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13 **Admitted Pro Hac Vice*

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

16 Scot Mussi, Gina Swoboda, in her capacity) No. CV-24-01310-PHX-DWL
17 as Chair of the Republican Party of Arizona,)
18 and Steven Gaynor,) **PROPOSED**
) **INTERVENORS**
19 Plaintiffs,) **ARIZONA ALLIANCE**
) **FOR RETIRED**
20 v.) **AMERICANS AND VOTO**
21) **LATINO'S MOTION TO**
Adrian Fontes, in his official capacity as) **DISMISS PLAINTIFFS'**
22 Arizona Secretary of State,) **COMPLAINT**
23)
Defendant.) (Oral Argument Requested)
24)
25)
26)
27)
28)

1 Under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Proposed Intervenor-
2 Defendants the Arizona Alliance for Retired Americans (“the Alliance”) and Voto Latino
3 (“Proposed Intervenor”) file this proposed motion to dismiss the complaint filed by
4 Plaintiffs Scot Mussi, Gina Swoboda, and Steven Gaynor (collectively, “Plaintiffs”).

5 INTRODUCTION

6 Congress enacted the National Voter Registration Act of 1993 (“NVRA”) to make
7 it *easier* for qualified voters to register and remain registered to vote. Plaintiffs improperly
8 seek to weaponize the statute by demanding this Court order Arizona to undertake new and
9 baseless purges of the voter rolls mere months before the 2024 General Election, all without
10 plausibly alleging a deficiency in the state’s reasonable efforts to conduct list maintenance.
11 This case is part of troubling trend: In the past several months, activists have filed similar
12 suits in states across the country as part of a nationwide effort to remove voters from the
13 rolls ahead of the 2024 General Election.¹ Like those other cases, Plaintiffs’ suit fails both
14 for lack of jurisdiction and because it does not plausibly allege a violation of the NVRA.

15 To start, each Plaintiff lacks standing. Their purported injuries—worries about
16 election integrity, the possibility of voter fraud and dilution of their votes, and the
17 expenditure of resources to address those speculative and generalized grievances—fall
18 short of what Article III requires. Plaintiffs also seek relief this Court cannot grant. Because
19 of the NVRA’s requirement that states may not conduct any systematic voter removal
20 programs within 90 days of a federal primary or general election—a period that has already
21 begun for the primary, which will take place on July 30, and which will then shortly be in
22 place again for the closely following general election—Plaintiffs’ requested relief cannot
23 plausibly be obtained before that election. Additionally, the Eleventh Amendment prohibits
24 the Court from ordering Defendant to comply with state law. *See Pennhurst State Sch. &*

25
26 ¹ *See, e.g.,* Complaint, *Republican Nat’l Comm. v. Aguilar*, No. 2:24-cv-518(D. Nev. Mar.
27 18, 2024), ECF No. 1; Complaint, *Pub. Int. Legal Found. v. Knapp*, No. 3:24-cv-
28 1276(D.S.C. Mar. 14, 2024), ECF No. 1; *Republican Nat’l Comm. v. Benson*, No. 1:24-cv-
262 (E.D. Mich. Mar. 13, 2024), ECF No. 1; Complaint, *Jud. Watch, Inc. v. Ill. State Bd.
of Elections, et al.*, Case No. 1:24-cv-1867 (N.D. Ill. Mar. 5, 2024). ECF No. 1.

1 *Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

2 On the merits, Plaintiffs fare no better. To plausibly allege a violation of the NVRA,
3 Plaintiffs must plead facts that suffice to show that Arizona is not making “reasonable
4 efforts” at list maintenance. *See* 52 U.S.C. § 20507(a)(4). Yet Plaintiffs offer no clear
5 allegation as to how Defendant’s list-maintenance efforts fall short of the NVRA’s
6 “reasonable efforts” requirement. Instead, Plaintiffs focus exclusively on the results,
7 contending that the numbers of registered voters in certain Arizona counties are too high
8 or that too few voters have been removed. But Plaintiffs’ statistical comparisons are
9 misleading, and ignore that the NVRA does not require—but instead expressly *prohibits*—
10 immediate removal of many voters, even if they may seem ineligible, to guard against
11 wrongful disenfranchisement. *See, e.g., id.* § 20507(d).

12 These and other limitations on the NVRA’s list-maintenance requirements provide
13 an “obvious alternative explanation” for Plaintiffs’ allegations about registration and
14 removal rates, requiring Plaintiffs to provide some factual allegation suggestive of lawless
15 rather than lawful conduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 566–67 (2007).
16 Plaintiffs’ belief that Arizona counties have too many people on their voter rolls is not
17 enough: The Rules require more than such a “naked assertion” to state a claim. *Id.* at 557.

18 **BACKGROUND**

19 **I. Arizona’s obligations under the National Voter Registration Act**

20 The NVRA requires states to provide simplified, voter-friendly systems for
21 registering to vote. Congress enacted the NVRA to *expand* access to the franchise by
22 establishing “procedures that will increase the number of eligible citizens who register to
23 vote in elections for Federal office” and by making it “possible for Federal, State, and local
24 governments to implement [the NVRA] in a manner that enhances the participation of
25 eligible citizens as voters in elections for Federal office.” 52 U.S.C. § 20501(b)(1)–(2).

26 To further those pro-voter purposes, the NVRA imposes strict restrictions on
27 whether, when, and how a state may cancel a voter’s registration. *See id.* § 20507(a)(3)–
28

1 (4), (b)–(d). Outside of limited and carefully delineated exceptions, a state may not remove
2 a voter until that voter has (1) failed to respond to a notice, and (2) not appeared to vote for
3 two general elections—or roughly four years—following delivery of the notice. *Id.*
4 § 20507(d)(1).² Congress therefore purposefully “limited the authority of states to
5 encumber voter participation by permitting states to only remove registrants” in a carefully
6 prescribed manner. *Am. C.R. Union v. Phila. City Comm’rs*, 872 F.3d 175, 182 (3d Cir.
7 2017).

8 At the same time, while Congress required that states maintain a “general program
9 that makes a reasonable effort to remove the names” of voters who have died or moved
10 “from the official lists of eligible voters,” 52 U.S.C. § 20507(a)(4), Congress did not
11 demand perfection. The “NVRA requires only a ‘reasonable effort,’ not a perfect effort, to
12 remove registrants.” *Pub. Int. Legal Found. v. Benson* (“*PILF*”), No. 1:21-CV-929, 2024
13 WL 1128565, at *11 (W.D. Mich. Mar. 1, 2024). And states need not “use duplicative tools
14 or [] exhaust every conceivable mechanism” to comply with the “reasonable effort”
15 requirement. *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th Cir. 2019). This balanced
16 approach reflects the twin policy objectives of the NVRA—to “enhance[] the participation
17 of eligible citizens as voters” and “to protect the integrity of the electoral process.” *See* 52
18 U.S.C. § 20501(b). It also reflects Congress’s judgment that it is better to tolerate some
19 ineligible voters remaining on the rolls past their point of ineligibility than to permit the
20 erroneous removal—and potential disenfranchisement—of eligible voters. Because of this
21 policy choice, voter rolls are *expected* to contain more names than those who are currently
22 eligible. Consistent with that expectation, federal courts reject NVRA claims based on
23 “snapshot[s]” of the number of registered voters at a given moment. *E.g., Bellitto*, 935 F.
24 3d at 1208.

25 Arizona has enacted robust procedures to identify and remove registered voters who

26 _____
27 ² A state may immediately cancel a person’s registration when a voter requests to be
28 removed from the rolls, if a voter is convicted of a disenfranchising felony under state law,
or upon verification of a voter’s death. *Id.* § 20507(a)(3)(A)–(C), (a)(4).

1 are no longer qualified to vote in their jurisdiction. *See* A.R.S. § 16-165(A)(2)–(5) (removal
 2 procedures for various categories of ineligible voters, including deceased Arizonans,
 3 individuals adjudicated incapacitated, and those convicted of a felony); *id.* § 16-165(D)
 4 (removal based on mental incapacitation); *id.* § 16-165(E) (removal based on department
 5 of health death records); *id.* § 16-165(F) (removal based on out-of-state license records);
 6 *id.* § 16-166(A) (inactive status based on U.S. Postal Service address verification); *id.* § 16-
 7 166(E) (inactive status based on change of address information); Ariz. Sec’y of State, State
 8 of Ariz. 2023 Elections Procedure Manual, 36–48 (Dec. 30, 2023) (“EPM”).³ And while
 9 the Secretary maintains the statewide database of voters, county election officials play a
 10 significant role in the state’s list maintenance protocols. *See id.*

11 As to voters who may have moved, “[o]ne of the principal ways” the state “ensure[s]
 12 the accuracy of registration records is to update records based on a registrant’s change of
 13 address.” EPM 45. County recorders receive information about a voter’s potential address
 14 change in various ways: from the Secretary (who periodically receives reports containing
 15 information from the Department of Transportation and information from other states),
 16 directly from the voter, from the U.S. Postal Service’s National Change of Address
 17 (“NCOA”) service, or through returned mail. *Id.* at 38–40, 45. Arizona is also part of the
 18 Electronic Registration Information Center (“ERIC”), which provides states with
 19 nationwide motor vehicle registration and Social Security Administration data, among
 20 other sources. *Id.* at 39, 45. When information from these sources suggests that a voter may
 21 have moved, Arizona follows the procedures “outlined in the NVRA.” *Id.* at 46. County
 22 recorders may also cancel registrations based on information from “reliable sources.” *Id.*
 23 at 38 (citing A.R.S. § 16-165(A)(2)).⁴ For voters who have died, election officials receive

24 ³ The EPM has the force of law. *Ariz. Pub. Integrity All. v. Fontes*, 475 P.3d 303, 308
 25 (2020). The 2023 EPM is available at:
 26 https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_1_2024.pdf.

27 ⁴ The NVRA includes a safe-harbor procedure: states may meet their obligation to conduct
 28 “reasonable” list maintenance by using NCOA data to identify voters who may have moved

1 data from the state department of health via the Secretary of State, verify the deaths, and
 2 remove voters from the rolls. A.R.S. § 16-165(E). In short, Arizona’s several voter removal
 3 procedures constitute “a reasonable effort” as required by the NVRA.

4 **II. Plaintiffs’ Complaint**

5 On June 3, three individual Arizona residents filed suit against the Secretary of
 6 State, alleging that the Secretary is violating his list-maintenance obligations under Section
 7 8 of the NVRA Compl. ¶¶ 71, 102–03. The gravamen of Plaintiffs’ complaint is that the
 8 Secretary *must* be violating the NVRA because Arizona counties have “implausibly high”
 9 rates of voter registration in Plaintiffs’ opinion. *Id.* ¶ 7. Plaintiffs conclude so because they
 10 believe the state’s total registration numbers exceed what should be “*expected*” according
 11 to a purported expert who derived estimates of registered voters from federal surveys and
 12 compared them to state-level data. *Id.* ¶¶ 7, 74 n.5.⁵ Plaintiffs also point to correspondence
 13 from the Secretary to leaders of the Arizona Legislature stating that one category of state-
 14 level notice and cancellation procedures related to voters who may have moved are “in
 15 development,” interpreting this to mean “that the general maintenance program required of
 16 states by the NVRA does not currently exist in Arizona.” *Id.* ¶¶ 3, 17, 71. But nowhere
 17 does the complaint identify any instance of Arizona improperly keeping someone on the
 18 voter rolls whom the NVRA required be removed, or any procedure that Arizona fails to

19
 20 and cancel such registrations according to the NVRA process. *See* 52 U.S.C. § 20507(c)(1).
 21 In Arizona, county recorders are authorized to use NCOA data for list maintenance
 purposes. *See* A.R.S. § 16-166(E); EPM 45–46.

22 ⁵ Plaintiffs purport to “incorporate[]” an “expert report” prepared for this litigation by
 23 Thomas M. Bryan to “support[]” “[a]ll the data discussed” in the Complaint. Compl. ¶ 7
 24 n.1; *see* Compl. Ex. 1, ECF No. 1-1 (“Bryan Report”). But under Federal Rule of Civil
 25 Procedure 10(c) and Ninth Circuit precedent applying it, such “evidentiary” material is not
 26 properly part of the complaint and cannot be considered at the pleading stage. *See, e.g.,*
 27 *DeMarco v. DepoTech Corp.*, 149 F. Supp. 2d 1212, 1219–22 (S.D. Cal. 2001) (granting
 motion to strike expert affidavit attached as an exhibit to plaintiffs’ complaint); *see also*
 28 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (citing *DeMarco*, 149 F. Supp.
 2d at 1219–21, and holding that affidavits “prepared” for litigation were not properly
 considered part of a pleading). Should the Court grant their intervention motion, Proposed
 Intervenors intend to file a motion to strike the Bryan Report as well as all conclusory
 allegations and opinions in the Complaint that are derived from it under Federal Rule of
 Civil Procedure 12(f) and Local Rule 7.2(m).

1 use that the NVRA requires. Nor do Plaintiffs acknowledge Arizona’s numerous statutory
2 provisions that describe the state’s “reasonable efforts” to comply with the NVRA.
3 Plaintiffs simply assume that Arizona must be violating the NVRA because there are more
4 voters on the rolls than Plaintiffs believe there should be.

5 The complaint likewise offers little to establish any injury to Plaintiffs because of
6 Defendant’s list-maintenance practices. Plaintiffs do little more than claim an interest in
7 the Secretary following the law, while contending that the Secretary’s voter roll practices
8 “undermine [their] confidence in Arizona’s electoral system” and “risk dilution” of their
9 votes if “ineligible” voters were to cast ballots. *Id.* ¶ 104. Plaintiffs also allege they or
10 organizations they lead that are not parties to the case will spend resources to address the
11 Secretary’s purported failure to comply with the NVRA. *Id.* ¶ 105.

12 As relief, Plaintiffs ask this Court to order an overhaul of Arizona’s list-maintenance
13 procedures: in addition to a declaratory judgment that the Secretary is violating Section 8
14 of the NVRA, Plaintiffs demand an injunction instructing the Secretary to develop and
15 implement “reasonable and effective” registration list-maintenance programs and
16 implement existing voter-removal procedures.

17 LEGAL STANDARD

18 Standing is a “threshold matter central to [the court’s] subject matter jurisdiction”
19 under Rule 12(b)(1). *Bates v. United Parcel Serv., Inc.*, 511 F. 3d 974, 985 (9th Cir. 2007).
20 To establish Article III standing, a plaintiff must sufficiently allege (1) a “concrete” and
21 “particularized” injury-in-fact, actual or imminent, (2) that is fairly traceable to the
22 defendant’s conduct, and (3) is likely to be redressed by a favorable decision from the
23 court. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016). Plaintiffs, as “[t]he party
24 invoking federal jurisdiction[,] bear[] the burden of establishing these elements.” *Lujan v.*
25 *Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

26 To survive a motion to dismiss under Rule 12(b)(6), a complaint must “state a claim
27 to relief that is plausible on its face.” *Koster v. Whitaker*, 427 F. Supp. 3d 1140, 1145 (D.
28

1 Ariz. 2019) (quoting *Twombly*, 550 U.S. at 570), *aff'd*, 843 F. App'x 917 (9th Cir. 2021).
 2 Although a court must “take all of the factual allegations in the complaint as true,” *Ashcroft*
 3 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555), “a plaintiff must
 4 allege facts sufficient to ‘raise a right to relief above the speculative level.’” *Koster*, 427 F.
 5 Supp. 3d at 1145 (quoting *Twombly*, 550 U.S. at 555). Motions to dismiss should be granted
 6 “where the well-pleaded facts do not permit the court to infer more than the mere possibility
 7 of misconduct, the complaint has alleged—but has not ‘show[n]’—‘that the pleader is
 8 entitled to relief.’” *Iqbal*, 556 U.S. at 679 (alteration in original) (quoting Fed. R. Civ. P.
 9 8(a)(2)). Because Plaintiffs lack standing and their claim lacks merit, their complaint fails
 10 under both Rule 12(b)(1) and 12(b)(6), and it should be dismissed.

11 ARGUMENT

12 I. Plaintiffs fail to plausibly allege standing.

13 Plaintiffs fail to plausibly allege any “actual or imminent” and “concrete and
 14 particularized” injuries-in-fact. *Lujan*, 504 U.S. at 560 (citation omitted). Each of their
 15 purported bases for standing—worries about election integrity, the specter of voter fraud
 16 and vote dilution, and vague allegations that they or non-party organizations will spend
 17 resources in response to Arizona list-maintenance procedures—fall far short of Article III’s
 18 requirements.

19 A. Plaintiffs’ desire for the government to follow the law and worries 20 about election integrity and vote dilution are not cognizable.

21 According to the complaint, each Plaintiff “has a clear interest in supporting the
 22 enforcement of laws such as the NVRA that promote fair and orderly elections,” Compl.
 23 ¶¶ 22, 26, 28, and “inaccurate voter registration rolls undermine Plaintiffs’ confidence in
 24 Arizona’s electoral system,” *id.* ¶ 104. Such subjective and unsubstantiated worries about
 25 Arizona’s compliance with the NVRA—and their supposed effect on Plaintiffs’ faith in the
 26 integrity of Arizona’s elections—are not cognizable harms.

27 Plaintiffs’ “concern [about] obedience to law” is an “abstract and indefinite” harm
 28

1 that fails to supply an injury-in-fact. *Novak v. United States*, 795 F.3d 1012, 1018 (9th Cir.
2 2015) (quoting *Fed. Election Comm’n v. Akins*, 524 U.S. 11, 23 (1998)). It is no more than
3 a “generally available grievance about government . . . [that] does not state an Article III
4 case or controversy.” *Jewel v. Nat’l Sec. Agency*, 673 F.3d 902, 909 (9th Cir. 2011)
5 (quoting *Lujan*, 504 U.S. at 573–74). The Supreme Court has held that mere concern about
6 whether a federal election requirement “has not been followed” is “precisely the kind of
7 undifferentiated, generalized grievance about the conduct of government that [courts] have
8 refused to countenance.” *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam)
9 (dismissing case challenging Colorado law as violating Elections Clause for lack of
10 standing); see also *FDA v. All. for Hippocratic Med.*, Nos. 23-235 & 23-236, 2024 WL
11 2964140, at *6 (U.S. June 13, 2024) (“[A] citizen does not have standing to challenge a
12 government regulation simply because the plaintiff believes that the government is acting
13 illegally”). Plaintiffs allege no more with respect to their concern about whether the
14 Secretary is following the NVRA and their fear about the ensuing consequences. In
15 “seeking relief that no more directly and tangibly benefits [Plaintiffs] than it does the public
16 at large,” the complaint “does not state an Article III case or controversy.” *Lance*, 549 U.S.
17 at 439 (quoting *Lujan*, 504 U.S. at 573–74).

18 The same is true of Plaintiffs’ generalized concerns about election integrity. Those
19 allegations fail to constitute a cognizable injury-in-fact for another reason as well—they
20 are purely speculative. “Courts have universally concluded that an alleged injury related to
21 a lack of confidence” in election administration “is ‘too speculative to establish an injury
22 in fact.’” *Thielman v. Fagan*, No. 3:22-CV-01516, 2023 WL 4267434, at *4 (D. Or. June
23 29, 2023) (quoting *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1028–29 (D. Ariz. 2022)), *aff’d*
24 *sub nom. Thielman v. Griffin-Valade*, No. 23-35452, 2023 WL 8594389 (9th Cir. Dec. 12,
25 2023). The complaint states that “Arizona [] has experienced known cases of voter fraud,”
26 Compl. ¶ 44, but nowhere does it identify any instance of fraud, let alone suggest that any
27 fraud has resulted from Arizona’s list-maintenance efforts. While the complaint makes a
28

1 passing reference to a two-decade old federal report on elections that contained a few lines
2 about voter rolls and possible fraud, *id.* ¶ 43, it makes no connection between any fraud
3 and Defendant’s list-maintenance procedures. Merely invoking “the possibility and
4 potential for voter fraud,” based only on “hypotheticals, rather than actual events,” does
5 not suffice. *Donald J. Trump for President, Inc., v. Boockvar*, 493 F. Supp. 3d 331, 406
6 (W.D. Pa. 2020). Plaintiffs’ “subjective fear” about the prospect of voter fraud thus “does
7 not give rise to standing.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013).

8 Plaintiffs also allege that their “votes risk being diluted” because of Arizona’s list-
9 maintenance procedures. Compl. ¶ 31. This, too, is a textbook generalized grievance:
10 “Plaintiffs’ purported injury of having their votes diluted due to ostensible election fraud
11 may be conceivably raised by any [Arizona] voter.” *Paher v. Cegavske*, 457 F. Supp. 3d
12 919, 926 (D. Nev. 2020). “Such claimed injury therefore does not satisfy the requirement
13 that Plaintiffs must state a concrete and particularized injury.” *Id.*; *see also Bowyer v.*
14 *Ducey*, 506 F. Supp. 3d 699, 712 (D. Ariz. 2020) (rejecting vote dilution claim because it
15 raised only generalized grievances). Indeed, a “veritable tsunami” of courts across the
16 country, including in this Circuit, have *uniformly* rejected such a vote-dilution theory of
17 standing. *O’Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL
18 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff’d*, No. 21-1161, 2022 WL
19 1699425 (10th Cir. May 27, 2022).⁶

20 _____
21 ⁶ Plaintiffs’ generalized vote-dilution theory is different in kind from a vote-dilution injury
22 in the redistricting context, where a law *minimizes* a voter’s or a group of voters’ voting
23 strength *as compared to other voters*. *See, e.g., Baker v. Carr*, 369 U.S. 186, 207–08
24 (1962). “As courts have routinely explained, vote dilution is a very specific claim that
25 involves votes being weighed differently and cannot be used generally to allege voter
26 fraud.” *Bowyer*, 506 F. Supp. at 711; *see also Wood v. Raffensperger*, 981 F.3d 1307, 1314
27 (11th Cir. 2020) (explaining why vote dilution may be an injury “in the racial
28 gerrymandering and malapportionment contexts” but not in the context raised here). No
court has recognized Plaintiffs’ theory of injury, where the alleged counting of
“illegitimate” ballots would “dilute” the voting power of all Arizonians equally. *See, e.g.,*
Wood, 981 F.3d at 1314–15 (“Vote dilution in this context is a paradigmatic generalized
grievance that cannot support standing.”) (citation omitted); *Donald J. Trump for*
President, Inc. v. Cegavske, 488 F. Supp. 3d 993, 1000 (D. Nev. 2020) (Plaintiffs’ alleged
injury of vote dilution is impermissibly “generalized” and “speculative”); *Wash. Election*

1 Moreover, Plaintiffs’ theory of standing premised on the possibility of unidentified
2 voters committing fraud raises serious traceability and redressability concerns, as there is
3 no reason to think Plaintiffs’ requested relief will resolve their baseless and speculative
4 fears. *See Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181
5 (2000) (explaining it must be “likely, as opposed to merely speculative, that the injury will
6 be redressed by a favorable decision”). That is particularly true here where Plaintiffs’
7 allegations of injury “depend on ‘the unfettered choices made by independent actors not
8 before the courts.’” *Novak*, 795 F.3d at 1020 (quoting *ASARCO Inc. v. Kadish*, 490 U.S.
9 605, 615 (1989)); *cf. Levine v. Vilsack*, 587 F.3d 986, 997 (9th Cir. 2009) (explaining that
10 a “pleading directed at the likely actions of third parties . . . would almost necessarily be
11 conclusory and speculative”); *see* Compl. ¶ 29 (alleging only that “ineligible voters have
12 an opportunity to vote”). Simply put, there is no reason to think Plaintiffs’ votes will be
13 diluted by fraudulent votes absent the relief they request.

14 In sum, neither Plaintiffs’ concern that Arizona is not adhering to the NVRA nor
15 their speculative worries about election integrity and vote dilution confer standing.

16 **B. Plaintiffs fail to allege cognizable monetary or resource-based**
17 **harm.**

18 Nor have Plaintiffs sufficiently alleged any other injuries that could support their
19 standing. Plaintiffs claim that they “must spend more time and resources monitoring
20 Arizona’s elections for fraud and abuse, mobilizing voters to counteract it, educating the
21 public about election-integrity issues, and persuading elected officials to improve list
22 maintenance” and that they must “spend more of their time and resources on get-out-the-
23

24 *Integrity Coal. United v. Wise*, No. 2:21-CV-01394, 2022 WL 4598508, at *4 (W.D. Wash.
25 Sept. 30, 2022) (collecting cases and concluding that allegations of vote dilution do not
26 confer standing); *Hall v. D.C. Bd. of Elections*, No. CV 23-1261, 2024 WL 1212953, at *4
27 (D.D.C. Mar. 20, 2024) (“At bottom, they are simply raising a generalized grievance which
28 is insufficient to confer standing.”); *Testerman v. N.H. Sec’y of State*, No. 23-CV, 2024
WL 1482751, at *4 (D.N.H. Jan. 9, 2024) (“[C]ourts that have considered voters’ standing
in circumstances similar to those here have uniformly rejected individual standing claims
based on allegations of dilution resulting from allegedly illegal votes being cast.”).

1 vote efforts for like-minded individuals.” Compl. ¶¶ 32–33. But their “bare and conclusory
2 allegations are insufficient to show that [Arizona’s list maintenance] has” required such
3 actions. *See Our Watch With Tim Thompson v. Bonta*, 682 F. Supp. 3d 838, 848 (E.D. Cal.
4 2023). Indeed, despite Plaintiffs’ awareness of the alleged list maintenance deficiencies for
5 more than ten months, the complaint is devoid of any allegation of what “time and
6 resources” have been spent, what Plaintiffs have done to “mobilize voters,” how they have
7 “educate[d] the public about election integrity issues” or “persuade[d] elected officials” to
8 act, Compl. ¶¶ 32–33, or how and from what Plaintiffs have been “required to divert their
9 resources,” *id.* ¶ 105. The complaint is thus “devoid of any allegations” about how the
10 Secretary’s activities “specifically impact[]” Plaintiffs, and they have at most “pled facts
11 suggesting that [their] values have been undermined.” *Our Watch*, 682 F. Supp. 3d at 848.
12 More is required.

13 Even if Plaintiffs had sufficiently pled an injury based on expenditure of resources,
14 they cannot create standing by “divert[ing] resources to combat an impermissibly
15 speculative injury.” *Cegavske*, 488 F. Supp. 3d at 1003. Because Plaintiffs have failed to
16 allege a non-speculative injury stemming from Arizona’s list-maintenance practices, any
17 resources spent in response are expended to address an illusory problem. Plaintiffs’ alleged
18 election-integrity injuries derive from “speculative fears” based on a “chain of
19 contingencies,” and are thus “self-inflicted” and “insufficient to establish a cognizable
20 injury.” *Doe v. Bonta*, 101 F.4th 633, 640 (9th Cir. 2024) (quoting *Clapper*, 568 U.S. at
21 410–11); *see also Clapper*, 568 U.S. at 416 (holding a plaintiff “cannot manufacture
22 standing merely by inflicting harm on themselves based on their fears of hypothetical future
23 harm that is not certainly impending”); *see supra* Section I.A. Put differently, Plaintiffs
24 “cannot manufacture standing by first claiming a general interest in lawful conduct and
25 then alleging that the costs incurred in identifying and litigating instances of unlawful
26 conduct constitute injury in fact.” *Project Sentinel v. Evergreen Ridge Apartments*, 40 F.

1 Supp. 2d 1136, 1139 (N.D. Cal. 1999).⁷ This theory of standing too fails.

2 **II. Plaintiffs fail to plausibly allege any violation of the NVRA.**

3 As Plaintiffs acknowledge, all the NVRA requires is that states “conduct a general
4 program that makes a *reasonable effort* to remove the names of ineligible voters” from the
5 rolls due to death or change of residence. Compl. ¶ 37 (emphasis added) (citing 52 U.S.C.
6 § 20507(a)(4)). Plaintiffs’ meager attempt to cast doubt on the state’s reasonable efforts to
7 remove ineligible voters relies on misleading and faulty data and ignores Arizona’s robust
8 list maintenance procedures. In short, nothing in the complaint creates a plausible inference
9 that Arizona has failed to make “reasonable efforts” to maintain its voter rolls in violation
10 of the NVRA.

11 The gist of Plaintiffs’ complaint is that Arizona *must* not be complying with the
12 NVRA because, in Plaintiffs’ view, “all Arizona counties have exceptionally high rates of
13 registered voters.” *Id.* ¶ 85; *see also id.* ¶¶ 72–99.⁸ But the numbers Plaintiffs point to are
14 “equally consistent with lawful conduct” and thus, “under *Twombly*, plaintiffs have not
15 pleaded facts that would move their allegations from merely possible to plausible.” *In re*

16 _____
17 ⁷ To the extent Plaintiffs intend to do so, they may not assert the rights of non-party
18 organizations that are allegedly spending resources in response to the Secretary’s list-
19 maintenance activities or otherwise impacted by them. Bedrock standing principles require
20 that parties “assert their own rights rather than rely on the rights or interests of third
21 parties.” *Hong Kong Supermarket v. Kizer*, 830 F.2d 1078, 1081 (9th Cir. 1987). Though
22 Plaintiffs Mussi and Swoboda lead organizations not party to this litigation, Compl. ¶¶ 21,
23 23, they cannot claim the purported injuries to those absent organizations as their own to
24 establish standing because organizational standing turns on “whether the organization *itself*
25 has suffered an injury in fact.” *We Are Am./Somo Am., Coalition of Ariz. v. Maricopa Cnty.*
Bd. of Supervisors, 809 F. Supp. 2d 1084, 1094 (D. Ariz. 2011) (emphasis added). And
26 while limited exceptions to that fundamental principle exist—such as when (1) “the party
27 asserting the right has a close relationship with the person who possesses the right” and (2)
28 “there is a hindrance to the possessor’s ability to protect his own interests,” *E. Bay*
Sanctuary Covenant v. Trump, 932 F.3d 742, 764 (9th Cir. 2018) (quoting *Sessions v.*
Morales-Santana, 582 U.S. 47, 57 (2017)), no such exceptions exist here, and the Complaint
nowhere contains allegations otherwise. Accordingly, the Court should not consider any
purported impact of the Secretary’s list-maintenance activities on non-party organizations.
See, e.g., Compl. ¶ 25 (describing the Republican Party of Arizona’s purported use of voter
rolls).

⁸ Throughout the complaint, Plaintiffs cite the total number of registered voters, including
inactive voters, which leads to an artificially inflated number of registrants because
multiple Arizona statutes require placing potentially ineligible voters on inactive status in
various circumstances before removal. *See, e.g.*, A.R.S. §§ 16-165 (F), 16-166(A), (E).

1 *Graphics Processing Units Antitrust Litig.*, 527 F. Supp. 2d 1011, 1023 (N.D. Cal. 2007).

2 Plaintiffs nowhere account for the fact that Congress “designed [the NVRA] to
3 protect voters from improper removal and only provide[d] very limited circumstances in
4 which states may remove them” from the rolls. *Am. C.R. Union*, 872 F.3d at 182. The law
5 purposefully “limits the methods which a state may use to remove individuals from its
6 voting rolls and is meant to ensure that eligible voters are not disenfranchised by improper
7 removal.” *U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 381 (6th Cir. 2008). Most
8 notably, if a voter fails to respond to a notice about a possible change of address, the NVRA
9 forbids removing the voter until that voter has failed to appear to vote in at least two federal
10 general elections—a four-year lag period meant to protect against improper removals,
11 which has been incorporated into Arizona law. 52 U.S.C. § 20507(d); *see* A.R.S. § 16-
12 166(E). In other words, Congress elected to permit some ineligible voters to remain on the
13 rolls for several years while the statutorily prescribed removal process occurs. Courts have
14 thus recognized that states need not “immediately remove every voter who may have
15 become ineligible,” and that “the NVRA requires only a ‘reasonable effort,’ not a perfect
16 effort.” *PILF*, 2024 WL 1128565, at *11. “[T]he statute requires nothing more of the state.”
17 *Bellitto*, 935 F.3d at 1203.

18 Considering the NVRA’s narrow requirements and strict limitations, Plaintiffs’
19 allegation that there are too many voters on the rolls fails to suggest anything “more than
20 the mere possibility of misconduct.” *Iqbal*, 556 U.S. at 679. The numbers Plaintiffs point
21 to are just as consistent with Arizona adhering to the removal processes established by
22 Congress. While Plaintiffs claim registration rates are too high, they do not explain why
23 they are inconsistent with “reasonable” list maintenance efforts. Instead, Plaintiffs allege
24 only that they show more registrants than estimates of the number of individuals who are
25 *qualified* to vote at any given time. *See* Compl. ¶¶ 7–15, 73–89. But that is not enough to
26 plead a violation of the NVRA, which requires that potentially ineligible voters remain on
27 the rolls for years before removal. Because “Plaintiffs must do more than allege facts that
28

1 are merely consistent with both their explanation and defendants’ competing explanation,”
 2 *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1105 (9th Cir. 2013), it is not
 3 enough to point to the “sheer number of . . . registered voters . . . [as] a hallmark of an
 4 unreasonable list maintenance program.” *Pub. Int. Legal Found. v. Boockvar*, 495 F. Supp.
 5 3d 354, 359 (M.D. Pa. 2020) (cleaned up). Under the NVRA, there is nothing
 6 “unreasonable” about having what appears to be an excessive number of voters on the rolls
 7 at one moment in time.

8 Moreover, as several courts have found, there is good reason *not* to take Plaintiffs’
 9 numbers at face value, even at the pleading stage. Their data relies on the 2022 American
 10 Community Survey (“ACS”) produced by the U.S. Census Bureau to estimate the current
 11 population of several Arizona counties. *E.g.*, Compl. ¶ 76. The Eleventh Circuit observed
 12 that such ACS data may “significantly underestimate[] the population” of a county for
 13 various reasons, including because it “asks who has resided in the household in the two-
 14 month period” preceding the survey, thereby “exclud[ing] many college students, military
 15 personnel” and others who may not reside in an area for the full year. *Bellitto*, 935 F.3d at
 16 1208. The Census Bureau itself has cautioned that “[d]ue to the variance inherent in survey
 17 estimates,” it “do[es] not recommend combining survey data from the [American
 18 Community Survey] with administrative record data, such as those produced as part of
 19 voter tallies.”⁹ Yet Plaintiffs do just that, despite the Census Bureau’s warning that “the
 20 margin of error could be around 90 percent.”¹⁰

21 For Arizona’s allegedly high registration rate, Plaintiffs rely on the 2022 Election
 22 Administration and Voting Survey (“EAVS”) produced by the U.S. Election Assistance
 23 Commission. *E.g.*, Compl. ¶¶ 94–95, 98. But courts have warned that an “EAVS snapshot”
 24 can “in no way be taken as a definitive picture of what a county’s registration rate is, ‘much

25 _____
 26 ⁹ Kurt Hildebrand, *Republican National Committee names Douglas in voter roll lawsuit*,
 27 TAHOE DAILY TRIB. (Mar. 31, 2024),
<https://www.tahodailytribune.com/news/republican-national-committee-names-douglas-in-voter-roll-lawsuit> (quoting statement of Census Bureau representative).

28 ¹⁰ *Id.*

1 less any indication of whether list maintenance is going on and whether it's ...
2 reasonable.” *Bellitto*, 935 F. 3d at 1208 (cleaned up). The EAVS itself, relied on by
3 Plaintiffs in their complaint, warns that:

4 [D]ata on registered and eligible voters as reported in the EAVS should be
5 used with caution, as these totals can include registrants who are no longer
6 eligible to 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.

7 2022 EAVS at 140 (emphasis added)¹¹; *see also Jud. Watch, Inc. v. North Carolina*, No.
8 3:20-CV-211-RJC-DCK, 2021 WL 7366792, at *10 (W.D.N.C. Aug. 20, 2021) (observing
9 the same cautionary note in 2018 EAVS survey). The EAVS thus advises that “states
10 should expect to see high voter registration rates,” meaning that “such information, without
11 more, does not” provide a meaningful inference of “non-compliance with the NVRA.” *Jud.*
12 *Watch*, 2021 WL 7366792, at *10. As a result, Plaintiffs’ data sources are not fit for the
13 purposes chosen by Plaintiffs, as both courts and the authors of such data have recognized.

14 Even taking Plaintiffs’ data and faulty theories at face value, the numbers suggest
15 nothing besides a “reasonable” voter roll-maintenance program. Arizona’s registration
16 data, cited by Plaintiffs elsewhere, combined with their ACS data shows a registration rate
17 of 77.8% in 2022, lower than at least one of the survey comparisons Plaintiffs claim
18 represent expected registration rates. Compl. ¶ 81 & Bryan Report ¶ 55 (alleging expert’s
19 calculations result in 81.4% registration based on 2022 CES Post-Election Survey); *id.* ¶ 80
20 n.6. The EAVS also shows that 432,498 voters were removed from the rolls in Arizona
21 during the two-year period Plaintiffs claim no reasonable program was being conducted,
22 confirming what the Secretary stated to Plaintiff Mussi last year: Arizona is actively
23 removing voters from the rolls. Compl., Ex. 3 at 7, ECF No. 1-3.¹²

24
25 ¹¹ U.S. Election Assistance Commission, Election Administration and Voting 2022
26 Comprehensive Report (June 2023), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

27 ¹² *See* U.S. Election Assistance Comm’n, 2022 EAVS Data Brief for Arizona (2022),
https://www.eac.gov/sites/default/files/2023-10/2022_EAVS_Data_Brief_AZ_508c.pdf;
28 *see also* Bryan Report, ¶ 60.

1 Other isolated data points Plaintiffs offer do not indicate anything besides a
2 “reasonable” effort. Plaintiffs repeatedly claim that about 30,000 deceased voters were
3 wrongly left on the rolls. *See, e.g.*, Compl. ¶ 12. But Plaintiffs compare apples to oranges:
4 they report the total number of deaths and then “assume[] 100%” of these individuals were
5 registered and thus should have been removed. Bryan Report, ¶ 65. But while “the Arizona
6 Department of Health Services provides the Secretary of State a record of the death of a
7 resident of the state, [] not everyone who is included in that list is a registered voter.” *See*
8 Compl. Ex. 2 at 2, ECF No.1-2.¹³ Applying a 69.9% registration rate, which Plaintiffs claim
9 is reasonable, Compl. ¶ 7, to the total 143,278 deceased Arizonians means about 100,151
10 deceased Arizonians were likely registered voters who should have been removed from the
11 rolls. Given Plaintiffs admit that 108,103 voters were removed using death records, *id.*
12 ¶ 12, Plaintiffs fail to show any gap at all.

13 Plaintiffs point to little else to support any inference that Arizona is falling short of
14 the NVRA’s requirements. While Plaintiffs note that the Secretary has reported that some
15 state-level list-maintenance procedures in Arizona are “in development,” Plaintiffs
16 nowhere acknowledge Arizona’s existing comprehensive statutory removal procedures,
17 *see* A.R.S. § 16-165(A)(2)–(5), (D), (E), (F); *id.* § 16-66(A), (E); EPM 36–48, never mind
18 “allege that this program itself is deficient” or “point to a specific breakdown that makes
19 the program ‘unreasonable.’” *Boockvar*, 495 F. Supp. 3d at 359. “Without allegation, let
20 alone proof,” of such a breakdown, the Court cannot infer “that the many procedures
21 currently in place are unreasonable.” *Id.* Plaintiffs also observe that the EAVS lacks data
22 on some of the removal notices sent in Maricopa County, Compl. ¶ 95, but again, they
23 never allege that any of the voters who received those notices are ineligible or should have
24 been removed from the rolls.

25 At bottom, the complaint offers no basis to infer that the Secretary, or any election

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27 ¹³ While Plaintiffs’ “expert” adjusted these figures for citizenship and voting age, he made
28 no other adjustments and assumed that 100% of these voters were registered. Bryan Report
¶ 65.

1 official in Arizona, is not complying with the NVRA. The “naked assertion” that Arizona’s
2 voter rolls include too many voters—a fact entirely consistent with the purposeful design
3 of NVRA—“stops short of the line between possibility and plausibility,” *Twombly*, 550
4 U.S. at 557, and the complaint should be dismissed.

5 **III. Plaintiffs seek relief that is unavailable.**

6 Any injunctive relief Plaintiffs seek for 2024 is unavailable because the NVRA
7 prohibits systematic voter removals during the 90-day period before a federal election. 52
8 U.S.C. § 20507(c)(2)(A) (systemic list maintenance must be completed “not later than 90
9 days prior to the date of a primary or general election for Federal office.”). Arizona’s
10 federal primary election is on July 30, 2024, and the removal blackout window began on
11 May 1. The 2024 general election will be on November 5, and the blackout period before
12 it begins on August 7. With only seven days available outside of the blackout period, the
13 Court cannot order any systematic voter list maintenance before the 2024 general election
14 without violating the NVRA’s clear prohibition on purging voters within the months
15 leading up to federal elections.

16 Plaintiffs also request that the Court enter “[a]n injunction requiring the Secretary
17 to fully comply with any existing procedures that Arizona has in place” to remove
18 ineligible voters from the rolls. Compl. at 19. The Supreme Court has made clear that a
19 federal court cannot order state officials to comply with state law. *See Halderman*, 465
20 U.S. at 98–100. Thus, this Court also cannot provide this portion of the relief Plaintiffs
21 seek. *See Lucas v. Ariz. Sup. Ct. Fiduciary Certification Program*, No. CV09-2599, 2010
22 WL 2573557, at *1–2 (D. Ariz. June 23, 2010) (finding court lacked authority under the
23 Eleventh Amendment to compel Arizona state officers to comply with state law), *aff’d*,
24 457 F. App’x 689 (9th Cir. 2011).

25 **CONCLUSION**

26 For all of these reasons, Plaintiffs’ complaint should be dismissed.
27
28

1 RESPECTFULLY SUBMITTED this 25th day of June, 2024.

2 By: /s/ D. Andrew Gaona
3 D. Andrew Gaona
Austin C. Yost

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CERTIFICATE OF CONFERRAL

1
2 Under Local Rule 12.1(c), the undersigned counsel for Proposed Intervenor-
3 Defendants the Arizona Alliance for Retired Americans and Voto Latino (“Proposed
4 Intervenors”) certifies that, on June 21, 2024, Proposed Intervenors’ counsel informed
5 counsel for Plaintiffs and counsel for Defendant that Proposed Intervenors intended to
6 lodge a proposed motion to dismiss on the same schedule as Defendant. Counsel for
7 Proposed Intervenors requested to participate in a meet-and-confer to discuss with the
8 parties the issues that would be raised in Proposed Intervenors’ proposed motion to dismiss.
9 Counsel for Defendant did not object to counsel for Proposed Intervenors participating in
10 a meet-and-confer, but counsel for Plaintiffs objected and refused to confer.

11 /s/ D. Andrew Gaona
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