegations remains the same: they continue to say they are harmed by the mere fact that some number of campaign mailers or

1 volunteer canvassers may end up at an inaccurate address—an evergreen part of campaigning in
 2 the United States. *See Bost v. Illinois State Bd. of Elections*, 684 F. Supp. 3d 720, 739 (N.D. Ill.
 3 2023) (“[s]pending time and money on campaigning is an inevitable feature of running for office”).
 4 Nowhere do Plaintiffs explain how this ordinary inconvenience and fact of campaigning rises to
 5 the level of “an invasion of a legally protected interest.” *Spokeo*, 578 U.S. at 339 (quoting *Lujan*,
 6 504 U.S. at 560).

7 Plaintiffs fail, moreover, to show that these alleged injuries are traceable to any alleged
 8 violations of the NVRA, in part because they do not *allege* any specific violations of the NVRA—
 9 they simply ask that Nevada “do better” without identifying any particular way in which its list
 10 maintenance efforts are not “reasonable.” Campaigns and parties will never have access to a
 11 perfect picture of Nevada’s electorate; nothing in the NVRA entitles them to that. Plaintiffs must
 12 plausibly allege their “injury-in-fact is . . . fairly traceable to the challenged action,” here, a failure
 13 to engage in “reasonable efforts” at list maintenance. *Davidson v. Kimberly-Clark Corp.*, 889 F.3d
 14 956, 967 (9th Cir. 2018) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149
 15 (2010)). But the fact that, for example, some voters who have moved remain on the rolls at an old
 16 address does *not* mean Nevada is violating the NVRA. In fact, the opposite is true: absent an
 17 express request from the voter for removal, Nevada *must* keep such voters on the rolls for at least
 18 two election cycles. *See* 52 U.S.C. § 20507(d). Accordingly, the fact that the RNC or NVGOP may
 19 sometimes mail a campaign flyer to an out-of-date address—or that they take steps to narrow the
 20 voter list to limit such mailings—is not traceable to any alleged violation of the NVRA. Such
 21 misdirected campaign efforts happen as a matter of course under the NVRA’s protections. The
 22 same is true of the NVGOP’s so-called “residency discrepancy reports.” SAC ¶ 28. NVGOP
 23 cannot plausibly allege its choice to prepare such reports is traceable to an alleged NVRA violation
 24 when the NVRA itself contemplates keeping voters who have moved on the voter rolls for two
 25 election cycles.

26 Plaintiffs’ purported injury fails to satisfy the redressability requirement for the same
 27 reason: Plaintiffs can do no more than speculate that their conclusory injuries will be redressed by
 28

1 the vague relief they seek—an order instructing Nevada to be more “reasonable and effective” in
 2 its list maintenance activities, SAC at 22, even though Plaintiffs nowhere specify what that means
 3 in practice. Regardless of any remedy afforded in this case, NVGOP will also still have the same
 4 reasons to prepare “residency discrepancy reports” because some voters will invariably continue
 5 moving to new states, and nothing in the NVRA requires their immediate removal from Nevada’s
 6 voter rolls. *See Humanitarian L. Project v. U.S. Dep’t of Treasury*, 463 F. Supp. 2d 1049, 1072
 7 (C.D. Cal. 2006) (finding no redressability where “Plaintiffs w[ould] be in the same position that
 8 they are in now” even if they win), *aff’d*, 578 F.3d 1133 (9th Cir. 2009).

9 The alleged injuries in the Second Amended Complaint are also not redressable because
 10 they focus on alleged harms related to the “federal election on November 5, 2024.” SAC ¶ 97, and
 11 demand actions related to that election, which of course has now passed. *See also id.* ¶ 111
 12 (“Plaintiffs also asked that Defendants . . . ‘fully describ[e] the efforts, policies, and programs
 13 [they] are taking, or plan to undertake before the 2024 general election’” (second alteration
 14 added)); *id.* ¶ 11 (“[i]n November 2024, [the RNC’s] candidates will appear on the ballot in Nevada
 15 for numerous federal and state offices”). The Court, of course, cannot redress an injury that
 16 revolves around an event that has already occurred, and Plaintiffs do not allege that the harms they
 17 feared actually came to pass in the November election—confirming the speculative nature of those
 18 harms. *See id.* ¶¶ 19, 29.

19 Finally, the RNC’s voluntary choice to “monitor[] Nevada elections for fraud and abuse,
 20 mobiliz[e] voters to counteract it, educat[e] the public about election-integrity issues, and
 21 persuad[e] elected officials to improve list maintenance,” *id.* ¶ 22, cannot confer standing either.
 22 Absent an actual injury that Plaintiffs seek to avoid, these activities amount to an effort to “spend
 23 [their] way into standing simply by expending money to gather information and advocate against
 24 the defendant’s action.” *FDA*, 602 U.S. at 370. Plaintiffs also again allege that to accomplish these
 25 efforts they must divert resources from “other efforts that are critical to its core activities, such as
 26 voter-registration efforts, voter-turnout efforts, election-integrity efforts, and voter education.”
 27 SAC ¶ 23. But as this Court noted in its last motion to dismiss order, “[t]hese vague allegations of
 28

1 shifting resources fail to provide the court any information regarding what or which resources the
2 organizational plaintiffs have needed to shift.” 2d MTD Order at 15.

3 Accordingly, Plaintiffs’ Second Amended Complaint fails to plausibly allege standing for
4 substantially similar reasons as its past two iterations. The Court should again dismiss this case
5 under Rule 12(b)(1).

6 **B. Plaintiffs’ speculative concerns about election integrity and vote dilution fail to**
7 **satisfy Article III.**

8 The Second Amended Complaint mirrors prior allegations that Plaintiff Scott Johnston, a
9 registered Republican voter in Nevada, “fears” that ineligible voters may cast ballots in Nevada,
10 “undermin[ing] [his] confidence in the integrity of Nevada elections” SAC ¶¶ 31–33. In their
11 motion to amend, Plaintiffs say they “are willing to forgo briefing Scott Johnston’s standing in
12 light of this Court’s ruling that he lacks an Article III injury.” MTA at 3. But the RNC and NVGOP
13 continue to assert standing based on the same “fears” assertedly held by other members and voters.
14 SAC ¶ 117. The Court should again reject this basis for standing. In its October 18 Order, this
15 Court correctly determined—for the second time—that “[u]ndermined confidence in the integrity
16 of Nevada elections” is both “too generalized” and “too speculative” to confer standing. 2d MTD
17 Order at 9–10. Plaintiffs did not meaningfully amend *any* of their allegations related to vote
18 dilution or election integrity, so the Court should reach the same conclusion again. *Compare*
19 *Compl. ¶¶ 13, 19, 21, 90 with FAC ¶¶ 18, 19, 28, 104 and SAC ¶ 117.*

20 **II. Plaintiffs have failed to plausibly allege any violation of the NVRA.**

21 On the merits, Plaintiffs also fail to state a claim for which relief can be granted. As
22 Plaintiffs acknowledge, the NVRA requires only that states “conduct a general program that makes
23 a *reasonable effort* to remove the names of ineligible voters from the official lists of eligible
24 voters” due to death or change of residence. FAC ¶ 38 (emphasis added) (quoting 52 U.S.C.
25 § 20507(a)(4)). To adequately allege a violation of this requirement, Plaintiffs must plausibly
26 allege Defendants have been *unreasonable* in their list maintenance efforts. Yet Plaintiffs do
27 nothing of the sort because—for the third time in three tries—they allege nothing at all about
28

1 Defendants’ actual list maintenance efforts. They do not allege, for example, that Nevada’s
 2 statutory list-maintenance regimen fails to meet the floor set by the NVRA, nor do they anywhere
 3 allege that any of the Defendants is failing to adhere to these statutory requirements. Nothing in
 4 the Second Amended Complaint “permit[s] the court to infer more than the mere possibility of
 5 misconduct,” *Iqbal*, 556 U.S. at 679, and accordingly the complaint “has not ‘shown that the
 6 pleader is entitled to relief,” *id.* (cleaned up) (quoting Fed. R. Civ. P. 8(a)(2)).

7 Plaintiffs’ failure to allege anything tied to Defendants’ actual list maintenance efforts is
 8 particularly striking because the NVRA entitles Plaintiffs to obtain exactly the sort of information
 9 that would enable them to make such allegations, were there any factual basis for them. States are
 10 required to “maintain for at least 2 years and . . . make available for public inspection . . . all
 11 records concerning the implementation of programs and activities conducted for the purpose of
 12 ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i). There
 13 was therefore no need for Plaintiffs to *assume*, as the Second Amended Complaint does, that
 14 Nevada’s efforts must have been unlawful—Plaintiffs could easily have requested access to the
 15 relevant records, determined what was actually done, and made allegations about why it violates
 16 the NVRA, if indeed it does. There is therefore even less of a reason in NVRA cases than in other
 17 cases to indulge the assumption that “discovery will reveal evidence” of illegality. *Twombly*, 550
 18 U.S. at 556.

19 The gist of Plaintiffs’ Second Amended Complaint—as it was with their prior two
 20 complaints—is that Nevada must not be complying with the NVRA because, based on U.S. Census
 21 data, three of Nevada’s seventeen counties “have more active registered voters than voting-eligible
 22 citizens, and five other counties have suspiciously high rates of active voter registration.” SAC ¶
 23 63; *see also id.* ¶¶ 62, 64–103 (similar). But that allegation merely assumes what Plaintiffs are
 24 obliged to plausibly allege—that the named election officials are not complying with the minimum
 25 requirements of the NVRA. The numbers Plaintiffs point to are “equally consistent with lawful
 26 conduct” and, “under *Twombly*, plaintiffs have not pleaded facts that would move their allegations
 27
 28

1 from merely possible to plausible.” *In re Graphics Processing Units Antitrust Litig.*, 527 F. Supp.
2 2d 1011, 1023 (N.D. Cal. 2007).

3 The Second Amended Complaint nowhere accounts for the fact that Congress “designed
4 [the NVRA] to protect voters from improper removal and only provide[d] very limited
5 circumstances in which states may remove them” from the rolls. *Am. C.R. Union*, 872 F.3d at 182.
6 The law purposefully “limits the methods which a state may use to remove individuals from its
7 voting rolls and is meant to ensure that eligible voters are not disenfranchised by improper
8 removal.” *U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 381 (6th Cir. 2008). Most notably,
9 the law forbids removing a voter due to possible change in residence until that voter has failed to
10 vote in at least two federal general elections—a four-year lag period, incorporated directly into
11 Nevada law, meant to protect against improper removal. *See* 52 U.S.C. § 20507(d); *see also* NRS
12 293.530(1)(c)(4). Congress therefore elected to permit some ineligible voters to remain on the rolls
13 for several years while the statutorily-prescribed removal process occurs. Courts have thus
14 recognized that “the NVRA requires only a ‘reasonable effort,’ not a perfect effort.” *PILF*, 721 F.
15 Supp. 3d at 597. “[T]he statute requires nothing more of the state.” *Bellitto*, 935 F.3d at 1203, 1207
16 (“The failure to use duplicative tools or to exhaust every conceivable mechanism does not make
17 [a state’s] effort unreasonable.”).

18 In view of the NVRA’s requirements and limitations, and Nevada’s own statutory
19 requirements mirroring the NVRA, Plaintiffs’ allegation that there are too many voters on the rolls
20 in some counties fails to suggest anything “more than the mere possibility of misconduct.” *Iqbal*,
21 556 U.S. at 679. The numbers Plaintiffs point to are equally consistent with Nevada simply
22 adhering to the rigorous removal processes established by Congress and incorporated into Nevada
23 law. *See* NRS 293.503(3)–(5); 293.525(4); 293.527; 293.530; 293.5303; 293.5307; 293.540. That
24 is not enough to plead a violation of the NVRA. “[A]t the pleading stage,” allegations must
25 “plausibly suggest[,]” and “not merely [be] consistent with,” a legal violation. *Twombly*, 550 U.S.
26 at 557; *see also Redlands Country Club Inc. v. Cont’l Cas. Co.*, No. CV-10-1905-GAF-DTBX,
27 2011 WL 13224843, at *3 (C.D. Cal. Jan. 28, 2011) (“Allegations that are equally consistent with
28

lawful and unlawful conduct are insufficient under *Twombly*.”). “To render their explanation plausible, plaintiffs must do more than allege facts that are merely consistent with both their explanation and defendants’ competing explanation.” *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (concluding “Plaintiffs have not offered allegations of this nature here”). It is therefore not enough to point to the “sheer number of . . . registered voters [as] a hallmark of an unreasonable list maintenance program.” *Pub. Int. Legal Found. v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020) (quotation omitted). Under the NVRA, there is nothing “unreasonable” about having what appears to be an excessive number of voters on the rolls at one moment in time.

Moreover, as several courts have noted, there is good reason not to take Plaintiffs’ numbers at face value, even at the pleading stage. Their data relies, in the first instance, on 2022 American Community Survey (“ACS”) data produced by the U.S. Census Bureau to estimate the current population of several Nevada counties. *E.g.*, SAC ¶ 64. The Eleventh Circuit in *Bellitto* observed that such ACS data may “significantly underestimate[] the population” of a county for a variety of reasons, including because it “asks who has resided in the household in the two-month period” preceding the survey, thereby “exclud[ing] many college students, military personnel” and others who may not reside in an area for the full year. 935 F.3d at 1208. The Census Bureau itself has cautioned that “[d]ue to the variance inherent in survey estimates,” the Census Bureau “do[es] not recommend combining survey data from the ACS with administrative record data, such as those produced as part of voter tallies.”³ Yet Plaintiffs do just that in their complaint, despite the Census Bureau’s warning that “the margin of error could be around 90 percent.”⁴

The Second Amended Complaint elsewhere relies upon the 2022 Election Administration and Voting Survey (“EAVS”) produced by the U.S. Election Assistance Commission to show the number of inactive registrations in Nevada. *E.g.*, SAC ¶¶ 77–84. But federal courts have warned

³ Kurt Hildebrand, *Republican National Committee names Douglas in voter roll lawsuit*, TAHOE DAILY TRIB. (Mar. 31, 2024), <https://www.tahodailytribune.com/news/republican-national-committee-names-douglas-in-voter-roll-lawsuit>.

⁴ *Id.*

1 that an “EAVS snapshot”—which is all that Plaintiffs provide in the report—can “in no way be
 2 taken as a definitive picture of what a county’s registration rate is, much less any indication of
 3 whether list maintenance is going on and whether it’s reasonable.” *Bellitto*, 935 F. 3d at 1208
 4 (cleaned up). The 2022 EAVS Survey itself,⁵ incorporated by Plaintiffs into their complaint, warns
 5 that:

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

9 2022 EAVS at 140 & n. 18, 19 (emphasis added) (citing examples in footnotes); *see also Jud.*
 10 *Watch, Inc. v. North Carolina*, No. 3:20-CV-211-RJC-DCK, 2021 WL 7366792, at *10 (W.D.N.C.
 11 Aug. 20, 2021) (observing same cautionary note in 2018 EAVS survey). The EAVS thus advises
 12 that “states should expect to see high voter registration rates,” because “such information, without
 13 more, does not” provide a meaningful inference of “non-compliance with the NVRA.” *Jud. Watch*,
 14 2021 WL 7366792, at *10. Accordingly, the data sources in the Second Amended Complaint are
 15 not fit for the purposes chosen by Plaintiffs, as both courts and the authors of the data have
 16 recognized.

17 To top it all off, Plaintiffs do not properly use the data from these sources, mixing and
 18 matching different numbers to self-servingly paint a misleading picture of Nevada’s voter rolls.
 19 For example, Plaintiffs rely upon ACS data to calculate the baseline population of Nevada’s
 20 counties—the denominator in their effort to show Nevada has bloated rolls. But as the Eleventh
 21 Circuit noted in *Bellitto*, this ACS population data “takes data drawn from the preceding five years
 22 and estimates the midpoint of that data.” 935 F.3d at 1208. In other words, the 2022 ACS
 23 population data relied upon in the Second Amended Complaint, *see* SAC ¶¶ 63–69, reflects the
 24 estimated population of a county *in 2020*—the midpoint of the five years preceding 2022. Plaintiffs
 25 then compare this population figure to voter registration rates *in 2024*—not 2020—to generate

26 ⁵ *Election Administration and Voting Survey 2022 Comprehensive Report*, U.S. Election
 27 Assistance Comm’n (June 2023), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf (“2022 EAVS”).
 28

1 exaggerated snapshots of the number of registered voters in a given county. *Id.* The Second
 2 Amended Complaint then baselessly asserts that “[t]he only explanation” for the ensuing high rates
 3 of voter registration “is substandard list maintenance.” *Id.* ¶ 71. But in fact, a very obvious
 4 alternative explanation exists: the citizen voting-age population in Nevada *grew* between 2020 and
 5 2024, undercutting Plaintiffs’ cherry-picked reliance on stale population data. The Census Bureau
 6 itself warns against using ACS data in this manner for just this reason. *Supra* 16–17. Thus, as in
 7 *Bellitto*, the Plaintiffs here rely upon an “artificially low denominator” to reach “an inflated
 8 registration rate.” 935 F.3d at 1208. Such an artificial representation of the state of Nevada’s voter
 9 rolls fails to “plausibly suggest” any violation of the NVRA.

10 In addition to vaguely claiming that there are too many people on Nevada’s voter rolls,
 11 Plaintiffs separately allege that there are 4,684 voters (1) listed as inactive in the 2019 voter file
 12 who are presently listed as inactive and (2) who also did not vote in the 2020 or 2022 federal
 13 elections. SAC ¶ 89. They suggest that these voters “should have been removed after the 2022
 14 general election” and that “Defendants are failing to engage in reasonable list-maintenance
 15 efforts.” *Id.* But these allegations—noticeably absent from both Plaintiffs’ original complaint and
 16 notice letter—likewise fail to raise any inference that Nevada’s list maintenance procedures are
 17 unreasonable for at least two reasons.

18 First, the NVRA does not require an inactive voter’s removal immediately after they fail
 19 to vote in two consecutive federal general elections. *See* 52 U.S.C. § 20507(b)(2). Rather, the
 20 NVRA simply prohibits removal of an inactive voter before that has occurred. *Id.* Thus, the
 21 existence of inactive voters for more than two election cycles is entirely consistent with the NVRA,
 22 so long as the state’s efforts, overall, constituted a “reasonable effort” to remove voters based on
 23 a change in residence. *Id.* § 20507(a)(4). Plaintiffs fail to explain how having a small number of
 24 voters who are inactive both in 2019 and 2024 falls short of that command, particularly given their
 25 failure to plausibly allege any misapplication of NRS 293.530(c)(4), which adopts the limitations
 26 of the NVRA into Nevada law.

Second, Plaintiffs’ reliance on snapshots for their allegations means they fail to show that these 4,684 voters—an infinitesimal portion of the millions of registered voters in the state—were, in fact, continuously inactive for two full federal election cycles so as to be removable under the NVRA. A voter listed as inactive in 2019 could have later returned to active status by, for example, returning a confirmation postcard more than 30 days after its issuance, *see* NRS 293.530(g), or by re-registering to vote at a new address, and then become inactive again before Plaintiffs’ latest voter list was pulled. After all, many voters, including students and younger voters, move frequently. In other words, the mere fact that these voters were listed as inactive in both 2019 and 2024 does not automatically require, or even allow, the cancellation of their voter registration, as Plaintiffs wrongly claim. *See* SAC ¶ 89 (suggesting such facts evince “a violation of state law”). Such facts are entirely consistent with the dutiful application of both the NVRA and NRS 293.530.

Finally, Plaintiffs’ new allegations stemming from a November ProPublica article that “at least part of the explanation for high inactive registration rates is that state officials were ‘assigning voters to the wrong precincts and mislabeling voters as ‘inactive’” do not resolve these issues.⁶ Importantly, in that very same article, state officials make clear they fixed these issues ahead of the November election, explaining that “errors identified during testing were anticipated, identified, and addressed.”⁷ Plaintiffs contend that “a local registrar has told reporters that ‘shortcomings have not been fully addressed,’” but that official has been on administrative leave since September, over a month before the election. SAC ¶ 96.⁸ A spokesperson from that very same county said “[i]ssues identified during the rollout and extensive testing period were addressed and resolved prior to the 2024 election,” and no other county official raised concerns.⁹

Plaintiffs point to nothing else to support any inference that Nevada is falling short of the NVRA’s requirements. For example, Plaintiffs nowhere acknowledge Nevada’s own

⁶ SAC ¶ 88 (quoting Anjeanette Damon & Nicole Santa Cruz, *Nevada Says It Worked Out the Kinks in Its New Voter System in Time for The Election, but Concerns Remain*, ProPublica (Nov. 2, 2024), <https://www.propublica.org/article/nevada-voter-registration-election-management-system-concerns> [perma.cc/KNP6-P7AS]).

⁷ Damon & Santa Cruz, *supra* note 5.

⁸ *See id.*

⁹ *Id.*

comprehensive statutory removal procedures, *see* NRS 293.503(3)–(5); 293.525(4); 293.527; 293.530; 293.5303; 293.5307; 293.540, never mind “allege that this program itself is deficient” or “point to a specific breakdown that makes the program ‘unreasonable.’” *Boockvar*, 495 F. Supp. 3d at 359. “Without allegation, let alone proof,” of such a breakdown, the court cannot infer “that the many procedures currently in place are unreasonable.” *Id.* The Second Amended Complaint notes that a number of counties “currently have inactive registration rates . . . well above the state and national averages.” SAC ¶ 85. But it nowhere explains what inference the Court should draw from this. Inactive registration is the *result* of list maintenance, so this hardly suggests a failure to engage in it. And the fact that roughly half of Nevada’s counties have inactive registration rates above the state average is mere common sense yet, by Plaintiffs’ strained reasoning, somehow supplies an inference that these counties are violating federal law. No greater inference can be drawn from comparison to national averages. And, tellingly, Plaintiffs point to Nevada counties that they have not even named in this suit. *Compare id.* ¶¶ 35–39 (naming officials in Clark, Douglas, Lyon, and Storey Counties, as well as Carson City, as defendants), *with id.* ¶ 80 (pointing to removal rates in Mineral and Esmerelda Counties), *and* ¶ 85 (pointing to inactive registration rates in Clark, Elko, Eureka, Humboldt, Lincoln, Mineral, Nye, and White Pine Counties).

The Second Amended Complaint therefore offers no basis to infer that the named Defendants, or any election official in Nevada, is not complying with the NVRA. The “naked assertion” that Nevada’s voter rolls are higher than Plaintiffs think they should be—a fact entirely consistent with the purposeful design of NVRA—“stops short of the line between possibility and plausibility” of entitled to relief. *Twombly*, 550 U.S. at 557. To hold otherwise would impermissibly lower the pleading bar established in *Twombly* and *Iqbal*, and in effect eviscerate any pleading requirement for NVRA claims. The Amended Complaint should be dismissed.

///

///

///

///

CONCLUSION

For the reasons stated above, Plaintiffs' Second Amended Complaint should be dismissed.

Dated: December 17, 2024

Respectfully submitted,

ELIAS LAW GROUP LLP

By: /s/ Bradley S. Schrager

David R. Fox (NV Bar No. 16536)

Christopher D. Dodge (*pro hac vice*)

Marisa A. O'Gara (*pro hac vice*)

Elias Law Group LLP

250 Massachusetts Ave NW, Suite 400

Washington, DC 20001

(202) 968-4490

dfox@elias.law

cdodge@elias.law

mogara@elias.law

Bradley S. Schrager (NV Bar No. 10217)

Daniel Bravo (NV Bar No. 13078)

Bravo Schrager LLP

6675 South Tenaya Way, Suite 200

Las Vegas, NV 89113

(702) 996-1724

bradley@bravoschrager.com

daniel@bravoschrager.com

Attorneys for Intervenor-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2024 a true and correct copy of INTERVENOR-DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT was served via the United States District Court's CM/ECF system on all parties or persons requiring notice.

By: /s/ Dannielle Fresquez
Dannielle Fresquez, an employee of
Bravo Schrager LLP