Jeffrey F. Barr (NV Bar No. 7269)
8275 South Eastern Avenue, Suite 200
Las Vegas, NV 89123
(702) 631-4755
barrj@ashcraftbarr.com

Thomas R. McCarthy* (VA Bar No. 47145)
Gilbert C. Dickey* (VA Bar No. 98858)
Conor D. Woodfin* (VA Bar No. 98937)
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com

Sigal Chattah (NV Bar No. 8264)
5875 S. Rainbow Blvd #204
Las Vegas, NV 89118
(702) 360-6200
sigal@thegoodlawyerlv.com

**Admitted pro hac vice*

UNITED STATES DISTRICT COURT
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.

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

RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT [ECF Nos. 132 and 136]

INTRODUCTION

Numerous courts have held that allegations like those in the Second Amended Complaint allege injury and state a claim. The Defendants' arguments would render the NVRA's list-maintenance provisions a dead-letter statute. Under the Defendants' theory, no person or organization could invoke the NVRA's private right of action for a section 8 violation. But this Court must "afford due respect to Congress's decision" to require voter-roll maintenance, public disclosure of those rolls, and a private right of action to enforce both of those requirements. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340-41 (2016)). Political parties are among those who depend most on States maintaining their voter rolls. It's common sense—not idle speculation—that poor list maintenance makes elections and campaigns more difficult, more expensive, and less effective. Those are concrete injuries to political parties like the RNC and NVGOP.

Courts overwhelmingly agree. In October, the Fifth Circuit affirmed the portion of a district court's summary judgment ruling that the RNC has standing to challenge state rules that harm its ability to turn out Republican voters and elect Republican candidates. *RNC v. Wetzel*, 120 F.4th 200, 205 n.3 (5th Cir. 2024). Last year, the Western District of North Carolina denied a motion to dismiss NVRA claims brought by voters in *Green v. Bell*, 2023 WL 2572210, at *7 (W.D.N.C. Mar. 20, 2023). Before that, the Western District of Michigan denied motions to dismiss in two different cases. *See PILF v. Benson*, 2022 WL 21295936, at *13 (W.D. Mich. Aug. 25, 2022); *Daunt v. Benson*, Doc. 376 at 19, No. 1:20-cv-522 (W.D. Mich. Nov. 3, 2020) (oral opinion, attached as Ex. A). Those recent cases rest on a body of precedent discussed in this brief.

The Western District of Michigan recently dismissed the wisdom of these cases. *RNC v. Benson*, 2024 WL 4539309, at *15 (W.D. Mich. Oct. 22, 2024), *appeal filed*, No. 24-1985 (6th Cir. Nov. 8, 2024). But that opinion is riddled with errors, and on appeal

in the Sixth Circuit. Among other things, the district court discounted injuries to activities that the "RNC normally engages" in, *id.* at *11, even though the Supreme Court *requires* organizations to allege injury to their "pre-existing core activities," *Mayes*, 117 F.4th at 1170. And on the merits, the district court disputed the plaintiffs' data and refused to draw inferences in their favor. *RNC v. Benson*, 2024 WL 4539309, at *13-14. Other errors aside, the district court dismissed the complaint without leave to amend. *RNC v. Benson*, 2024 WL 4539309, at *15. To the extent *RNC v. Benson* is similar to this case, it was in the initial versions of the complaints. But unlike the district court in *Benson*, this Court has permitted Plaintiffs to replead their injuries. The second amended complaint before this Court contains far more detail about Plaintiffs' injuries and Defendants' NVRA violations. The Court should deny the Secretary's and Intervenors' motions to dismiss. *See* Sec'y Mot. (Doc. 132); Int. Mot. (Doc. 136).

BACKGROUND

The Court is familiar with this case. Plaintiffs filed their complaint in March 2024. *See* Compl. (Doc. 1). The Secretary moved to dismiss the complaint, arguing that the Plaintiffs did not allege a concrete injury, the notice letter was deficient, and the complaint failed to state a claim. After a hearing, this Court granted the motion to dismiss, ruling that Scott Johnston lacked Article III standing, the Court could not afford effective relief, and the claim was not ripe. *See* Hr'g Tr. (ECF No. 96) 23:2-4, 72:17-73:23. Plaintiffs amended their complaint in July. *See* 1st Am. Compl. (Doc. 98).

The Secretary and Intervenors moved to dismiss the amended complaint on similar grounds. *See* Sec'y Mot. to Dismiss Am. Compl. (Doc. 101); Int. Mot. to Dismiss Am. Compl. (Doc. 104). This Court granted the motions to dismiss, ruling that the Plaintiffs "have not adequately alleged standing under Article III." MTD Order (Doc. 121) at 3. The Court also ruled that to the extent the amended complaint requested relief within 90 days before the next election, those claims were not redressable. MTD

Order 16-18. But the Court rejected the Secretary's argument that the claims were not prudentially ripe, ruling "for clarity of the record" that had the Court "found an injury-in-fact," "both prongs" of the prudential-ripeness doctrine would "weigh in favor" of finding that Plaintiffs claims are ripe. MTD Order 18-19. The Court granted Plaintiffs leave to amend in part because they "did not have the benefit of the *Mayes* case" when they filed their amended complaint. MTD Order 19-20.

Consistent with the Court's order, Plaintiffs moved for leave to amend their complaint. Mot. for Leave to Amend (Doc. 124). The Court granted the unopposed motion, *see* Order Granting Mot. to Amend (Doc. 130), and the Plaintiffs filed their second amended complaint on December 3, *see* 2d Am. Compl. (Doc. 131). The second amended complaint includes updated voter-registration statistics and additional details regarding Defendants' list-maintenance failures. It clarifies the RNC and NVGOP's organizational injuries in light of this Court's order and recent circuit precedent. And it preserves the Plaintiffs' positions on Scott Johnston's individual standing as a voter. When this Court ruled on the Plaintiffs' first amended complaint, it dismissed Mr. Johnston "with prejudice." MTD Order 19. The second amended complaint preserves those issues for appeal, but Plaintiffs accept this Court's previous ruling on Mr. Johnston's standing as final, and do not re-brief those issues here.

The Defendants again move to dismiss the complaint on largely the same grounds as before. The Secretary and Intervenors argue that the Plaintiffs fail to allege an Article III injury and fail to state a claim. Sec'y Mot. 6-12; Int. Mot. 9-20. The Secretary also re-raises his argument that the organizational plaintiffs don't have statutory standing under the NVRA. Sec'y Mot. 10-12. The county Defendants joined the Secretary's motion. *See* Joinders (Docs. 133, 134, 135, 138, 139, 140).

LEGAL STANDARDS

A Rule 12(b)(6) motion "tests" whether the complaint satisfies Rule 8. *Thomson v. Caesars Holdings Inc.*, 661 F. Supp. 3d 1043, 1052 (D. Nev. 2023) (Silva, J.). Rule 8

requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Courts must accept the complaint's factual allegations as true, draw reasonable inferences from those allegations, and construe the complaint in the light most favorable to the plaintiff. *Edwards v. Signify Health, Inc.*, No. 2:22-cv-95, 2023 WL 3467558, at *2 (D. Nev. May 12, 2023) (Silva, J.).

After drawing all those inference in Plaintiffs' favor, the question is whether the complaint states a claim that is "'plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausible means a "reasonable inference that the defendant is liable." *Id.* It does not mean that liability is "probable," *id.*, or even that Plaintiffs are "likely to succeed," *Produce Pay, Inc. v. Izguerra Produce, Inc.*, 39 F.4th 1158, 1166 (9th Cir. 2022). "If there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). To the extent the "parties proffer evidence" in their filings, "the court may not weigh [that] evidence in deciding a motion to dismiss." *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1151 (C.D. Cal. 2003) (collecting cases).

When assessing a claim's plausibility, courts generally "'may not consider any material beyond the pleadings.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Courts can consider "'the face of the complaint [and] materials incorporated into the complaint by reference,'" such as Plaintiffs' pre-suit notice. *See In re Sorrento Therapeutics, Inc. Sec. Litig.*, 97 F.4th 634, 641 (9th Cir. 2024). Courts also can take judicial notice of official documents for their "existence," but not for their "truth." *Lee*, 250 F.3d at 690. And in no event can the court take "judicial notice of *disputed* facts," *id.*, or use outside materials to contradict the factual allegations or inferences in the complaint, *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003, 1014 (9th Cir. 2018). An outside document that "merely creates a defense to the well-pled allegations in the complaint" cannot "defeat otherwise cognizable claims." *Id.*

The same rules apply to the Rule 12(b)(1) motion. "When 'standing is challenged on the basis of the pleadings,'" the Court "must 'accept as true all material allegations of the complaint' and 'construe the complaint in favor of the complaining party.'" *Cal. Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094, 1100 (9th Cir. 2024) (quoting *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988)). At this stage, "general factual allegations of injury resulting from the defendant's conduct may suffice," because the court must "presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (cleaned up).

ARGUMENT

I. Plaintiffs have Article III standing.

Standing requires injury, causation, and redressability. Importantly, Congress created a private right of action for violations of the NVRA, including section 8's list-maintenance requirement. *See* 52 U.S.C. §20510(b). Courts evaluating Article III standing "must afford due respect to Congress's decision." *TransUnion*, 594 U.S. at 425 (citing *Spokeo*, 578 U.S. at 340-41). Congress's judgment is "instructive and important" because it is "well positioned to identify intangible harms that meet minimum Article III requirements." *Spokeo*, 578 U.S. at 341. In fact, Congress can "'articulate chains of causation that will give rise to a case or controversy where none existed before.'" *Id.* And Congress can "'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." *TransUnion*, 594 U.S. at 425 (citation omitted).

A. The RNC and the NVGOP have plausibly alleged harm to their core mission.

Organizations—no less than individuals—have standing if they allege a "personal stake in the outcome of the controversy." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977) (citation omitted). One way an organization can plead an "injury in fact" is by alleging a "concrete and demonstrable injury to the organization's activities" accompanied by a "consequent drain on the organization's

resources." *Havens Realty*, 455 U.S. at 379. Organizations cannot "spend their way to standing based on vague claims that a policy hampers their mission." *Ariz. All. for Retired Ams. v. Mayes*, 117 F.4th 1165, 1170 (9th Cir. 2024). But they can plead an Article III injury by alleging that "a challenged governmental action directly injures the organization's preexisting core activities and does so apart from the plaintiffs' response to that governmental action." *Id.* And at the pleading stage, even "broadly alleged" injuries are sufficient. *Havens Realty*, 455 U.S. at 379. The RNC and NVGOP satisfy those liberal standards.

Start with the RNC, which exists to turn out Republican voters and elect Republican candidates nationwide. 2d Am. Compl. ¶¶11-13. To facilitate that mission, the RNC provides voter registration services for candidates, voters, and local state parties. ¶14. It engages in ballot-chase programs, voter-turnout efforts, and voter-contact services. ¶¶15-18. It provides support to Republican candidates in general elections, and it formulates electoral strategies tailored to each State, jurisdiction, and race. ¶¶19-20. The NVGOP engages in similar activities, focused on Nevada. ¶¶26-27. Each of these are "pre-existing core activities" that the RNC and NVGOP conduct to facilitate their respective mission. *Mayes*, 117 F.4th at 1170. To plead an organizational injury, Plaintiffs need only *allege* that Defendants' NVRA violations injure, impede, or otherwise "frustrate[]" these activities. *Havens Realty*, 455 U.S. at 379.

Plaintiffs have pleaded far more than the "broadly alleged" frustration required under *Havens*. *Id.* They've explained how when Nevada "fails to maintain clean voter rolls," it "harms the ability of candidates, voters, and local state parties to know who needs to be registered and who needs to update their registration," which impedes Plaintiffs' efforts to register "*eligible* voters." 2d Am. Compl. ¶14. Plaintiffs have explained how Nevada's "false report of registered voters hinders the RNC's ability to effectively chase ballots and turn out voters" because the RNC doesn't know how many of those ostensibly registered voters remain eligible and reside in the same

jurisdiction. ¶15. Nevada's universal mail-ballot program magnifies the RNC's ballot-chase difficulties by sending "all active voters a mail ballot" based on inaccurate voter rolls. ¶16. Put simply, when a jurisdiction reports many registered voters, the RNC focuses on voter *turnout*. ¶17. When a jurisdiction reports few registered voters, the RNC focuses on voter *registration*. ¶17. When a jurisdiction reports an inaccurate number of registered voters, "the RNC is unable to determine whether it needs to prioritize voter registration or voter turnout, which necessarily harms the RNC's ability elect Republican candidates and turn out Republican voters." ¶17.

Defendants' NVRA violations also frustrate the RNC's voter-engagement efforts. The RNC contacts voter segments through a variety of traditional and digital avenues. ¶18. Those segments include active voters, inactive voters, recent voters, and a variety of other demographics that the RNC uses voter rolls to calculate. ¶18. Each message is tailored to a specific demographic, and "inaccurate voter rolls harm the effectiveness of these voter-contact efforts" by mixing up the proper recipients of each message. ¶18. They also result "in mail pieces being printed and sent but never properly delivered." ¶18. These injuries tangibly impede the RNC's ability to turn out Republican voters and elect Republican candidates. ¶18.

The RNC also relies on voter rolls to form its electoral strategies and provide contact support to Republican candidates. The RNC depends on voter rolls to form nationwide and state-specific electoral strategies. ¶20. The number of voters registered in a given jurisdiction affect the RNC's messaging and strategies surrounding voter turnout, voter registration, mail-voting campaigns, and in-person turnout efforts. ¶20. Inaccurate rolls provide "a false picture of Nevada's electorate" that necessarily damages the effectiveness of those strategies. ¶20. And inaccurate rolls frustrate the RNC's ability to provide "contact support" to Republican candidates. ¶19. "Voter rolls inform who should be contacted in [each] candidate's jurisdiction," and poor list maintenance "hinders the Republican candidate's ability to effectively target eligible voters, which harms her chances of winning that election." ¶19.

The NVGOP uses voter rolls for similar purposes. Inaccurate voter rolls "impede the NVGOP's efforts to engage active voters, conduct mail-ballot chase programs, and otherwise accomplish their core activities to elect Republican candidates and turn out Republican candidates." ¶29. The NVGOP "conducts residency discrepancy reports to mitigate" those harms. ¶28. Using "public records requests and other public sources of information," the NVGOP attempts to "catalogue active voters who have permanently moved to another State, or who have submitted a change of address and have registered to vote in a new State." ¶28. In other words, the NVGOP is doing what the NVRA requires Defendants to do, and only because the Defendants aren't fulfilling their statutory obligations. "But for the inaccurate voter rolls caused by Defendants' NVRA violations," the NVGOP would not need to conduct those residency discrepancy reports, ¶30. The NVGOP's activities would thus be more effective at turning out Republican voters and electing Republican candidates, ¶28-29, and it would be able to "spend those resources on other activities that further its organizational goals, such as get-out-the-vote efforts and voter registration," ¶30.

Compare these detailed allegations to the two sentences in *Havens* that the Supreme Court held stated an organizational injury: "Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices." *Havens Realty*, 455 U.S. at 379 (alteration in original). In *Havens*, that single allegation was enough to survive a motion to dismiss the complaint. *Id.* But the Defendants—relying on summary judgment and preliminary-injunction cases—would raise the pleading standard for organizations.

Plaintiffs' injuries are "not mere abstract concern about a problem of general interest." *Arlington Heights*, 429 U.S. at 263. They are concrete injuries to each organization's core activities that "the general population will not experience." *RNC v. Wetzel*, 2024 WL 3559623, at *5 (S.D. Miss. July 28, 2024), *rev'd in part on other*

grounds, 120 F.4th 200 (5th Cir. 2024). This might be a different case if Plaintiffs relied on money spent to oppose Defendants' list maintenance because it harmed Republican values or conflicted with the RNC's ideals. Those are the sort of "abstract social interests" that the Supreme Court warned against. *Havens Realty*, 455 U.S. at 379. But the RNC and NVGOP rely on injuries to their core activities, which occur regardless of whether they act "to oppose" Nevada's list-maintenance failures. *All. for Hippocratic Med.*, 602 U.S. at 394. That injury "fits comfortably" within organizational standing precedents. *RNC v. Wetzel*, 120 F.4th at 205 n.5.

The RNC and NVGOP need not shut down their operations to plead an Article III injury. The Secretary argues that the Plaintiffs don't allege "that they cannot continue their outreach and strategizing activities." Sec'y Mot. 7. But HOME, the plaintiff in *Havens*, didn't allege that either. The inaccurate information in *Havens* did not bar HOME from providing counseling and referral services; HOME could still "assist equal access to housing through counseling and other referral services," notwithstanding the defendants' legal violations. *Havens Realty*, 455 U.S. at 379. HOME suffered an injury because those activities had "been frustrated" by the defendants' conduct. *Id.* What mattered was that HOME's ordinary activities were "perceptibly impaired" by the defendants' conduct, not that they were totally barred. *Id.* That's because the "comparative magnitude of the harms alleged by the parties … is not relevant for standing purposes." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 664 n.5 (9th Cir. 2021) (en banc) (citing *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017)). The Secretary flouts that longstanding rule by arguing that an organization suffers an injury only if it "cannot continue" its operations. Sec'y Mot. 7.

When the Ninth Circuit observed in *Mayes* that the plaintiff organizations could still "continue their core activities," it was because the law they challenged "[did] not directly affect their pre-existing core activities." *Mayes*, 117 F.4th at 1178. Those plaintiffs were "nonprofit groups" that engaged in the "core and ongoing business of registering voters." *Id.* at 1169, 1180. But the provision they challenged "allow[ed]

county recorders to cancel a voter's registration" under certain conditions. *Id.* at 1170. That provision didn't affect the plaintiffs' activity of registering voters. That is, regardless of whether few or many voters' registrations were cancelled, the cancellation provision didn't make the plaintiffs' activity of registering voters any more difficult or less effective. *Id.* at 1180-81. Here, by contrast, Plaintiffs allege that Defendants' NVRA violations "directly affect" numerous "pre-existing core activities." *Id.* at 1178.

By focusing on diverted resources, the Defendants miss the Plaintiffs' core injuries. An organizational injury can be shown with a "concrete and demonstrable injury to the organization's activities," plus a "consequent drain on the organization's resources." *Havens Realty*, 455 U.S. at 379. Plaintiffs plead both: They allege that Defendants' NVRA violations impede Plaintiffs' "voter registration services," "ballot-chase programs and voter-turnout efforts," "voter-contact efforts," "contact support" services for candidates, and other "electoral" activities. 2d Am. Compl. ¶¶13-20. And they allege that to mitigate each of those independent injuries, the RNC and NVGOP have been "diverting substantial resources to counteract the effects of the State's failure to maintain clean rolls." ¶23. Plaintiffs divert these resources not "*in response* to a policy," but to mitigate the effects of a policy that "directly harms [their] already-existing core activities." *Mayes*, 117 F.4th at 1177. Said differently, Plaintiffs allege injuries that would occur even if they didn't divert any resources. And just as a tort victim doesn't lose standing when a hospital treats her injury, Plaintiffs don't lose standing when they divert resources to mitigate their injuries.

Recent precedent clarified that diverting resources *alone* does not constitute an injury. That's because any organization could divert resources to address any "policy that they dislike," regardless of whether the policy actually affects the organization. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024). But Plaintiffs here don't rely on resource diversion as the injury itself—they allege that Defendants' "actions directly affect[] and interfere[] with [their] core business activities." *Id.* The Secretary

thus argues against a strawman when he claims that "just because Plaintiffs might need to expend additional resources in support of their activities, that does not mean they have suffered a cognizable injury-in-fact." Sec'y Mot. 7. This is "not a case in which" Plaintiffs claim standing based on a "voluntary decision to spend more resources." *Mayes*, 117 F.4th at 1180. Rather, their "core and ongoing business activity [is] 'perceptibly impaired'" by Defendants' unlawful conduct. *Id.*

At this stage, Plaintiffs need not prove an injury—they need only allege one. And their numerous injuries mirror those in *Havens*: they allege "that a challenged governmental action directly injures the organization's pre-existing core activities and does so apart from the plaintiffs' response to that governmental action." *Mayes*, 117 F.4th at 1170. It would be "improper for the District Court to dismiss for lack of standing the claims of the organization in its own right." *Havens Realty*, 455 U.S. at 379.

B. The RNC and NVOGP's injuries are fairly traceable to Defendants' NVRA violations.

Plaintiffs adequately allege causation. Defendants' NVRA violations "impair[]" and "frustrate[]" the RNC and NVGOP's core activities, *Havens Realty*, 455 U.S. at 379, making it more difficult "to turn out Republican voters and elect Republican candidates," 2d Am. Compl. ¶23. "Proper voter roll maintenance would redress each of these injuries." ¶24. The Secretary doesn't dispute that he and the county defendants are responsible for maintaining the voter rolls. And that's all that the causation element tests. *See Lujan*, 504 U.S. at 560 ("there must be a causal connection between the injury and the conduct complained of—the injury has to be 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" (cleaned up)). The Defendants' counterarguments suffer from two errors.

First, Defendants improperly dispute the Plaintiffs' factual allegations. The Secretary claims that Plaintiffs can't show causation because "Nevada's voter rolls

accurately reflect who is registered to vote." Sec'y Mot. 8. But the Secretary ignores that Plaintiffs' injuries are caused by rolls "bloated with *ineligible voters*." 2d Am. Compl. ¶41 (emphasis added). Defendants dispute those allegations, claiming that even proper list maintenance "would cause the same alleged injuries to the Organizational Plaintiffs' outreach and strategizing activities." Sec'y Mot. 9; Int. Mot. 9-12. But that factual claim contests Plaintiffs' allegations. *E.g.*, 2d Am. Compl. ¶16 ("Inaccurate voter rolls result in more ineligible voters receiving mail ballots, which results in the RNC chasing ballots of citizens who are not even eligible to vote."). Plaintiffs allege that Defendants' violations impair their operations in a manner they would otherwise not experience. Intervenors dispute the *magnitude* of that injury, claiming that anything short of "perfect voter rolls" would not redress Plaintiffs' injuries. Int. Mot. 3. But "the magnitude of the asserted injury" presents "factual questions that cannot be resolved on a motion to dismiss." *Mecinas v. Hobbs*, 30 F.4th 890, 905 (9th Cir. 2022).

Defendants also reject Plaintiffs' allegations as "sheer speculation." Sec'y Mot. 8. But unlike the plaintiffs in *Mayes*, the RNC and NVGOP are not "speculat[ing]" about what "they might in the future" need to do. 117 F.4th at 1178. They allege harms that they experience right now as a result of Defendants' violations. The Intervenors fixate on the November 2024 election, Int. Mot. 11, but Plaintiffs allege ongoing injuries that recur with each election cycle. And "[w]hen 'standing is challenged on the basis of the pleadings,'" the Court "must 'accept as true all material allegations of the complaint' and 'construe the complaint in favor of the complaining party.'" *Cal. Rest. Ass'n*, 89 F.4th at 1100 (quoting *Pennell*, 485 U.S. at 7). Plaintiffs allege that improper list maintenance impedes a variety of their core activities, which suffices at this stage.

Second, Defendants' dispute about the degree of causation is an evidentiary issue not appropriate at the pleading stage. The Secretary again relies on *Mayes*, but in that case, the plaintiffs bore a "burden to make a clear showing of a concrete injury" to obtain a preliminary injunction. 117 F.4th at 1182. The Plaintiffs here don't have

to make a "clear showing" of anything. They must only *allege* an injury that is "plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted). The Ninth Circuit recognized that in some circumstances "the chain of causation will be longer and inferences will be necessary." *Mayes*, 117 F.4th at 1177. And at this stage, the Court must draw those inferences in Plaintiffs' favor. *Edwards*, 2023 WL 3467558, at *2.

In any event, the chain of causation here is no more attenuated than the chain of causation in *Havens*. In both circumstances, the defendant provided bad information to the plaintiff in violation of law. Just as that violation in *Havens* "directly impacted HOME's pre-existing core activity of helping Black clients obtain housing," Sec'y Mot. 8, Defendants' NVRA violations here "directly affect[] the RNC's ability to provide services to candidates and voters, and to accomplish its core activities of electing Republican candidates and turning out Republican voters in local, state, and federal elections," 2d Am. Compl. ¶13. The Secretary points out that in *Havens* the legal violation was a "wrongful lie," Sec'y Mot. 8, but he doesn't explain why that's relevant to whether the plaintiff is *injured*. Organizational standing doesn't turn on whether the underlying violation is fraud. What matters is that the Defendants' violation—whether under the NVRA or Fair Housing Act—results in a "concrete and demonstrable injury to the organization's activities." *Havens Realty*, 455 U.S. at 379.

It's also no answer to say that the Plaintiffs could "choose" not to use Defendants' defective voter rolls. Sec'y Mot. 8. It didn't matter in *Havens* whether HOME could have chosen to do business with other housing providers, or whether it could have obtained the information it sought from other avenues. 455 U.S. at 379. Likewise, a manufacturer cannot avoid liability for "defective goods" by suggesting that a "retailer" could simply choose not to buy those goods. *All. for Hippocratic Med.*, 602 U.S. at 395. The NVRA requires Defendants to maintain and publish accurate voter registration information, 52 U.S.C. §20501(b)(4), just as the Fair Housing Act requires housing providers to provide truthful information "regarding the availability"

of housing, *Havens Realty*, 455 U.S. at 368. Violating those duties has natural consequences for the people who rely on the information. And because Defendants have sole control over who is a registered voter, Plaintiffs can't seek remedies from anyone else. The Court must "afford due respect to Congress's decision" to require voter-roll maintenance, public disclosure of those rolls, and a private right of action to enforce both of those requirements. *TransUnion*, 594 U.S. at 425 (citing *Spokeo*, 578 U.S. at 340-41).

* * *

Because all Plaintiffs here seek the same relief under the same claim, "the Article III injury requirement is met if only one plaintiff has suffered concrete harm." *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020). And once a court concludes that at least one party has standing, it "err[s] by inquiring into the … independent Article III standing" of other parties. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020). The Court should rule that the Plaintiffs have pleaded an Article III injury and reach the merits of the complaint.

II. Plaintiffs have statutory standing under the NVRA.

The Secretary renews his argument that Plaintiffs don't have statutory standing under the NVRA because their injuries don't fall within the NVRA's "zone of interests." Sec'y Mot. 10. Courts have consistently rejected the argument. *See ACORN v. Fowler*, 178 F.3d 350, 363 (5th Cir. 1999); *Pub. Int. Legal Found. v. Boockvar* [*PILF v. Boockvar*], 370 F. Supp. 3d 449, 456 (M.D. Pa. 2019). In fact, the Secretary cites no case holding that private organizations fall outside the NVRA's zone of interests, even after the Plaintiffs pointed out that fact in the last round of briefing. *See* Resp. to Mot. to Dismiss Am. Compl. (Doc. 108) at 8. This Court should reject the argument.

The NVRA confers a right on any "person who is aggrieved by a violation" of the NVRA to "bring a civil action in an appropriate district court for declaratory or

injunctive relief with respect to the violation." 52 U.S.C. §20510(b)(1)-(2). As "used in the NVRA," that language is broad. *ACORN*, 178 F.3d at 365. When Congress enacts a "detailed statement of the statute's purposes," courts ask only whether the Plaintiffs' injury falls within those purposes. *Lexmark Int'l v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014). Plaintiffs have a cause of action "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. §20501(b)(4). Most of the RNC and NVGOP's injuries are the direct result of Defendants' failure to maintain "accurate and current voter registration rolls." *Id.* Those injuries satisfy Article III, as this brief explains. *See supra* Section I. And if inaccurate and out-of-date voter rolls harm Plaintiffs, the NVRA's purpose to ensure "accurate and current voter registration rolls" covers that injury. 52 U.S.C. §20501(b)(4); *accord ACORN*, 178 F.3d at 364 (holding that the "person aggrieved" formulation "allow[s] any plaintiff meeting Article III standing requirements to sue under the law").

The Secretary argues that the NVRA's purposes are "in service of the public interest at large, not the interest of any private or partisan entity." Sec'y Mot. 10-11. But nothing in the statute limits the NVRA to "public" injuries, as opposed to "private" ones. Indeed, the very presence of the private right of action forecloses that arbitrary distinction. In other words, the Secretary puts statutory standing at odds with Article III standing. Every plaintiff must show a particularized "private" injury to satisfy Article III. But according to the Secretary, that private injury necessarily *removes* plaintiffs from a statute's zone of interests. That rule makes no sense, which is why the Secretary has no authority to support it.

In any event, Plaintiffs' interests align with the NVRA's other purposes, too. Congress sought to "increase the number of eligible citizens who register to vote" and to "enhance[] the participation of eligible citizens as voters." 52 U.S.C. §20501(b)(1), (2). So do Plaintiffs. They engage in "voter turnout, voter registration, mail-voting campaigns, and in-person efforts." 2d Am. Compl. ¶20. An essential part of their mission is to "turn out Republican voters" in local, state, and federal elections. ¶¶17,

23, 29. The Secretary denigrates these interests as "partisan." Sec'y Mot. 10-11. But the NVRA doesn't close the courts to political parties. Many voter organizations—including the RNC, NVGOP, and the Intervenors in this case, *see* Mot. to Interv. (Doc. 7) at 4-8—focus their voter engagement on specific constituent groups. The NVRA's text doesn't prohibit such groups from invoking the private right of action, and creating such an arbitrary rule would frustrate Congress's design.

Finally, Congress enacted the NVRA "to protect the integrity of the electoral process." 52 U.S.C. §20501(b)(3). Plaintiffs work to ensure that, as well. They spend resources "monitoring Nevada elections for fraud and abuse, mobilizing voters to counteract it, educating the public about election-integrity issues, and persuading elected officials to improve list maintenance." 2d Am. Compl. ¶22. And when an organization "seeks to promote election integrity nationwide by ensuring that voter rolls are 'free from ineligible registrants, noncitizens, individuals who are no longer residents[,] and individuals who are registered in more than one location,'" it falls within "the zone of interests protected by the NVRA." *PILF v. Boockvar*, 370 F. Supp. 3d at 456. The RNC and NVGOP's interests are "not discordant with all of the NVRA's stated goals." *Id.* The Secretary cites no authority holding otherwise.

As for proximate cause, the Secretary again misrepresents Plaintiffs' claims. Plaintiffs do not argue, as the Secretary suggests, "that Nevada has kept too many people on the voter rolls." Sec'y Mot. 12. They claim that Defendants have failed "'to remove the names of *ineligible voters* from the official lists of eligible voters' due to death or change of residence." 2d Am. Compl. ¶42 (emphasis added) (quoting 52 U.S.C. §20507(a)(4)). And accepting Plaintiffs' "assertions at face value" about their reliance on voter rolls, they've at least "alleged proximate causation." *Lexmark*, 572 U.S. at 139. That is, if Defendants start complying with their list-maintenance obligations, "then it would follow more or less automatically" that the RNC and NVGOP's core activities would no longer suffer the setbacks alleged in the complaint. *Id.* at 140. To the extent there is any doubt that political parties depend on accurate voter rolls,

Plaintiffs are "entitled to a chance to prove [their] case" with "evidence of injury proximately caused by" Defendants' NVRA violations. *Id.*

III. The Second Amended Complaint states a claim under the NVRA.

Section 8 of the NVRA "requires States to 'conduct a general program that makes a reasonable effort to remove the names' of voters who are ineligible 'by reason of' death or change in residence." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (quoting 52 U.S.C. §20507(a)(4)). The law makes the removal of dead or relocated voters "mandatory." *Id.* at 767. Plaintiffs plausibly alleged that Nevada is not complying with this duty. The Secretary argues that "[n]o case brought on similar allegations has ever succeeded on the merits." Sec'y Mot. 19. But that just concedes that virtually all of those cases made it past the pleading stage. After that, the cases largely settle. *See* 2d Am. Compl. ¶¶98-103.

A. High active registration rates plausibly state a section 8 claim.

The allegations of high registration rates alone raise a reasonable inference of liability. The complaint alleges that at least eight counties have registration rates that are abnormally or impossibly high compared to the rest of the State and the rest of the country. 2d Am. Compl. ¶¶3-5, 63-71. These "unreasonably high registration rate[s]" create a "strong inference of a violation of the NVRA" that is "sufficient," on its own, to survive a motion to dismiss. *ACRU v. Martinez-Rivera*, 166 F. Supp. 3d 779, 805 (W.D. Tex. 2015). "Other courts" agree that "a registration rate in excess of 100%" indicates that a jurisdiction is "not making a reasonable effort to conduct a voter list maintenance program in accordance with the NVRA." *Jud. Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021); *Voter Integrity Proj. NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017); *Green*, 2023 WL 2572210, at *1; *ACRU*, 166 F. Supp. 3d at 793; *Daunt*, Ex. A at 16.

Defendants deem these allegations insufficient for three main reasons. First, the Secretary claims that the NVRA permits States to rely on the U.S. Postal Service's

change-of-address information as a "safe harbor." Sec'y Mot. 14. Second, Defendants claim that, instead of poor list maintenance, the inflated rolls could be caused by population growth or the NVRA's limits on how fast voters can be removed. Sec'y Mot. 14, 18-19; Int. Mot. 14-16. And third, they dispute the data. Sec'y Mot. 14-19; Int. Mot. 15-19. None of these arguments is a reason to dismiss a complaint at the pleading stage. Notably, the Secretary's primary authority is a case that was decided *at trial*, after the court received "extensive expert testimony." *Bellitto v. Snipes*, 935 F.3d 1192, 1207-08 (11th Cir. 2019). Earlier in that case, the district court denied the defendant's motion to dismiss, rejecting the same arguments the Secretary makes here. *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1365 (S.D. Fla. 2016).

First, the so-called "safe harbor" for USPS data is not a reason to dismiss the complaint. The NVRA allows a State to "meet the requirement of subsection (a)(4)" by relying on "change-of-address information supplied by the Postal Service." 52 U.S.C. §20507(c)(1). The Secretary suggests the USPS data may be inaccurate, Sec'y Mot. 14, but courts have found that argument "unconvincing" at this early stage. *ACRU*, 166 F. Supp. 3d at 793-94. If the USPS data were the sole cause of inflated rolls, the counties named in the complaint would not be outliers among the rest of the State. 2d Am. Compl. ¶¶69-71. Rather, "it is more likely that the Defendant's failure to maintain the voter rolls caused the registration rate to climb," which raises a "'strong inference'" that "is adequate to survive a motion to dismiss." *ACRU*, 166 F. Supp. 3d at 794.

Moreover, the Secretary doesn't claim that Defendants actually rely on USPS information. *See* NRS 293.530(1) (counties may "use any reliable and reasonable means" to determine whether a voter has moved residences). Even if some counties use USPS data, that would not prove that the Defendants consistently and accurately apply that data, or that they follow through in removing voters. The USPS data is meaningless unless States and counties actually use it. *See* 52 U.S.C. §20507(c)(1)(A) (requiring that the change-of-address information "is used"). Whether the State is

complying with "subsection (c)(1)" and whether that compliance "defeats Plaintiff[s'] claims" is a "fact-based argument more properly addressed at a later stage of the proceedings." *Bellitto*, 221 F. Supp. 3d at 1366; *accord Voter Integrity Proj. NC*, 301 F. Supp. 3d at 620 (similar); *Griswold*, 2021 WL 3631309, at *11 (similar).

The provision is also not a "safe harbor," at least not in the way that the Secretary means. The NVRA requires States to remove voters who have moved, 52 U.S.C. §20507(a)(4)(B), and restricts how States can remove those voters, *id.* §20507(d). The process in subsection (c)(1) is thus a "permissible" way to satisfy these "mandates and accompanying constraints." *A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 707 (6th Cir. 2016), *rev'd*, 584 U.S. 756. It is not a *sufficient* way to satisfy section 8's list-maintenance requirements. A process that admittedly permits "a substantial number of voters who have moved out of the jurisdiction" to remain on the rolls and fails to reach "40 percent of people who move," Sec'y Mot. 14, is hardly a "reasonable effort" to conduct list maintenance, 52 U.S.C. §20507(a)(4)(B). Moreover, the provision pertains only to a States' "obligations regarding change of address." *Bellitto*, 935 F.3d at 1210. Section 8 also requires States to remove voters who become ineligible due to "death," 52 U.S.C. §20507(a)(4)(A), and USPS data does not ensure Defendants are complying with that separate duty. *See Bellitto v. Snipes*, 302 F. Supp. 3d 1335, 1356-57 (S.D. Fla. 2017).

Second, Plaintiffs need not disprove other explanations for Nevada's inflated rolls. *See Starr*, 652 F.3d at 1216. The Secretary relies on a case in which "only one" of two "possible explanations" could be true, and "only one of which results in liability," *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013). But the allegations here are "plausible," not merely "possible," and this case does not present two alternatives, "only one of which can be true." *Id.* Even if the NVRA or population growth were "'partly responsible' for high voter registration rates," Sec'y Mot. 14 (citation omitted), that does not "exclude the possibility" that deficient list-maintenance is responsible for the rest, *Century Aluminum*, 729 F.3d at 1108. To the

extent there is "a potentially reasonable explanation for the high registration rate, … the validity of that explanation is not appropriate for determination at this early stage of the litigation, where the court views the factual allegations and inferences drawn therefrom in favor of [Plaintiffs]." *Voter Integrity Proj. NC*, 301 F. Supp. 3d at 619. The Secretary's alternative explanations are themselves contradictory. On one hand, he claims that the rolls *are* inflated because the NVRA does not allow counties to quickly remove ineligible voters. Sec'y Mot. 14-15. On the other hand, he claims that the rolls *are not* inflated because he reads the data differently. *Id.* at 15-23. These theories cannot render Plaintiffs' contrary inference of substandard list maintenance implausible.

Third, even if Defendants' criticisms of Plaintiffs' methodology were correct, they are not proper at this early stage. Relying on the post-trial *Bellitto* case, the Secretary argues that census data is "insufficient to prove an NVRA violation." Sec'y Mot. 16 (citing *Bellitto*, 935 F.3d at 1207-08). But at this stage, Plaintiffs don't need to "prove" anything. Even if the Court could weigh the evidence at this stage, Defendants' nitpicks with the census data are unpersuasive. Sec'y Mot. 15-20; Int. Mot. 15-16. The U.S. Election Assistance Commission uses the census numbers to estimate voter turnout and registration "because it provides a more accurate picture of the population covered by the [survey]." U.S. Election Assistance Comm'n, *Election Admin. and Voting Survey 2022 Comprehensive Report* 7 (June 2023), perma.cc/28SQ-T24L.

For example, Defendants quibble with Plaintiffs' use of the five-year census estimate instead of the one-year estimate. Sec'y Mot. 16-17; Int. Mot. 16-17. But the Census Bureau says that five-year estimate is the "[m]ost reliable" of the American Community Surveys.[1] The one-year estimate is more "current" but "[l]less reliable," and it only has "[d]ata for areas with populations of 65,000+," *id.*, which excludes *all*

[1] U.S. Census Bureau, *When to Use 1-year or 5-year Estimates* (Sept. 2020), perma.cc/LJ8K-WJYQ.

but two of Nevada's counties.[2] Next, the Secretary's use of old registration rates from 2017 through 2020 is self-defeating. Sec'y Mot. 17-18. Plaintiffs challenge the registration practices of today, not those of five years ago. To the extent there is disagreement about which data best measures those practices, "the fact-intensive dispute about the accuracy and significance of the Plaintiffs' statistics must be resolved at the summary-judgment stage or at trial." *Green*, 2023 WL 2572210, at *5. Even if the Court could consider Defendants' preferred statistics and methodologies, it cannot take "judicial notice of *disputed* facts," *Lee*, 250 F.3d at 690, or use outside materials to contradict the factual allegations or inferences in the complaint, *Khoja*, 899 F.3d at 1003, 1014. At most, Defendants' outside evidence "merely creates a defense to the well-pled allegations in the complaint," which cannot "defeat otherwise cognizable claims." *Id.*

Plaintiffs' methodology has been repeatedly upheld. Their "census data is reliable," *ACRU*, 166 F. Supp. 3d at 791, especially since Plaintiffs used "the most recent census data available at the time of the filing of [their] complaint," *Voter Integrity Proj. NC*, 301 F. Supp. 3d at 619. Regardless, this Court cannot dismiss the complaint even if it suspects that the "registration numbers may not be unreasonably high in context or there may be a reasonable explanation for them." *Griswold*, 2021 WL 3631309, at *11. At "the motion to dismiss stage, the Court does not 'weigh potential evidence that the parties might present'" in this manner. *Id.* Defendants' disputes about "the reliability" and "significance" of "Plaintiffs' statistics" thus cannot defeat "a 'reasonable inference' that the defendant is liable." *Green*, 2023 WL 2572210, at *5.

[2] Nev. Legislature Research Div., *Population of Counties in Nevada* (Aug. 2021), perma.cc/NY8M-RFP6.

B. The many other allegations in the complaint plausibly allege an NVRA violation.

Although courts have held that Plaintiffs' voter-registration data states a claim, the complaint here does not rest on those numbers alone. The complaint documents examples of six jurisdictions with similarly high registration rates who, after they were sued, essentially agreed that their rolls were inflated. *See* 2d Am. Compl. ¶¶98-103. The complaint also rules out alternative explanations for these inflated rolls. ¶¶70-71. And it details even more data demonstrating that certain counties are not keeping up with residency changes, ¶¶76-82, and not removing voters even after marking them inactive, ¶¶83-88.

Start with residency discrepancies, which courts have held also allege an NVRA violation. *Compare Griswold*, 554 F. Supp. 3d at 1108 ("the 2018 EAC Report shows that 30 Colorado counties reported removing fewer than 3% of voters," even though "18% of Coloradans were not living in the same house as a year ago"), *with* 2d Am. Compl. ¶¶79-80 (the 2020-2022 EAC Report shows that two counties "reported removing less than 2% of their registration lists for residency changes" even though "more than 15% of Nevada's residents were not living in the same house as a year ago"). The Secretary obfuscates by changing the words of the statute: he claims the State can't "systematically act" on residence changes in the 90 days before an election. Sec'y Mot. 14. That's false. The provision he cites says that the State cannot "systematically *remove*" voters from the rolls 90 days before an election. 52 U.S.C. §20507(c)(2)(A). Nothing in the NVRA prohibits Defendants from moving voters to inactive status before an election or notifying the voters of their residency status. In any event, these alternative explanations are irrelevant, *see Starr*, 652 F.3d at 1216, and even Defendants can't explain why some counties removed *no voters* for failing to respond to an address-confirmation notice, 2d Am. Compl. ¶81. The complaint contrasts a highly mobile population with unusually stagnant list-maintenance for

those moves. ¶¶76-82. That data raises a plausible inference of a violation. *Griswold*, 554 F. Supp. 3d at 1108.

Even if Nevada had a "reasonable program" to maintain its rolls, Nevada's treatment of inactive registrations shows that it is not *implementing* that program. The second amended complaint alleges that Nevada's rate of inactive registrations (16%) is much higher than the national average (11%). ¶¶84-86. The Secretary argues that the discrepancy shows that Nevada is aggressively canceling registrations. Sec'y Mot. 20-21. But at most, it shows that Nevada is effective at *almost* canceling registrations but fails to actually remove those voters from the rolls. In other words, a "high 'inactive registration rate'" is evidence that even if the State is "availing itself of the NVRA's safe harbor," it may "not actually be implementing it." *Griswold*, 554 F. Supp. 3d at 1097, 1108. The NVRA requires States to "conduct" a list-maintenance program, not to simply *have* a list-maintenance program. 52 U.S.C. §20507(a)(4); *see Bellitto*, 935 F.3d at 1205-06 (defendants must demonstrate as a "factual" matter that they "reasonably used [the enacted] process"). Nevada's treatment of inactive registrations shows it is failing to remove ineligible voters from the rolls.

Contrary to Intervenors' argument, Plaintiffs need not point to specific failures. Int. Mot. 12-14. The NVRA requires reasonable list maintenance, not specific policies, so identifying specific policies that the State must adopt or repeal cannot be part of the plaintiff's pleading burden. *See King*, 993 F. Supp. 2d at 922. Similarly, Plaintiffs' claim relies on an omission: that Defendants are failing to conduct proper list maintenance. "[L]ittle factual detail is necessary or available when a plaintiff is alleging that the defendant failed to act." *Arvizu v. Medtronic Inc.*, 41 F. Supp. 3d 783, 792 (D. Ariz. 2014); *accord Washington v. Baenziger*, 673 F. Supp. 1478, 1482 (N.D. Cal. 1987).

Regardless, the second amended complaint details many specific failures. Start with the 4,684 voters who have been inactive for over two election cycles. 2d Am. Compl. ¶89. Defendants don't dispute that state law requires their removal. *See* NRS

293.530. But they haven't been removed. The Secretary suggests that the Court should infer those voters *have* been removed because the "allegation is based on the voter rolls as of June 2024." Sec'y Mot. 22. But the motion-to-dismiss standard does not permit the Court to draw inferences against the Plaintiffs. *Edwards*, 2023 WL 3467558, at *2. Even if it did, Defendants' failure to remove those voters for months on end is solid evidence of their list-maintenance violations. Relying on a summary-judgment case, the Secretary argues that 4,684 voters is a relatively small number. Sec'y Mot. 22 (citing *PILF v. Benson*, 2024 WL 1128565, at *11 (W.D. Mich. Mar. 1, 2024)); *see also* Int. Mot. 18. But the proper comparator and relative size of a particular failure are questions of fact, as that case shows. More to the point, Defendants can't avoid a plausible inference of a violation by arguing the violation "isn't that bad." The 4,684 voters are evidence that Defendants are failing to act on their own records that show thousands of improper registrations. By not removing those voters, the Defendants are violating state law. *See* NRS 293.530. At a minimum, that failure raises a reasonable inference that Defendants are not taking "reasonable efforts." *See PILF v. Benson*, 2022 WL 21295936, at *9-10 (denying motion to dismiss complaint).

The second amended complaint also details failures of residency maintenance. At least part of Clark County's bloated rolls is explained by the significant number of non-residential addresses listed. *See Kraus v. Portillo*, Doc. 1, No. A-24-896151-W (8th Jud. Dist., Clark Cty. June 25, 2024); 2d Am. Compl. ¶82. The Secretary claims that "voter registration does not require a residential address," Sec'y Mot. 24, but then contradicts that claim by citing state law that prohibits registrants from listing a "business as the address … unless the applicant actually resides there," NRS 293.507(4)(c); *see also id.* 293.486(1). And *Kraus v. Portillo* contains evidence of several locations where voters couldn't "actually reside[]," *id.*, such as empty parking lots, demolished buildings, and a U.S. Post Office, *see Kraus*, Doc. 1 at 10-12, 24-25. "Clark County's failure to use 'reliable and reasonable means' to confirm voters' residences

indicates a systemic failure to maintain the voter rolls." 2d Am. Compl. ¶82. The plaintiffs settled that case after they "received the relief" they requested, and the Clark County Registrar opened an "investigation of the ninety (90) known commercial addresses listed as residences." *Kraus*, Stip. and Order for Dismissal at 2.

The second amended complaint also provides specific examples of how the Defendants are failing in their list-maintenance duties. When clerks send out election postcards, state law requires them "to use any postcards which are returned to correct the portions of the statewide voter registration list which are relevant to the county clerk." NRS 293.530(1)(f). The Secretary recently took responsibility for postcards away from the clerks. 2d Am. Compl. ¶80. But he did not take on the coordinate duty to use those postcards to correct "the statewide voter registration." NRS 293.530(1)(f). The Secretary responds that the "Plaintiffs are trying to impose their own view of what constitutes reasonable efforts." Sec'y Mot. 24. But it's the Nevada Legislature's view that Defendants must use election postcards to correct "the statewide voter registration." NRS 293.530(1)(f). By shifting the responsibility of election officials, the Secretary nullified a key list-maintenance tool enacted by the Legislature.

These failures with the Secretary's new system persist. Recent "testing of the new system revealed errors affecting tens of thousands of voters in Washoe County, including voters assigned to the wrong precincts and active voters labeled as inactive or vice versa." 2d Am. Compl. ¶93. And at least one county "missed [the] federal deadline to clean the rolls of inactive voters" before the election. ¶93. In fact, "there were 'enough issues'" with the Secretary's new system "'that clerks pressured Aguilar's office to delay the 'go-live' date until after the June primary.'" ¶94. And "[d]espite the Secretary's assurances that problems have been fixed, a local registrar has told reporters that 'shortcomings have not been fully addressed' and 'incorrect voter data wound up in the new system.'" ¶96. The Secretary's response that these problems are "unrelated to Nevada's efforts to conduct list maintenance" are belied by the allegations and public sources in the complaint. Sec'y Mot. 24-25. The complaint

shows "that the new system is broken" and that "Defendants are failing to implement basic list-maintenance procedures." 2d Am. Compl. ¶95.

CONCLUSION

The Court should deny the Defendants' motions to dismiss.

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Respectfully submitted,

/s/ Jeffrey F. Barr

Jeffrey F. Barr
NV Bar No. 7269
ASHCRAFT & BARR LLP
8275 South Eastern Avenue
Suite 200
Las Vegas, NV 89123
(702) 631-4755
barrj@ashcraftbarr.com

Counsel for the Republican National Committee and Scott Johnston

/s/ Sigal Chattah

Sigal Chattah
NV Bar No. 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd #204
Las Vegas, NV 89118
(702) 360-6200
sigal@thegoodlawyerlv.com

Counsel for the Nevada Republican Party

Thomas R. McCarthy*
VA Bar No. 47145
Gilbert C. Dickey*
VA Bar No. 98858
Conor D. Woodfin*
VA Bar No. 98937
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com

**admitted pro hac vice*

Counsel for Plaintiffs