**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION**

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| UNITED SOVEREIGN AMERICANS, INC., BERNARD JOHNSON, AND CITIZENS DEFENDING FREEDOM,<br><br>*Plaintiffs*,<br><br>v.<br><br>JANE NELSON, in her official capacity as the Secretary of State of Texas, KEN PAXTON, in his official capacity as the Attorney General of Texas, and MERRICK GARLAND, in his official capacity as Attorney General of the United States,<br><br>*Defendants.* | Case No. 2:24-cv-00184 |

**BRIEF IN SUPPORT OF MOTION TO INTERVENE BY TEXAS STATE CONFERENCE OF THE NAACP AND LEAGUE OF WOMEN VOTERS OF TEXAS**

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## INTRODUCTION AND BACKGROUND

Proposed Intervenor-Defendants ("Proposed Intervenors") Texas State Conference of the NAACP ("Texas NAACP") and the League of Women Voters of Texas ("LWVTX" or "the League") move, under Federal Rule of Civil Procedure ("Rule") 24(a)(2), to intervene as of right as Defendants in this matter, or in the alternative, for permissive intervention under Rule 24(b).

Plaintiffs' nebulous request for judicial intervention on the eve of an election, seemingly up to and including lawlessly removing thousands of voters from the voter rolls and denying the certification of election results, is unprecedented, has zero basis in law or fact, and would undermine not only the secure and efficient administration of elections in Texas, but also the voting rights of Texas voters.

Proposed Intervenors are civil rights organizations dedicated to protecting the voting rights of their members and all Texans, including Black voters and other voters of color who have faced barriers to the exercise of their rights to fully participate and vote in Texas. As part of that mission, Proposed Intervenors work across the State to educate and register voters, help voters access mail ballots, mobilize voters to the polls, and more. *E.g.*, App.4, App.6, App.11.

Proposed Intervenors seek to intervene as Defendants on behalf of their members and on behalf of themselves. Plaintiffs' requested relief of interfering with voter rolls, particularly on the eve of an election, and preventing election certification would threaten the voting rights of all Texans, sow baseless confusion, and force Proposed Intervenors to divert precious resources away from core activities like voter mobilization, education, and election protection toward identifying and assisting affected voters. Affected voters will include Proposed Intervenors' members who intend to vote in the upcoming election, as well as in future elections that would be disrupted if the Court grants the requested relief.

Proposed Intervenors satisfy each requirement for intervention as a matter of right under Rule 24(a)(2), and the Court should grant the motion to intervene. Alternatively, the motion should be granted on a permissive basis under Rule 24(b)(1).

## ARGUMENT

### I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(A)(2).

Texas NAACP and the League are entitled to intervene as of right. "Although the movant bears the burden of establishing its right to intervene, Rule 24 is to be liberally construed," *Brumfield v. Dodd*, 749 F.3d 339, 341 (5th Cir. 2014), "with doubts resolved in favor of the proposed intervenor," *Energy Gulf States La., L.L.C. v. EPA*, 817 F.3d 198, 203 (5th Cir. 2016) (internal quotation marks omitted). Pursuant to Rule 24(a)(2), a non-party is entitled to intervention if: (1) the application is timely; (2) the applicant has an interest relating to the property or transaction that is the subject of the action; (3) the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; and (4) the applicant's interest is inadequately represented by the existing parties to the suit. *Sierra Club v. Espy*, 18 F.3d 1202, 1204–05 (5th Cir. 1994). "Federal courts should allow intervention 'where no one would be hurt and greater justice could be attained.'" *Id.* at 1205 (quoting *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970)).

Proposed Intervenors easily meet each of these requirements.

#### A. The Motion Is Timely.

Courts consider four factors when examining the timeliness of a motion to intervene. These are (1) the length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before it petitioned for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be

intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the would-be intervenor may suffer if intervention is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Sierra Club*, 18 F.3d at 1205 (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264–66 (5th Cir. 1977)).

Each of the timeliness factors weigh in favor of Proposed Intervenors. *First*, Proposed Intervenors have not delayed in filing—they learned of this litigation shortly after its filing and are submitting this motion in the infancy of the case, during the pleading stage. *See, e.g.*, *Swoboda v. Manders*, 665 F. App'x 312, 314 (5th Cir. 2016) (motion to intervene timely when filed 45 days after learning that original parties would not protect movant's interests and 625 days after complaint was filed); *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (motion to intervene filed after "only 37 and 47 days . . . [was] not unreasonable"); *Sierra Club*, 18 F.3d at 1206 (motion to intervene filed two months after movants became aware that Forest Service would not protect their interests considered timely); *Labrew v. A&K Truckline, Inc.*, No. 2:23-CV-079-Z-BR, 2023WL 7420203, at *4 (N.D. Tex. Nov. 9, 2023) (intervention timely when "litigation has not progressed at all"); *La. State Conf. of the NAACP v. Louisiana*, No. 19-479-JWD-SDJ, 2022 WL 2663850, at *6 (M.D. La. July 11, 2022) ("The Fifth Circuit has found motions to intervene filed both close to and longer than two months were timely.").

*Second*, no existing party to the litigation is prejudiced by intervention because of the short time between the initiation of this lawsuit and this motion, as well as the fact that no scheduling order has been issued, and not all defendants have filed responsive pleadings or motions. *See Labrew*, 2023 WL 7420203, at *4 (no prejudice "when case is still in its infancy"). Intervention will not delay litigation proceedings, and this factor weighs in favor of Proposed Intervenors.

*Third*, Proposed Intervenors will be prejudiced if they are unable to intervene and defend their interests, as discussed in detail below. *See Infra* Part I.C. The Organizations' members face the risk of potential disenfranchisement and on top of that, the Organizations must divert considerable resources away from planned activities to respond to any problems that would arise if the requested relief is granted. App.6–7, App.12–13.

*Fourth*, there are no unusual circumstances in this matter that bear on timeliness of intervention. Proposed Intervenors' motion is therefore timely.

### B. Proposed Intervenors Have Substantial Legal Interests Supporting Intervention.

A party is entitled to intervene as of right under Rule 24(a) if their interest in the subject matter of the litigation is "direct, substantial, [and] legally protectable." *Sierra Club*, 18 F.3d at 1207 (5th Cir. 1994) (quoting *Piambino v. Bailey*, 610 F.2d 1306, 1321 (5th Cir. 1980) (citations omitted)). "[A]n interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (quoting *Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015)). Courts judge the intervenor's interest "by a more lenient standard if the case involves a public interest question or is brought by a public interest group." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014).[1]

[1] Defendant-Intervenors need not establish Article III standing if they do not seek relief, through a counter-claim, cross-claim, or any other claim for relief, that is not sought by existing parties. *See Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435 (2017) (intervenor must establish standing if they wish to "pursue relief" different from existing parties); *Texas v. U.S. Dep't of the Interior*, No. 23-CV-00047-DC, 2023 WL 11759736, at *2 (W.D. Tex. Aug. 29, 2023) (certain intervenor-defendants—those who do not raise counterclaim, cross-claim, or any other claim for relief—need not establish Article III standing to successfully intervene); *Franciscan All., Inc. v. Azar*, 414 F. Supp. 3d 928, 938 n.3 (N.D. Tex. 2019) (relying on *Town of Chester* and holding defendant intervenors do not "seek relief" and therefore need not demonstrate standing, in part because "'relief' is linked to affirmative claims, not defenses").

Proposed Intervenors are both "public interest group[s]" with at least two significant interests at stake in this litigation that raise "public interest question[s]," *Brumfield*, 749 F.3d at 344: (1) ensuring that the members and constituents they serve remain registered to vote and are able to participate successfully and have their votes counted in the upcoming General Election and in future elections, and (2) continuing to engage in critical election-year activities and other organizational priorities without having to divert resources from those core organizational activities to address the harms to their members and the voting public that will likely flow from Plaintiffs' requested relief.

As to their members, many are eligible voters who are registered to vote in Texas and intend to vote in the General Election and in future elections. *See* App.4–6, App.12. The disposition of this suit will directly impact the members, communities, and constituents of Proposed Intervenors—eligible voters who stand to be disenfranchised if they are improperly removed from the voter rolls just before the election or if elections in which they voted are not certified. App.6, App.12. Proposed Intervenors' interest in protecting their members' rights is itself a sufficient basis for intervention. *See League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434 (5th Cir. 2011) (voter has sufficient interest to intervene to "protect his right to vote" in at-large, rather than single member district elections); *Carter v. Dies*, 321 F. Supp. 1358, 1360 (N.D. Tex. 1970) (three-judge district court) (voters have right to intervene based on claim that "filing fees deprive them of their right to vote for a candidate of their own choice"); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1307 (N.D. Ga. 2018) (intervention as of right appropriate where voter intervenors would be potentially disenfranchised by the requested relief); *Bellitto v. Snipes*, No. 16-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 20, 2016) (organization allowed to intervene where it "asserts that its interest and the interests of its members would be threatened by

the court-ordered 'voter list maintenance' sought by Plaintiffs"); *cf. Pub. Int. Legal Found., Inc. v. Winfrey* ("*PILF*"), 463 F. Supp. 3d 795, 798–802 (E.D. Mich. 2020) (permitting League intervention in National Voter Registration Act suit to purge voters to protect interests of its members and "assure that no overzealous measures going beyond the reasonable list maintenance program required by the statute are employed, which could increase the risk of properly registered voters being removed by mistake").

Proposed Intervenors also have an interest in carrying out their core mission by continuing to devote all their resources to their planned elections-related programs and other organizational priorities. App.6–7, App.12–13. Courts routinely find that organizations, including public interest organizations like Proposed Intervenors, should be granted intervention in voting cases when they demonstrate harm to their core missions and activities. *See, e.g.*, *La Union*, 29 F.4th at 306 (Republican Party committees satisfied interest requirement under Rule 24(a) because they expend resources to recruit and train volunteers and poll watchers, whose conduct is regulated by challenged law); *Kobach v U.S. Election Assistance Comm'n*, No. 13-4095, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (advocacy groups allowed to intervene where organizational interests broadly articulated as "either increasing participation in the democratic process, or protecting voting rights, or both, particularly amongst minority and underprivileged communities"); *PILF*, 463 F. Supp. 3d at 798–802; *Issa v. Newsom*, No. 20-01055, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (civil rights organizations permitted to intervene on grounds that if plaintiffs won, then proposed intervenors would "have to devote their limited resources to educating their members on California's current voting-by-mail system and assisting those members with the preparation of applications to vote by mail").

Here, Proposed Intervenors have robust plans for pre-election programming in service of their core missions, much of which is already in full swing. App.4, App.11. Proposed Intervenors have been assisting their members, communities, and other prospective voters in registering to vote; educating them about voting in the upcoming General Election; and planning activities to mobilize these voters to the polls. App.6, App.11. But their work is at risk of being undermined if this Court orders (as Plaintiffs appear to request) Defendants to needlessly remove large swaths of registered voters from the voter rolls just before the General Election or to withhold certification of election results. This risk is particularly heightened here, where Proposed Intervenors would have to divert resources from their ordinary pre-election work, which they planned to take place during the NVRA's 90-day quiet period, *see* 52 U.S.C. § 20507(c)(2), during which removing voters from the voter rolls pursuant to systematic programs, as requested by Plaintiffs, is prohibited. App.6, App.12.

Instead, Proposed Intervenors will be forced to spend their resources educating voters about the State's plan to cancel registrations and contacting voters who have been removed from voter rolls. App.6, App.12–13. For voters whose registration is canceled after the October 7, 2024, registration deadline, *see* Tex. Elec. Code § 16.061, Proposed Intervenors will have to educate voters about cumbersome procedures to challenge the cancellation of their registration. App.6, App.12. In such a scenario, Proposed Intervenors would need to assist voters who might be purged, to look up whether their members and constituents are subject to a purge, and to follow up on their members' behalf prior to Election Day, all of which would require inordinate staff and volunteer time and resources they cannot afford to lose. App.6, App.12 –13. For future elections, Proposed Intervenors will have to divert their resources toward re-registering voters who were removed from the voter rolls, as opposed to their usual focus on registering first-time voters and other election

activities. App.6–7, App.11–12. Having to spend scarce volunteer and staff time to respond to these issues would thus prevent Propose Intervenors from registering new voters in the time that is left (as distinct from re-registration or cancellation challenges and the attendant separate focus those would require) and conducting voter education, and voter mobilization. App.7, App.11–12. And these harms to Proposed Intervenors will be repeated ahead of any future election where the proposed relief is initiated or during which voters have to re-register because of improper registration cancellations.

Proposed Intervenors thus have significant protectible interests in intervention.

### C. The Interests of Proposed Intervenors and Their Members Will Be Impaired If They Are Not Permitted to Intervene.

"The third requirement of [R]ule 24(a) is that the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect his interest." *Sierra Club*, 18 F.3d at 1207 (5th Cir. 1994). Importantly, proposed intervenors need not "establish that their interests *will* be impaired." *Brumfield*, 749 F.3d at 344. Proposed intervenors "need only show that if they cannot intervene, there is a possibility that their interest could be impaired or impeded." *La Union*, 29 F.4th at 307. "It would indeed be a questionable rule that would require prospective intervenors to wait on the sidelines until after a court has already decided enough issues contrary to their interests. The very purpose of intervention is to allow interested parties to air their views so that a court may consider them before making potentially adverse decisions." *Brumfield*, 749 F.3d at 344–45.

As discussed in detail above, Proposed Intervenors' interests and those of their members may be impaired if denied intervention. *See supra* Section I.B; *see also Ind. State Conf. of the NAACP v. Lawson*, 326 F. Supp. 3d 646, 650 (S.D. Ind. 2018), *aff'd sub nom, Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019) ("Historically. . . throughout the country, voter registration

and election practices have interfered with the ability of minority, low-income, and other traditionally disenfranchised communities to participate in democracy."). If this Court were to grant some or all of Plaintiffs' requested relief, Proposed Intervenors' members and the constituents they serve would be at risk of improper removal from the voter registration rolls or having their ballots disregarded by the pre-emptive denial of election certification. As such, Proposed Intervenors satisfy the impairment prong of Rule 24(a).

Proposed Intervenors also satisfy the impairment requirement because their core missions and organizational interests would be directly impaired by a judgment that would force them to divert substantial time and resources to educating and assisting members and constituents who have their voter registration canceled or otherwise impacted, especially after the October 7, 2024 registration deadline, and taking other action to ensure that the duly cast votes of its members and constituents are counted. *See La Union*, 29 F.4th at 307 (impairment requirement satisfied when outcome of lawsuit "may change what the [intervenors] must do to prepare for upcoming elections," and intervenors "will have to expend resources to educate their members on the shifting situation in the lead-up" to elections). The relief sought here would further implicate Proposed Intervenors' interests in future elections, where they would have to divert their resources to re-registering voters who had been improperly removed from voter rolls or improperly had their registration information changed and may again be at risk of their votes not being counted. Proposed Intervenors easily satisfy the third requirement of intervention as of right.

### D. Proposed Intervenors' Interests Are Not Adequately Protected by Defendants.

Finally, the existing parties in this litigation do not adequately protect the interests of Proposed Intervenors. For the inadequacy-of-representation requirement, a proposed intervenor "need not show that the representation by existing parties will be, for certain, inadequate," *Texas*, 805 F.3d at 661 (citation omitted), but only that it *may* be inadequate, *see id.* (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). Although proposed intervenors must demonstrate potential inadequate representation, that burden is "minimal." *Edwards*, 78 F.3d at 1005. And mere similarity of interests between the existing parties is "normally not enough" to support adequate representation which would defeat intervention as of right. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 196–97 (2022) (internal citations omitted).

Thus, while the Fifth Circuit recognizes certain "presumptions of adequate representation," *Brumfield*, 749 F.3d at 345, such as where the existing defendant is "a governmental body or officer charged by law with representing the interests of the [intervenor]," *Texas*, 805 F.3d at 661–62 (citation omitted), this presumption can be and is often overcome when the interests or objectives of the proposed intervenor "diverge from the putative representative's interests in a manner germane to the case," *La Union*, 29 F.4th at 308 (quoting *Edwards*, 78 F.3d at 662); *accord Texas*, 805 F.3d at 661–62 (citation omitted).

Here, Plaintiffs plainly do not represent Proposed Intervenors' interests, as the relief they request risks disenfranchising Proposed Intervenors' members. Accordingly, Proposed Intervenor easily meet their minimal burden to show likely inadequate representation.

As an initial matter, Defendant Garland has not filed any motion or responsive pleading, and no counsel for Defendant Garland has yet appeared in this litigation.

With respect to State Defendants, Secretary Nelson and Attorney General Paxton have already taken certain action to voluntarily do what Plaintiffs seek in this suit, *see* Compl. ¶ 56. Secretary Nelson has initiated a process to request citizenship data from federal immigration officials for comparison to a list of individuals on Texas's voter rolls whose citizenship supposedly cannot be verified using existing state sources. Press Release, Ken Paxton, Att'y Gen. of Tex., *Attorney General Ken Paxton Urges Texas Secretary of State to Request Citizenship Data from Biden Administration to Identify Potentially Ineligible Voters Before 2024 Election* (Sept. 18, 2024).[2] Following up on this request, Attorney General Paxton subsequently sent a list of over 450,000 voters, originally provided by Secretary Nelson, to federal immigration officials for citizenship verification. *Attorney General Ken Paxton Demands Citizenship Data From Biden-Harris Administration To Investigate Potential Noncitizen Voters*.[3] Such requests are contrary to the interests of Proposed Intervenors, who are strongly committed to *removing* barriers on the right to vote for all eligible U.S. citizens and all voters. App.6–7, App.11–12.

In contrast, the actions taken by Defendant Nelson and Defendant Paxton will result in unjustified burdens being placed on naturalized U.S. citizens, who are eligible to vote but for whom there may be outdated or incorrect information in federal or state databases. For example, the list of 450,000 voters sent by Attorney General Paxton to immigration officials suggests that a substantial number of eligible voters would be incorrectly flagged in this process. *Supra* fn. 3. Defendant Paxton suggested, in a draft letter urging Defendant Nelson to issue this request, that "approximately one million people" should have their voter registration subject to this process,

[2] Available at https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-urges-texas-secretary-state-request-citizenship-data-biden.
[3] Available at https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-demands-citizenship-data-biden-harris-administration-investigate.

likewise suggests that a substantial number of eligible voters would be incorrectly flagged in this process. Letter to Jane Nelson, Sec'y of State of Texas, Ken Paxton, Att'y Gen. of Tex., *Proposed Request to USCIS* (Sept. 18, 2024).[4] At a minimum, these actions suggest that the State Defendants in the lawsuit may have different interests in the resolution of this litigation than Proposed Intervenors. That State Defendants have a divergence of interests from Proposed Intervenors is more than enough to show that they would be unlikely to provide adequate representation. *See Texas*, 805 F.3d at 661.

In addition, Proposed Intervenors' interests are different from Defendants as government entities. Even assuming that Defendants are generally interested in defending against Plaintiffs' myriad claims under federal and state law, they may have different reasons for taking the positions that they do. As elected and appointed officials, Defendants' "interests and interpretation of the NVRA," as well as other federal laws, "may not be aligned and [their] reasons for seeking dismissal" may very well be different from those of Texas NAACP and LWVTX. *See Bellitto*, 2016 WL 5118568, at *2; *La Union*, 29 F.4th at 308 (interests of intervenors diverged from that of State where State preferred not to resolve case on merits at all but dismiss on sovereign immunity grounds while intervenors wished to defend constitutionality of statutes). Moreover, the existing government Defendants may not have any particular interest in defending the list maintenance, election security, and election certification practices that are carried out at the county level in Texas, not by Defendants themselves, even though these practices directly affect Proposed Intervenors and their members.

[4] available at https://www.texasattorneygeneral.gov/sites/default/files/images/press/Proposed%20Request%20to%20USCIS.pdf.

Proposed Intervenors also have a particular interest in ensuring broad voter access—especially for Black voters and other voters of color—that is fundamental to their missions. But Defendants have responsibilities related to the administration of elections and incentives as elected officials that do not necessarily further those particular objectives, either. *See, e.g.*, *Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1478 (11th Cir. 1993) ("The intervenors sought to advance their own interests in achieving the greatest possible participation in the political process. Dade County, on the other hand, was required to balance a range of interests likely to diverge from those of the intervenors."), *abrogated on other grounds*, *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007); *see also Sierra Club*, 18 F.3d at 1208 ("government must represent the broad public interest," not only the concerns of a particular constituency).

Indeed, Proposed Intervenors have repeatedly sued some of these same Defendants or their predecessors in office for various violations of voting laws. *See, e.g.*, *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2012) (TX NAACP intervened in case concerning Texas utility district seeking "bailout" under VRA); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (Texas voter ID law violated Section 2 of the VRA); Complaint at 17-20, *Tex. State Conf. of NAACP Branches v. Abbott*, No. 1:20-CV-1024-RP (W.D. Tex. Oct. 16, 2020) (challenging Texas order prohibiting counties from providing voters with more than one location to return mail in ballots under First and Fourteenth Amendments and VRA Section 2); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195 (W.D. Tex. 2020) (mask-mandate exemption violated Section 2 of the NVRA because it discriminated against Black and Latino voters); *Tex. League of United Latin Am. Citizens v. Abbott*, 493 F. Supp. 3d 548 (W.D. Tex. 2020) (challenge brought by LWVTX and others against state proclamation prohibiting counties from providing absentee voters the benefit of returning ballots to multiple drop box locations in person); *La Union del Pueblo Entero v.*

*Abbott*, No. 5:21-CV-00844, Order, ECF No. 1157 at 53–67 (W.D. Tex. Sept. 28, 2024) (restriction on compensated canvassers from conducting voter advocacy near mail-in-ballots in SB 1 to violate the First and Fourteenth Amendments, in challenge brought by LWVTX and others); Petition, *Tex. State Conf. of the NAACP et al. v. Abbott et al.*, No. 01-22-00122-CV (Tex. App.—Houston [1st Dist.] 2023, pet. pending) (challenging SB 1's changes to Texas Election Code); *League of United Latin Am. Citizens v. Abbott*, No. EP-21-CV-00259, 2021 WL 5417402 (W.D. Tex 2021) (consolidating redistricting challenges against State brought by groups including TX NAACP).

That Proposed Intervenors and the State Defendants have frequently held opposing policy and litigation positions on some of the issues of election administration and voting access raised by the Complaint here strongly indicates that those Defendants may not adequately represent Proposed Intervenors' interests. For these reasons, Proposed Intervenor's interests sufficiently diverge from the existing parties to satisfy Rule 24(a)(2). Because they meet every requirement of Rule 24(a)(2), the Court should grant Proposed Intervenor's motion to intervene as of right.

## II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION.

If the Court determines that Proposed Intervenor is not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention. "Permissive intervention under Rule 24(b) 'is wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.'" *DeOtte v. Azar*, 332 F.R.D. 173, 178 (N.D. Tex. 2019) (quoting *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 806 F.2d 1285, 1289 (5th Cir. 1987)).

Intervention under Rule 24(b) is appropriate when: "(1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact

in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties." *DeOtte v. Azar*, 332 F.R.D. 173, 178 (N.D. Tex. 2019) (citation omitted).

Proposed Intervenors satisfy these factors. As explained above, Proposed Intervenors' motion is timely, and granting the motion at this early stage of the case will not delay or prejudice the adjudication of the original parties' rights. *Supra* Section I.A. By contrast, refusing to permit intervention will deprive Proposed Intervenors of the chance to defend their significant and protectable interests in the litigation. *See supra* Sections I.B–C. *See Stallworth*, 558 F.2d at 269 ("interest" prong of Rule 24(b)(2) should be given "liberal construction").

As explained above, Proposed Intervenors represent many Texans whose votes are at risk if the relief sought is granted. Proposed Intervenors also have particular knowledge about the risks to voters associated with upending election rules mere weeks before a general election of great national interest. Ensuring that the interests of these voters are advanced is a critical perspective that would serve the interests of the Court. Moreover, Proposed Intervenors stand to divert significant resources that they have already budgeted and scheduled for election preparations and other programming if Plaintiffs win some or all the relief they seek. Further, Proposed Intervenors would likewise have to divert resources from preparing for future elections to deal with the aftermath of the relief sought here. As such, Texas NAACP and LWVTX should be permitted to intervene to defend their interests and those of their members.

## CONCLUSION

For the reasons stated above, the Court should grant Proposed Intervenors' Motion to Intervene.

Respectfully submitted this 9th day of October 2024,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2024, the undersigned filed the document, Brief in Support of Motion to Intervene by Texas State Conference of the NAACP and League of Women Voters of Texas, via this Court's electronic filing system (CM/ECF), which sent notice of such filing to all counsel of record.

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# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION**

| | |
|---|---|
| UNITED SOVEREIGN AMERICANS, INC., BERNARD JOHNSON, AND CITIZENS DEFENDING FREEDOM<br><br>*Plaintiffs,*<br><br>v.<br><br>JANE NELSON, in her official capacity as the Secretary of State of Texas, KEN PAXTON, in his official capacity as the Attorney General of Texas, and MERRICK GARLAND, in his official capacity as Attorney General of the United States<br><br>*Defendants,* | Case No. 2:24-cv-00184 |

**MOTION TO DISMISS BY PROPOSED INTERVENOR-DEFENDANTS TEXAS STATE CONFERENCE OF THE NAACP AND LEAGUE OF WOMEN VOTERS OF TEXAS**

Proposed Intervenor-Defendants ("Proposed Intervenors") Texas State Conference of the NAACP ("Texas NAACP") and the League of Women Voters of Texas ("LWVTX" or "the League") hereby file this Motion to Dismiss the Complaint (ECF No. 5) for the reasons set forth in the accompanying Brief in Support, which is incorporated by reference herein.

WHEREFORE, Texas NAACP and LWVTX respectfully request that the Court enter an Order dismissing Plaintiffs' Complaint (ECF Nos. 1& 5) in its entirety.

Dated: October 9, 2024

Respectfully submitted,

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I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on October 9, 2024, which will serve all counsel of record.

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**AMARILLO DIVISION**

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**BRIEF IN SUPPORT OF MOTION TO DISMISS BY TEXAS STATE CONFERENCE OF THE NAACP AND LEAGUE OF WOMEN VOTERS OF TEXAS**

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## INTRODUCTION

On the eve of the 2024 Presidential Election, Plaintiffs demand unprecedented relief: a mandamus order compelling the removal of hundreds of thousands of eligible voters from voter rolls and federal court denial of certification of the election results. Nowhere in the 56-page complaint do Plaintiffs identify a specific statutory or constitutional cause of action that would entitle them to any relief, let alone the extraordinary remedies they demand. Nor could they: Plaintiffs lack standing to assert any fairly read claims, and the statutes they broadly invoke do not provide them with a basis for any relief from this Court. Indeed, the National Voter Registration Act ("NVRA") specifically prohibits that relief. The Complaint should be dismissed.

Plaintiffs ask the Court to (1) order the State to "correct" allegedly "inaccurate" errors in the voter rolls, *i.e.*, purge thousands of voters within days of the General Election; (2) order the State to verify that all voter registrations against citizenship and immigration status data kept by the Department of Homeland Security; and order the State not to certify the results of the 2024 election until all supposed "errors" are corrected. Again, they never identify *any* provision of federal law that could entitle them to this relief. Nor one that could empower the roving, lawless, election-eve "intervention" that they seek from this Court.

The Court should reject Plaintiffs' suit in its entirety. First, this Court does not have subject matter jurisdiction. Plaintiffs lack Article III standing to bring any of their claims. Nor do they have statutory standing under the NVRA. Moreover, their demand that the State withhold certification of the results of the upcoming election if the supposed "errors" alleged in the Complaint are not corrected is patently not ripe for adjudication.

On the merits, Plaintiffs fail to state a claim upon which relief may be granted. They never identify a legal basis that gives them any cause of action. And in fact, their requested relief is

affirmatively *barred* by federal and state law. For one, the Help America Vote Act (HAVA), which they cite, does not afford Plaintiffs a private right of action. And the NVRA expressly prohibits Texas from undertaking systematic voting-list maintenance, *i.e.*, the very thing Plaintiffs seek, within the 90-day quiet period before the upcoming federal elections. As for rejecting certification of the election results, state law is crystal clear that certification is a mandatory, not discretionary, duty of state officials, even if post-election challenges that go to "reliability" are ongoing. Thus having failed to identify cognizable legal claims on which relief may be granted, Plaintiffs' freestanding request for mandamus relief must be rejected and their Complaint dismissed.

## ARGUMENT

### I. APPLICABLE LEGAL STANDARDS

#### A. Rule 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). The burden of proof for a motion to dismiss under Rule 12(b)(1) falls on the plaintiffs. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Additionally, "[w]hen a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Id.* (citing *Hitt v. City of Pasadena,* 561 F.2d 606, 608 (5th Cir. 1977) (per curiam).

#### B. Rule 12(b)(6)

"To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff [must] provide more than labels and conclusions." *Murphy v. Amarillo Nat'l Bank*, No. 2:20-CV-048-Z, 2021 WL 40779, at *3 (N.D. Tex. Jan. 5, 2021) (quoting *Johnson v. E. Baton Rouge Fed'n of Teachers*, 706 Fed. App'x 169, 170 (5th Cir. 2017) (citing *Twombly*, 550 U.S. at 555)). Thus, the complaint must contain factual allegations that "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The court need not accept the plaintiff's legal conclusions, even when they are couched as factual allegations. *Iqbal*, 556 U.S. at 678–79.

## II. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS UNDER RULE 12(B)(1).

Federal courts are courts of limited jurisdiction and hear only "cases" and "controversies" under Article III of the Constitution. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Standing to sue is one component of the case or controversy requirement. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). Plaintiffs must sufficiently plead (1) an injury-in-fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) is likely to be redressed by a favorable court decision. *Lujan*, 504 U.S. at 560–61. At the motion to dismiss stage, a plaintiff sufficiently establishes to proceed by alleging "facts that give rise to a plausible claim" of standing. *Cornerstone Christian Sch. v. Univ. Interscholastic League*, 563 F.3d 127, 134 (5th Cir. 2009).

An "injury in fact" is one that is "concrete," "particularized," and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560–61. The mere alleged existence of a statutory violation is not sufficient to confer standing without a concrete and particularized injury to the particular federal court plaintiff who invokes the Court's jurisdiction. "Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo, Inc. v. Robins*, 578 U.S. 330,

341(2016); *see also Scott v. Schedler*, 771 F.3d 831, 836–37 (5th Cir. 2014) (analyzing plaintiff's Article III standing to bring NVRA claims).[1]

Because standing is a matter of subject matter jurisdiction, there are no exceptions to the Article III standing requirement. "[A] plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *Gilbert v. Donahoe*, 751 F.3d 303, 313 (5th Cir. 2014) (same). Article III requirements are not relaxed or waived because a federal court plaintiff seeks a writ of mandamus. *See United States v. Denedo*, 556 U.S. 904, 911 (2009) ("[A] court's power to issue any form of relief—extraordinary or otherwise—is contingent on that court's subject-matter jurisdiction over the case or controversy."); *In re Red Barn Motors, Inc.*, 794 F.3d 481, 483 (5th Cir. 2015) ("The All Writs Act, 28 U.S.C. § 1651, empowers us to issue writs of mandamus, but that statutory authority does not itself confer jurisdiction.").

**A. The Organizational Plaintiffs Lack Standing.**

An organization can establish standing in two ways: on behalf of its members or on its own behalf. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). As to Plaintiff United Sovereign Americans, the Complaint does not even attempt to set forth facts that could support either basis, stating only that United Sovereign Americans is a nonprofit corporation incorporated in Missouri, and that the corporation worked with "expert data analysts" regarding voter registration data. *See* Compl. ¶¶ 60, 167–70. There is not a single reference to United Sovereign Americans' members, or any kind of membership structure, and no allegations of concrete organizational harm, such as a diversion of organizational resources if the Court were to deny the

[1] Plaintiffs allege that it is "not clear" the extent to which the "NVRA requires a hypothetical plaintiff to have suffered injury." Compl. ¶ 124. It is clear: They must. *See Scott*, 771 F.3d at 836–37.

requested relief. United Sovereign Americans should therefore be dismissed for lack of standing. Indeed, it already has been dismissed for these reasons in a similar suit it brought in Maryland. *See, e.g.*, *Md. Election Integrity, LLC v. Md. Bd. of Elections*, No. SAG-24-00672, 2024 WL 2053773, at *3–4 (D. Md. May 8, 2024) (dismissing United Sovereign Americans in NVRA and HAVA suit against Maryland for lack of standing, where organization "does not purport to represent any individual members" and where it did not allege a concrete and demonstrable injury to the organization's activities).

Plaintiff Citizens Defending Freedom ("CDF") claims it has standing because it "represents a group of Texas registered voters each expecting their vote to be properly counted and weighted," Compl. ¶ 73, and because it is "comprised of Texas citizens who have an interest in the elections being administered fairly, properly and accurately," *id.* ¶ 84. In other words, CDF claims "associational standing," that is, standing to sue that is derivative of some purported injury to its members. *Ass'n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). To establish associational standing at the pleading stage, CDF must allege facts demonstrating that "(1) 'its members would otherwise have standing to sue in their own right;' (2) 'the interests it seeks to protect are germane to the organization's purpose; and' (3) 'neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 787 (W.D. Tex. 2015) (quoting *Hunt*, 432 U.S. at 343). The pleadings contain no such factual allegations as to CDF.

As an initial matter, it is not even clear that CDF is a membership organization that could assert a claim on behalf of its members. The only allegation is that CDF "represents" a "group of Texas registered voters," Compl. ¶ 73, and is "comprised" of "Texas citizens," *id.* ¶ 84. But CDF

fails even to allege the number or geographic spread of its members across the state, or any facts about its membership process or structure, or for that matter, plead that it is in fact a membership organization with the particular indicia typical of membership organizations. *See Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 829 (5th Cir. 1997) (prong met when organization "clearly articulated and understandable membership structure"); *see also Hunt*, 432 U.S. at 344–45 (prong met when purported members "possess all of the indicia of membership in an organization" and organization "provides the means by which they express their collective views and protect their collective interests"). CDF has not pleaded any facts that establish it meets the requirements of a membership organization which may sue based on the purported injuries of its members.

Even if CDF had sufficiently alleged that it has a cognizable membership, it fails to allege any facts regarding the "concrete and particularized injury" experienced by the "Texas citizens" it "represents" that would allow them to sue in their own right. *Lujan*, 504 U.S. at 560 (injury must also be "actual or imminent, not conjectural or hypothetical") (internal quotations omitted). Generally, citizen-standing style grievances are insufficient as a matter of law. Courts "have repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power." *United States v. Hayes*, 515 U.S. 737, 743 (1995); *see also Pederson v. La. State Univ.*, 213 F.3d 858, 869 (5th Cir. 2000); *Hotze v. Hudspeth*, 16 F.4th 1121, 1124 (5th Cir. 2021) (voters' allegations that drive-thru voting would harm the "integrity" of electoral process were "far too generalized to warrant standing").

To the extent CDF alleges it can proceed without the required indicia of membership based on third-party standing to represent various like-minded "citizens," CDF's claims would *also* be barred as a prudential matter. CDF cannot assert claims based on any purported injury to the voting

rights of unnamed, third-party Texas voters because "an organization plainly lacks the right to vote." *Vote.org v. Callanen*, 39 F.4th 297, 303 (5th Cir. 2022) (non-membership organization, Vote.org, that "invokes the rights of Texas voters and not its own—an organization plainly lacks the right to vote" did not have third-party standing to assert violation of right to vote).

And that is that CDF can muster in its pleadings: generalized allegations that (1) Defendants failed to comply with the law in an unspecified manner, and (2) generalized claims that CDF's members' votes will somehow be "diluted" by the presence of purportedly ineligible voters on the voter rolls. *See, e.g.*, Compl. ¶¶ 24–56, 73–78, 166–201. Courts have repeatedly rejected this theory of "dilution" because it runs headlong into Article III. Even if a person could be harmed by the fact that *someone else* was *allowed* to vote, the same alleged "dilution" harm alleged would inure to every Texas voter to the same degree as the "Texas citizens" who supposedly comprise CDF. Such an injury is insufficiently particularized to support standing. Thus, in a similar lawsuit brought by an organization who, like CDF, alleged that officials "did not act in accordance with the law in administering the elections," the court dismissed on standing grounds because "any injury from those actions would accrue to every citizen and would not be particularized to members of [the group]." *Md. Election Integrity*, 2024 WL 2053773, at *4.[2]

[2] *See also Wood v. Raffensperger*, 981 F.3d 1307, 1313, 1314–15 (11th Cir. 2020) (speculation of "vote dilution" from the alleged inclusion of unlawfully processed absentee ballots, where "no single voter is specifically disadvantaged" is a "paradigmatic generalized grievance," as distinguished from redistricting-related vote-dilution claims where voters in challenged district directly harmed compared to voters in other districts) (citation omitted); *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 731 (N.D. Ill. 2023), *aff'd*, No. 23-2644, 2024 WL 3882901 (7th Cir. Aug. 21, 2024) (collecting cases where courts have "agreed that claims of vote dilution based on the existence of unlawful ballots fail to establish standing"); *Moore v. Circosta*, 494 F. Supp. 3d 289, 312 (M.D.N.C. 2020) (collecting cases); *Martinez-Rivera*, 166 F. Supp. 3d at 789 (allegation that "failure to remedy inaccurate voter rolls" will lead to "undermined voter confidence and the risk of vote dilution" was a generalized grievance insufficient to support standing).

**B. Plaintiff Johnson Lacks Standing.**

Candidates like Plaintiff Bernard Johnson similarly lack standing to challenge the conduct of elections when they assert only undifferentiated, generalized grievances. *See, e.g.*, *Hotze*, 16 F.4th at 1124 & n.2 (5th Cir. 2021) (allegation that drive-thru voting "hurt the 'integrity' of the election process" was "far too generalized to warrant standing" for a political candidate); *see also Lance v. Coffman*, 549 U.S. 437, 442 (2007) (allegation that "the law has not been followed" is an "undifferentiated, generalized grievance about the conduct of government" that does not support standing). Plaintiff Johnson lacks standing for much the same reasons that CDF lacks associational standing on behalf of its members or Texas voters generally: generalized or speculative concerns regarding government officials' compliance with the law, with no allegations about specific harms to the plaintiff, are insufficiently concrete and particularized to create a constitutional case or controversy. *See supra* Section II.A.

The Complaint's references to campaign expenditures by Mr. Johnson do not provide any firmer basis for standing. Cognizable injuries to a candidate are those that directly "threaten his election prospects and campaign coffers." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006). Mr. Johnson makes only speculative allegations that he is "directly affected" by alleged inaccuracies in the voter rolls in 2022—a year he did not run for political office—because he "cannot properly devise and budget for campaign strategies" and has spent "money campaigning to garner votes based on registrations and voter rolls that *may* be inaccurate." Compl. ¶ 81–82 (emphasis added). He never explains *how* his ability to campaign has been concretely affected by the *potential* existence of unspecified inaccuracies in a state database. Absent such allegations regarding "how the candidate[] would be specifically harmed," *Hotze*, 16 F.4th at 1124 & n.2, Mr. Johnson's alleged injury from these purported inaccuracies is not materially different than any other Texas voter.

### C. Plaintiffs Lack Statutory Standing Under the NVRA.

To the extent that Plaintiffs assert claims for violations of the NVRA, their claims would fail for an independent reason: they have not established statutory pre-requisites to suit and therefore lack statutory standing to bring their NVRA claims.[3] *Scott v. Schedler*, 771 F.3d 831, 835 (5th Cir. 2014); *see also Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 533 (5th Cir. 2016) (standing under statute is matter of subject matter jurisdiction that may be challenged through Rule 12(b)(1)).

The NVRA creates a private right of action for an "aggrieved" person to, subject to a specific process: they must send written notice of a statutory violation to the state's chief election official and provide an opportunity to cure the violation within the statutory timeline before the aggrieved person files suit. 52 U.S.C. § 20510(b). A party lacks standing to sue under the NVRA if they fail to comply with the NVRA's notice requirements. *Scott*, 771 F.3d at 835. The "notice should provide states in violation of the Act an opportunity to attempt compliance before facing litigation." *Martinez-Rivera*, 166 F. Supp. 3d at 806. Courts have found that notice is adequate if it "(1) sets forth the reasons that a defendant purportedly failed to comply with the NVRA, and (2) clearly communicates that a person is asserting a violation of the NVRA and intends to commence litigation if the violation is not timely addressed." *Pub. Int. Legal Found. v. Boockvar*,

[3] Courts have reached different conclusions as to whether the NVRA's notice requirements are jurisdictional, and thus whether they are best addressed under Rule 12(b)(1) or 12(b)(6). *Compare Scott*, 771 F.3d at 835 ("No standing is therefore conferred if no proper notice is given . . . .") (quoting *Ga. State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012), *with Martinez-Rivera*, 166 F. Supp. 3d at 794 n.9 ("The NVRA notice provision is nonjurisdictional.") (citing *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 976–77 (9th Cir. 2012). Whether or not NVRA notice is jurisdictional, courts agree that failure to comply with NVRA notice requirements justifies dismissal. In accordance with the precedent of this Court, Plaintiffs move under Rule 12(b)(1), but in the alternative move under Rule 12(b)(6). *See Scott*, 771 F.3d at 835; *Voice of the Experienced v. Ardoin*, No. 23-331-JWD-SDJ 2024 WL 2142991, at *8 n.3 (M.D. La. May 13, 2024).

370 F. Supp. 3d 449, 457 (M.D. Pa. 2019); *see also Black Voters Matter Fund v. Raffensperger*, 508 F. Supp. 3d, 1283, 1293 (N.D. Ga. 2020) (citing *Boockvar*, 370 F. Supp. 3d at 457).

Plaintiffs invoke the NVRA, despite their correct observation that "[a]ny Court in the United States would have great reluctance to [] order election officials to correct the NVRA error and/or decertify an election so close in time to an actual election or just after certification." Compl. ¶¶ 123, 127. Indeed, their observation is in striking contrast to their extraordinary allegations and relief requested particularly given that they fail to allege that they even attempted to comply with the NVRA's threshold pre-suit notice requirement. The sum of their allegations regarding pre-suit notice is a single vague sentence: "Petitioners here have provided notice to the State of Texas as required by NVRA." Compl. ¶ 122. That is facially insufficient in at least three ways.

*First*, the Complaint lacks any other details, including whether the notice informed Defendants that any or all Plaintiffs would sue if the violation was not addressed, or even if the notice was in writing. Dozens of pages of Plaintiffs' exhibits do not contain a copy of any NVRA notice. Plaintiffs' NVRA claims should be dismissed on that ground alone. *See, e.g.*, *Black Voters Matter Fund*, 508 F. Supp. 3d at 1294–95 (rejecting report as providing NVRA pre-litigation notice because it didn't "reasonably put the Secretary on notice that an NVRA lawsuit was looming").

*Second*, the Complaint does not allege that Plaintiffs served written notice on the "chief election official and the State" as the NVRA requires. 52 U.S.C. § 20510(b)(1). Instead, the Complaint alleges only that Plaintiffs provided notice to the "State of Texas." Compl. ¶ 122. Notice that was not served on Secretary of State Jane Nelson does not satisfy Section 11 of the NVRA. 52 U.S.C. § 20510(b)(1). *See, e.g.*, *Boockvar*, 370 F. Supp. 3d at 457–58 (dismissing claim for failure to provide adequate pre-litigation NVRA notice where "[a]bsent from the complaint is any allegation that" the state's chief election official was informed of the plaintiff's notice).

*Third*, the Complaint does not allege *which* Plaintiffs provided the purported "notice" under the NVRA. Prospective plaintiffs may not "piggyback" on notice of an NVRA violation provided by others. *Scott*, 771 F.3d at 836. Because they failed to provide a copy of the required notice or otherwise allege who sent it, Plaintiffs' allegations are insufficient on this basis as well.

Plaintiffs' Claims Are Not Ripe.

One more fatal justiciability problem with the Complaint: the request to block certification of the 2024 election is unripe. A claim is not ripe if further factual development is required. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 833 F.2d 583, 587 (5th Cir. 1987). Where a plaintiff sues based on an injury that has not yet occurred, the court must evaluate whether the injury "is sufficiently likely to happen." *Chevron U.S.A., Inc. v. Trailour Oil Co*., 987 F.2d 1138, 1153 (5th Cir. 1993). The court "should dismiss . . . for lack of ripeness when the case is abstract or hypothetical." *Monk v. Houston*, 340 F.3d 279, 282 (citing *New Orleans Pub. Serv. Inc*., 833 F.2d at 586). Claims "contingent [on] future events that may not occur as anticipated, or indeed may not occur at all" are not ripe. *Lopez v. City of Houston,* 617 F.3d 336, 342 (5th Cir. 2010) (quoting *Thomas v. Union Carbide Argic. Prods*. *Co.*, 473 U.S. 568, 580–81 (1985)); *see also New Orleans Pub. Serv., Inc.*, 833 F.2d at 587.

Here, Plaintiffs' demand that the Court should order Defendants not to certify the 2024 election is unripe for adjudication because it is premised entirely on speculation. The 2024 election has not yet happened, and the effect, if any, of the supposed technical deficiencies or errors in Texas's voter database alleged in the Complaint on the Election is entirely speculative. Especially so because, other than alleging, without specificity, that there are technical issues with the database, Plaintiffs never allege that any ineligible persons are improperly registered, let alone improperly voting, or that any "inaccurate" votes would affect any election. Because any actual harm from

these technical issues would result only from a series of future events that may not unfold as Plaintiffs anticipate, the case is not ripe for adjudication.

## III. PLAINTIFFS FAIL TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Plaintiffs' Complaint identifies no valid legal basis for any cause of action. Indeed, federal and state law prohibit the relief sought—namely, election-eve judicial intervention requiring Defendants to (1) remove all "ineligible voters" from the voter roll before the 2024 General Election, (2) conduct a systematic list maintenance to identify and remove alleged noncitizens by comparing the state's voter rolls to data from the Department of Homeland Security before the upcoming election, and (3) refrain from certifying the outcome of the 2024 General Election.

### A. Plaintiffs Fail to State a Claim Under HAVA.

Plaintiffs allege a violation of Section 301(a)(5) of HAVA, 52 U.S.C. § 21081(a)(5), based on purported "errors" claim to have been found in the 2022 General Election. Compl. ¶¶ 24–59. According to Plaintiffs, the "error rates" in the 2022 Election exceeded a threshold set under HAVA. *Id.* ¶¶ 38–41. From that premise, Plaintiffs surmise "it is reasonable to believe that systemic issues which occurred in the 2022 combined federal and state election in Texas will continue uncorrected in 2024, 2026, 2028, and so forth, absent intervention by this Court." *Id.* ¶ 21.

These allegations do not support a federal law cause of action for two reasons. First, the statutory meaning of "error rates" in HAVA has nothing to do with who is or is not registered on the voter rolls. Rather, it relates only to errors that arise during the testing of different types of voting machines. Plaintiffs' presumption of "systemic issues" with actual voting based on an esoteric voting-machine testing metric entirely misconstrues what Section 301(a)(5) of HAVA says and is not a plausible basis for a claim. In any event, HAVA does not afford Plaintiffs a private cause of action to pursue a claim related to system error rates.

First, Plaintiffs allege no plausible, actionable violation of HAVA. Section 301(a)(5) of HAVA states that the "error rate" of the "voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter)" must comply with certain error rate standards established under guidance promulgated by the Federal Election Assistance Commission ("EAC"). 52 U.S.C. § 21081(a)(5). The guidance, repeatedly cited by Plaintiffs, in turn makes clear that these error rates relate only to the testing of voting machine software and hardware, not errors in reporting the results of any actual elections. *See* Voting System Standards Volume I: Performance Standards ("Voting System Standards") at 3–51, https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf (last visited Oct. 3, 2024) ("The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE[4] systems have different processing steps. Some differences also exist between precinct count and central count systems."). The 500,000 "ballot positions" yardstick that Plaintiffs repeatedly reference, Compl. ¶¶ 27–34, 139, similarly arises in the context of systems testing, not reporting of actual election results. *E.g.*, Voting System Standards, *supra*, at 3-52 ("For each processing function [including paper-based and DRE systems], the system shall achieve . . . a maximum acceptable error rate in the *test* process of one in 500,000 ballot positions." (emphasis added)). Thus, the

[4] "A Direct Record Electronic (DRE) Voting System records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory components. It produces a tabulation of the voting data stored in a removable memory component and as printed copy. The system may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from precincts at the central location." Voting System Standards, *supra*, at 1–12.

500,000 ballot positions metric is related to the functionality and "operational accuracy" of the voting system, *i.e.*, paper-based or DRE, not, as Plaintiffs would have it, the purported accuracy of voting rolls and whether any voter is actually eligible to vote. Furthermore, the EAC guidance nowhere corroborates Plaintiffs' allegation that 500,000 ballot positions metric somehow "equal[s]" 125,000 ballots.[5] Compl. ¶ 32. That calculation seems to be made up. Rather, the source cited by Plaintiffs provides that all voting systems must achieve a report total error rate of no more than one in 125,000 ($8\times10^{-6}$) with respect to random "unpreventable hardware-related errors" and "software faults that result in systematic miscounting of votes." EAC 2005 Voluntary Voting System Guidelines at 79, https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.1.VOL.1.FINAL1.pdf. Plaintiffs' Complaint has nothing to do with hardware or software errors in voting machines, and as such, Plaintiffs' reliance on this HAVA metric undercuts the core of their Complaint. Where, as here, the factual foundation of a plaintiff's complaint is contradicted by the documents upon which they plead, dismissal for failure to state a claim is proper. *Cf. Carter v. Target Corp.*, 541 F. App'x

[5] Furthermore, the EAC guidance nowhere corroborates Plaintiffs' allegation that the 500,000 ballot positions metric somehow "equal[s]" 125,000 ballots. Compl. ¶ 32. That calculation seems to be made up and, in any case, incorrect. Plaintiffs have confused "votes" with "individual ballots" – they cite the Voluntary Voting System Guidelines to support this calculation, *see id.*, when in fact the Voluntary Voting System Guidelines states that "[t]he benchmark of one in 125,000 is expressed in terms of *votes*" and "the estimated ratio of *votes* to ballot positions is ¼," Voluntary Voting System Guidelines, *supra* at 80 (emphases added), going on to illustrate by example that "[i]n a presidential election, there would be approximately 20 contests with a vote for 1 on each ballot with an average of 4 candidates, including the write-in position, per contest." *Id.* Using this structure, 500,000 ballot positions would be divided by 4 ballot positions per vote to translate to 125,000 votes, which would then be divided by the number of votes per individual ballot to reach an estimate of the number of individual ballots that would form the basis of the error rate threshold. For example, for a ballot with 20 contests and therefore 20 votes each containing an average of 4 ballot positions, the error rate as expressed in terms of individual ballots would be 1 error per 6,250 individual ballots: 500,000 ballot positions divided by 4 ballot positions per vote and further divided by 20 votes per ballot is 6,250 ballots.

413, 417 (5th Cir. 2013) ("Conclusory allegations and unwarranted deductions of fact are not admitted as true, especially when such conclusions are contradicted by facts disclosed by a document appended to the complaint." (quoting *Associated Builders, Inc. v. Ala. Power Co*., 505 F.2d 97, 100 (5th Cir. 1974)).

Moreover, even if they had identified some plausible violation of HAVA, Plaintiffs would still lack a private right of action. There is no implied right of action to enforce any provision of HAVA. *See Morales-Garza v. Lorenzo-Giguer*e, 277 F. App'x 444, 446 (5th Cir. 2008) (HAVA did not create private cause of action permitting plaintiff to challenge adequacy of absentee voting process); *Tex. Voters All. v. Dallas Cnty.*, 495 F. Supp. 3d 441, 458 (E.D. Tex. 2020) ("HAVA does not expressly create a private right of action."); *see also Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019) ("HAVA creates no private cause of action."); *Am. Civil Rights Union v. Phila. City Comm'rs*, 872 F.3d 175, 184-85 (3rd Cir. 2017) ("HAVA does not include a private right of enforcement . . . HAVA only allows enforcement via attorney general suits or administrative complaint.").

Nor can Plaintiffs enforce their purported rights under HAVA via 42 U.S.C. § 1983, as they wrongly suggest. *See* Compl. ¶¶ 141–44. To determine whether a provision of federal law is enforceable via Section 1983, "[c]ourts must employ traditional tools of statutory construction to assess whether Congress has 'unambiguously conferred' 'individual rights upon a class of beneficiaries' to which the plaintiff belongs." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283, 285–86 (2002)). This is typically indicated by language in the specific provision sought to be enforced that expressly refers to the benefitted class of individuals. *E.g.*, *Gonzaga*, 536 U.S. at 287 (FERPA's nondisclosure provisions "speak only to the Secretary of Education, directing that 'no funds shall

be made available' to any 'educational agency or institution,'" which "clearly does not confer the sort of '*individual* entitlement' that is enforceable under § 1983." (citations omitted)); *Delancey v. City of Austin*, 570 F.3d 590, 594, 595 (5th Cir. 2009) (provisions of Uniform Relocation Assistance and Real Property Acquisition Policy Act "are directed at the 'head of any displacing agency' rather than at the individuals benefitted by the statute" and do not "evidence Congressional intent to create a private right of action" under § 1983 (citation omitted)).

Courts have identified such individual rights-creating language in *other* sections of HAVA which *do* contain direct references to voters. For example, in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004), the court held that Section 302(a)(2) is enforceable via Section 1983 because it specifically mentions "individual" voters and protects an individual voter's right to cast a provisional ballot. And in *Colon-Marrero v. Velez*, 813 F.3d 1, 18, 20 (1st Cir. 2016), the court found that Section 303(a)(4) was enforceable via Section 1983 because it specifically mentions "eligible voters" and mandates safeguards to prevent them from being improperly removed from the voter rolls. But Section 301 does not speak of voters at all, and courts have accordingly *rejected* Section-1983-enforceability for Section 301 under the *Gonzaga* analysis. *See Crowley v. Nev. ex rel. Nev. Sec'y of State*, 678 F.3d 730, 732 (9th Cir. 2012) (Section 301 was not enforceable via Section 1983 because Section 301 was not unambiguously intended to confer benefits on voters and/or candidates). Because Section 301(a)(5) contains no mention of (let alone an express conferral of benefits upon) individual voters or candidates, it does not pass the *Gonzaga* test and is not enforceable under Section 1983.

**B. Plaintiffs Fail to State a Claim Under the NVRA.**

Plaintiffs appear to allege violations of two provisions of the NVRA that relate to the maintenance of voter rolls. Compl. ¶¶ 117–18; *see* 52 U.S.C. § 20501(b)(4) (requiring states "to ensure that accurate and current voter registration rolls are maintained"); 52 U.S.C. § 20507(a)(4),

(requiring states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" when the registrant has either passed away or changed residence"). But even assuming Plaintiffs have standing and a right of action to challenge such putative violations, the factual allegations on which they base their claimed violation are not plausible. Further, the relief they seek—requiring Texas to remove all "ineligible voters" from the rolls before the upcoming election—would be barred by the terms of the NVRA itself.

As an initial matter, Plaintiffs' request for a court-ordered round of general voter list maintenance, *i.e.*, election-eve voter roll purges, rests mainly on vague assertions that an unidentified "expert analysis" showed that "there were a total of 1,352,202 voter registration violations" in the 2022 election out of "19,109,291 voter registrations." Compl. ¶ 174. Nowhere in the Complaint do Plaintiffs explain what is meant by "voter registration violations" in a way that could alert the Court and the parties to whether it is plausible that these "violations" have anything to do with a person's eligibility to vote. *See* Compl. ¶¶ 174, Ex. A. At most, they allege that these "violations" include typos or duplicate records or things like "age discrepancies" which Plaintiffs do not explain or define, or the fact that a name on the rolls is "embedded with numerals and symbols" or that 29,847 votes in 2022 were cast by voters with "invalid addresses" (whatever that means). Compl. ¶¶ 40, 74, 75, 179. Indeed, while plaintiffs include a *caption* in their Complaint entitled "Votes from Ineligible Voters," *never once* do they allege that any ineligible voters *actually voted* in Texas, whether on residency or citizenship or any other grounds. There is no factual averment in the Complaint that plausibly supports a claim to remove a single Texas voter from the rolls, let alone the radical, last-minute judicial intervention in the election process that they demand. *See Iqbal*, 556 U.S. at 678.

And even if Plaintiffs had pleaded actual facts supporting their requested relief, that relief would still be barred by law. Plaintiffs ask the Court to order the State to remove supposed voters who changed their address and non-citizens from the voter rolls. Compl. ¶¶ 180–82; *see also* Compl. at 56, Prayer for Relief (asking the Court to order matching of voter rolls to Department of Homeland Security records). But removing voters from the voter rolls, on either of those grounds, on the eve of the election would violate the plain terms of the NVRA.

Section 8(c) of the NVRA provides that states must complete "any program the purpose of which is to systematically remove the names of ineligible voters from the list of eligible voters" no later than 90 days before a primary, general, or runoff election for federal office. 52 U.S.C. § 20507(c)(2)(A). This mandatory quiet period is subject to only a few, expressly specified exceptions: voters may be removed during the 90-day period only at the voter's request, or because the voter has been convicted of a disqualifying crime, or because they have died. 52 U.S.C. § 20507(c)(2)(B). The systematic removal of voters from the rolls based on other bases, like supposed residence or citizenship—*i.e.*, precisely what Plaintiffs are requesting—is thus forbidden by federal law. *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1345–46 (11th Cir. 2014); *see also Djie v. Garland*, 39 F.4th 280, 285 (5th Cir. 2022) (discussing *expressio unius* canon and citing *Christensen v. Harris Cnty.*, 529 U.S. 576 (2000)). The 90-day clock began to run on August 7, so the State may no longer remove voters on residency grounds using a systematic program.

Even if the 90-day prohibition on removal of voters based on residence were not dispositive, the NVRA additionally prohibits *any* removal of a voter from the rolls "on the ground that the registrant has changed residence" without following a mandatory notice process. 52 U.S.C. § 20507(d)(1). Under Section 8(d), a state may remove a person from the voter rolls on residency

grounds only in one of two circumstances: upon (1) the person's written confirmation of a change in residence to a place outside the jurisdiction, or (2) completion of the notice-and-waiting process described in Section 8(d)(2). *Id.* § 20507(d)(2). The notice process provides that a registrant may not be removed from the rolls unless they fail to respond to a postage prepaid and pre-addressed return card, sent by forwardable mail, and subsequently do not vote in two federal general election cycles. *Id* § 20507(d)(1). *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 762 (2018).

Part of the reason Congress prohibited these systematic removal programs close to an election, the *Arcia* court explained, was to avoid the risk of errors. *Arcia*, 772 F.3d at 1346.[6] Congress judged that the risk of erroneous disenfranchisement from imposing data-matching programs or other systematic purges close to the election was too great, as "[e]ligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote." *Id.* In seeking the election-eve imposition of a complex data-matching process to remove voters from the rolls, Plaintiffs are asking the Court to order the very thing that Congress forbade. Plaintiffs' Complaint is thus legally deficient.

### C. Plaintiffs Fail to State a Claim that the State Should Be Ordered Not to Certify the Results of the General Election.

Perhaps the most brazen relief Plaintiffs demand is that the Court prohibit the State from certifying the results of the 2024 General Election and all subsequent elections. The underlying premise of this request appears to be that an election may not be certified if it is somehow not

[6] The inherent errors in these types of purges became apparent when in 2019 the Secretary of State of Texas initiated a systematic removal of 98,000 voter registrants alleged as non citizens based on citizenship information that the Secretary of State had received from the Texas Department of Public Safety. In a case challenging the purge, the court found that the Secretary had "created [a] mess." *Tex. League of United Latin Am. Citizens v. Whitley*, No. SA-19-CA-074-FB, 2019 WL 7938511 at *2 (W.D. Tex. Feb. 27, 2019). This was because of the thousands of registrants identified as non-citizens, a vast majority of them were eligible voters. *Id.* Applying this logic to Plaintiffs' request here further counsels against granting the relief Plaintiffs seek so close to the General Election.

"reliable" (*i.e.*, if it does not meet the standard that Plaintiffs invented based on their distorted reading of HAVA's technical election systems testing requirements). *Id.* ¶¶ 1, 33; *see also id.* at ¶¶ 15, 18, 28, 37, 185, 192, 225. This unprecedented claim fails as a matter of law.

Plaintiffs assert, citing literally nothing, that "the currently accepted Federal definition 'to certify' is *to attest that an official measurement is both accurate and the finding of accuracy was reaching in a fully compliant manner*[.]" Compl. ¶ 12 (emphasis in original). But there is no such language in any federal or state law. Indeed, under Texas law, election certification is a ministerial, mandatory duty, not a discretionary process that depends in any way on the "reliability" of the voter rolls.

The certification of elections occurs at the end of the canvassing process, much of which occurs at the precinct level. Tex. Elec. Code § 67.016. At the conclusion of this extensive process, the local authorities' reports of their tabulation, the precinct returns, and the tally lists reflecting the total number of votes for each candidate and office are all delivered to the general custodian of the election records, and a notation of the completion of the canvass is issued. *Id.* The Governor (who is not a named party here) is the official who ultimately certifies elections for statewide offices or ballot issues (including the presidential election) and does so only after the Secretary of State delivers the returns from the county canvass. *Id.* § 67.010. The Governor's duties in this process are prescribed under law, and they are limited: based on the tabulations of the statewide election results prepared by the Secretary of State, "[t]he governor shall certify the tabulations." *Id.* § 67.013(a)–(d); *see also id.* § 67.010. Nowhere does the Texas Election Code authorize the Governor or the Secretary of State or any county canvassing board to question the validity of the ballots cast or the qualifications of the voters who voted.

Every Texas state court to consider election certification issues has confirmed that certification is mandatory. Indeed, *all* cases involve orders *compelling* certification where someone tried to hold up certification. *See Grant v. Ammerman*, 437 S.W.2d 547, 549 (Tex. 1969); *Williamson v. Kempf*, 574 S.W.2d 845, 847 (Tex. App.—Texarkana 1978, writ ref'd n.r.e); *Orth v. Benavides*, 125 S.W.2d 1081, 1083 (Tex. App.—San Antonio 1939, writ dism'd); *In re Robinson*, 175 S.W.3d 824, 827-28 (Tex. App.—Houston [1st Dist.] 2005, no pet.); *Beeler v. Loock*, 135 S.W.2d 644, 647 (Tex. App.—Galveston 1939, writ dism'd). As one court put it, "during its progress [certification] is not subject to judicial control other than to require the election and canvassing officials to perform their ministerial duties that have been prescribed by statute. *Williamson*, 574 S.W.2d at 84; *see also Sama v. Sowell*, 519 S.W.2d 526, 527 (Tex. App.—Houston [14th Dist.] 1975, no writ).

Candidates concerned about voting irregularities or voter fraud *must* bring any challenges *after* certification has already occurred. Tex. Elec. Code. §§ 221.003; 221.006 (an election contest made before certification should not impact the canvassing and certification process); *see Williamson* 574 S.W.2d at 848 (If candidates "fe[lt] that voting irregularities or fraud has been committed during the election process, then following the completion of the election process, such dissatisfied party can file suit to contest the election, but not before the statutory requirements for the completion of the election have been met"); *Leslie v. Griffin*, 25 S.W.2d 820, 821 (Tex. Comm'n App. 1930) ("No citizen . . . is given a private right to contest the returns made by the proper officials until after the election is completed."); *Sama*, 519 S.W.2d at 527 (denying election contest before certification was completed); *Willaims v. Sorrell*, 71 S.W.2d 944, 946 (Tex. App.—San Antonio 1934, no writ) (requiring canvassing boards to complete certification before election contest as to legality of voters ensued).

Accordingly, even if Plaintiffs had pleaded a valid cause of action, and even if any claims about the upcoming election were ripe, blocking certification would not be a proper remedy.

Plaintiffs Have No Right to Mandamus Relief.

Mandamus is a "drastic and extraordinary" remedy "reserved for really extraordinary cases." *In re JPMorgan Chase & Co.*, 916 F.3d 494, 499 (5th Cir. 2019) (citing *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 350 (5th Cir. 2017)). Because mandamus "is one of the most potent weapons in the judicial arsenal," *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380 (2004) (internal quotation and citation omitted), it is only appropriate when the plaintiff establishes (1) "a clear right to relief"; (2) the defendant has "a clear duty to act"; and (3) "no other adequate remedy exists," *Mendoza-Tarango v. Flores*, 982 F.3d 395, 400 (5th Cir. 2020) (quoting *Wolcott v. Sebelius*, 635 F.3d 757, 768 (5th Cir. 2011)) .

For all the reasons explained above, *supra* Sections III.A–C, Plaintiffs have identified no possible basis for any right to relief, let alone a clear one. Nor have they identified any clear duty that any Defendant is not already following. As explained, any general federal or state law duty to conduct voter roll maintenance is circumscribed by the express and specific limitations of the federal NVRA, including the 90-day quiet period barring systematic removals like those that Plaintiffs request. *See supra* Section III.B; *see also Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013) (NVRA pre-empts contrary state law). With respect to verifying citizenship information, state law provides for no affirmative duty on the part of the State to verify citizenship by sharing and exchanging information *with federal agencies*. *See, e.g.*, Tex. Elec. Code § 16.0332 (authorizing the Secretary of State to enter into an agreement with the Texas Department of Public Safety to verify citizenship information). Nor do federal statutes place any such duty on the State. Neither of the statutes referenced by Plaintiffs, 8 U.S.C. § 1644 and § 1373(c), create any

mandatory duty on the part of state entities to request citizenship information from the Immigration and Naturalization Service (let alone to purge voters on the basis of such information).

Having failed to identify a legal basis for any cause of action at all, Plaintiffs appear to ask the Court to issue sweeping mandamus relief purely on the basis of its own equitable powers. But equity follows the law, and absent a legal entitlement to relief, Plaintiffs are not entitled to mandamus or any other remedy, and this Court would have no power to grant it. *E.g.*, *I.N.S. v. Pangilinan*, 486 U.S. 875, 883 (1988) (Scalia, J.) ("[C]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law." (quoting *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893))); *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 842 (5th Cir. 2019) ("[A] 'court in equity may not do that which the law forbids.'" (quoting *United States v. Coastal Ref. & Mktg. Inc.*, 911 F.2d 1036, 1043 (5th Cir. 1990))); *see also, e.g.*, *Galveston Causeway Const. Co. v. Galveston, H. & S.A. Ry. Co.*, 284 F. 137, 147 (S.D. Tex. 1922) ("[E]quity follows the law, and ground for sympathy is not ground for equity"), *aff'd*, 287 F. 1021 (5th Cir. 1923). Indeed, every relevant principle regarding the nature and proper scope of equitable relief would stand against Plaintiffs' lawless request.

Plaintiffs are seeking highly disruptive federal court intervention into Texas elections just before a major general election. A plaintiff seeking this kind of extraordinary remedy must have an entitlement that is "entirely clearcut." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). Here, Plaintiffs have not even identified a valid legal basis for such an entitlement. Moreover, election-eve federal court remedies in particular must take into account the burden on voters, candidates, and administrators. *E.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (courts weighing election-eve judicial intervention in election procedures must weigh "considerations specific to election cases" such as voter confusion); *Milligan*, 142 S. Ct. at 881

(Kavanaugh, J., concurring) (*Purcell* requires plaintiffs to establish that requested election-eve "changes are feasible without significant cost, confusion, or hardship"). Here, where Plaintiffs seek this Court's "intervention" into nearly every aspect of the 2024 election, Compl. ¶¶ 6–12, those contemplated burdens—disenfranchisement for voters, a massive new mandate to impose novel and illegal voter roll maintenance programs for election administrators, and certification chaos for candidates and the public—would be extreme. Indeed, Plaintiffs seek to deprive innocent voters of the right to vote by removing them from the rolls or stopping the certification of their votes indefinitely, which would be especially inequitable and contrary to the public interest. *E.g.*, *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 220 (W.D. Tex. 2020) ("[P]rotecting the right to vote is of particular public importance.").

Nor is there any actual need to bring an election-eve lawsuit at all; the various obscure allegations about Texas' voter registration database on which Plaintiffs base their Complaint are not new and could have been raised many months or even years ago. *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm.*, 366 F. Supp. 2d 887, 909 (D. Ariz. 2005) (dismissing complaint seeking injunctive relief "just weeks before critical election deadlines"); *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1353 (S.D. Fla. 1999) (dismissing complaint because it was filed after four elections had passed under challenged redistricting plan, 1992, 1994, 1996, and 1998, with only one election remaining before the next Census and noting that court could not grant effective relief because of that). Plaintiffs' indolence, or strategic delay, in waiting to raise their sweeping claims about Texas elections until close to the election is yet another reason why, even if they had come within spitting distance of a valid cause of action, they would not be entitled to equitable relief. *See, e.g.*, *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946) (articulating equitable principle that federal court "may dismiss a suit where the plaintiffs' 'lack of diligence is

wholly unexcused; and both the nature of the claim and the situation of the parties was such as to call for diligence'" (quoting *Benedict v. City of New York*, 250 U.S. 321, 328 (1919)).

## CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint.

Respectfully submitted this 9th day of October 2024,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2024, the undersigned filed the document via this Court's electronic filing system (CM/ECF), which sent notice of such filing to all counsel of record.

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**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION**

| | |
|---|---|
| UNITED SOVEREIGN AMERICANS, INC., BERNARD JOHNSON, AND CITIZENS DEFENDING FREEDOM<br><br>*Plaintiffs*,<br><br>v.<br><br>JANE NELSON, in her official capacity as the Secretary of State of Texas, KEN PAXTON, in his official capacity as the Attorney General of Texas, and MERRICK GARLAND, in his official capacity as Attorney General of the United States<br><br>*Defendants*, | Case No. 2:24-cv-00184 |

**[PROPOSED] ORDER GRANTING TEXAS STATE CONFERENCE OF THE NAACP AND LEAGUE OF WOMEN VOTERS OF TEXAS' MOTION TO DISMISS THE COMPLAINT**

Before the Court is the Motion to Dismiss Plaintiffs' Complaint by Proposed Intervenor-Defendants Texas State Conference of the NAACP ("Texas NAACP") and the League of Women Voters of Texas ("LWVTX"). After considering the Motion, the Briefs in Support by both sides, and the applicable law, the Court finds that Defendants' Motion to Dismiss should be, and hereby is, GRANTED.

**SO ORDERED, this _____ day of _____, 2024.**

*/s/*_____
**HON. MATTHEW J. KACSMARYK**
**UNITED STATES DISTRICT JUDGE**