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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

REPUBLICAN NATIONAL COMMITTEE, NEVADA REPUBLICAN PARTY, and SCOTT JOHNSON

Plaintiffs,

vs.

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

Defendants.

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

Hon. Cristina Silva

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

COME NOW the American Civil Liberties Union of Nevada ("ACLUNV") and Campaign Legal Center ("CLC") as *amici curiae*, and through their counsel of record, attorney Sadmira Ramic of ACLUNV, and hereby move this Honorable Court for an order granting ACLUNV's and CLC's request for leave to file a brief as *amici curiae* on the above-captioned action.

This Motion is made and based on the papers and pleading on file herein, the Points and Authorities submitted herewith, and any further evidence and argument as may be adduced at a hearing on this matter.

Dated this 3rd day of May 2024.

Sadmira Ramic, Esq.
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Counsel of Record for Amici Curiae

INTRODUCTION

Proposed *Amici Curiae* American Civil Liberties Union of Nevada ("ACLUNV") and Campaign Legal Center ("CLC") are nonpartisan, nonprofit organizations that work to protect and enforce the constitutional right to vote and ensure that voters in Nevada and elsewhere are protected from unwarranted purges from the state's voter rolls. They have taken an interest in the above-captioned matter because Plaintiffs' claim under Section 8 of the National Voter Registration Act (NVRA) implicates the constitutional right of Nevadans to participate in the 2024 elections.

A proposed brief is attached hereto as Exhibit A.

POINTS AND AUTHORITIES

The Local Rules of Practice for the District of Nevada do not address the propriety of amici participation. *See* LR IA 1-1–81-1. While "there is no inherent right to file an amicus curiae brief with the Court," a court may in its discretion "grant leave to appear as *amicus* if the information offered is timely and useful." *League to Save Lake Tahoe v. Tahoe Reg'l Plan. Agency*, No. 3:09-CV-478-RCJ-RAM, 2011 WL 3847185, at *15 (D. Nev. Aug. 30, 2011), vacated and remanded on other grounds, 497 F. App'x 697 (9th Cir. 2012) (quoting *Long v. Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999)).

Here, the proposed brief is useful because it provides the Court with relevant legal context not raised by either party. First, the brief situates this lawsuit within a long-running effort to use similar if not identical legal claims to cast doubt on the sufficiency of list maintenance procedures in election offices around the country, none of which have been successful on the merits. In particular, it explains why courts have rejected the factual predicates and voter registration metrics supporting this lawsuit as misleading and insufficient to prove a violation of Section 8 of the NVRA. Second, the brief explains why the remedy Plaintiffs seek is not only beyond the scope of what the NVRA requires but contradicts the Act's central purpose of increasing access to voter registration and avoiding improper removal of voters from the rolls.

The brief further highlights the risks posed by accelerated purges in election years and the disproportionate burdens improper purges impose on certain classes of voters. Thus, the proposed brief does not "merely extend [] the length of either litigant's brief" and provides context relevant to resolving Defendants' motion to dismiss.

Furthermore, the proposed brief is timely because the Court has not yet rendered a decision on the motion to dismiss and the parties' briefing on the motion is ongoing. The parties have indicated that they do not object to the filing of amicus briefs, and this brief is filed well in advance of their requested deadline of May 6, 2024, for such filings. ECF No. 34 at 2.

CONCLUSION

The undersigned respectfully request that the Court grant their Motion for Leave to File Brief as *Amici Curiae*.

Dated this 3rd day of May 2024.

Sadmira Ramic, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May 2024, I filed the foregoing Motion for Leave to File Brief as Amici Curiae with the Clerk of the Court for the United States Federal District Court for the District of Nevada by using the CM/ECF system and that the proper parties were served by way of electronic service.

Sadmira Ramic

EXHIBIT A

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NEVADA AND CAMPAIGN LEGAL CENTER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NEVADA AND CAMPAIGN LEGAL CENTER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

STATEMENT OF INTEREST

Amici Curiae American Civil Liberties Union of Nevada ("ACLUNV") and Campaign Legal Center ("CLC") respectfully submit this brief in support of Defendants' motion to dismiss.[1]

ACLUNV is a non-profit, non-partisan organization dedicated to defending civil liberties and civil rights guaranteed by the federal and state constitutions. This includes assuring that all eligible Nevada voters can register to vote and cast their ballot, and that any actions related to elections comply with federal and Nevada state law. Protecting Nevada voters from being removed from the state's official list of eligible voters pursuant to unwarranted purges which extend beyond that required by Section 8 of the National Voter Registration Act (NVRA) is of paramount importance to ACLUNV and its members as it implicates the constitutional rights of Nevadans and will have a direct impact on their ability to cast their ballots during the upcoming 2024 Primary and General Elections, and those beyond.

CLC is a nonpartisan, nonprofit organization that has been working for more than fifteen years to advance democracy through law. CLC has litigated many cases in federal courts, including as arguing counsel for the plaintiffs in *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018), which challenged the unjustified purging of thousands of registered voters from Ohio's voter rolls under the NVRA, and as counsel for plaintiffs in *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (challenging Texas's photo ID law), and *Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020) (en banc) (challenging Florida's felony disenfranchisement law). CLC has represented voters across the country who were purged from the rolls or denied registration in violation of the NVRA, the federal Voting Rights Act of 1965, or the U.S. Constitution. CLC also advocates for the adoption of laws and procedures to prevent unlawful and discriminatory voter purges.

SUMMARY OF ARGUMENT

Amici urge the Court to dismiss this case, which rests entirely on implausible theories that courts have repeatedly debunked for years, and most recently in March 2024. *Public Interest Legal Foundation v. Benson*, No. 1:21-cv-929, 2024 WL 1128565 (W.D. Mich. Mar. 1, 2024). These dubious efforts sow

[1] This brief was not authored in whole or in part by counsel for any party, and no person or entity other than *Amici Curiae* made any monetary contribution intended to fund its preparation or submission.

unwarranted and harmful doubts about election officials' diligent efforts to maintain Nevada's voter rolls and administer free and fair elections, including the upcoming 2024 election.

Dismissal is warranted for the reasons explained in the moving papers of Defendant Secretary of State Aguilar and Intervenor-Defendants but *Amici* write separately to provide the Court with two additional points of relevant context.

First, this lawsuit is part of a long-running effort to cast aspersions on states' voting systems by accusing election officials of violating Section 8 of the National Voter Registration Act (NVRA) and demanding voter roll purges beyond what the law requires. But courts have repeatedly rejected the misleading theories and metrics Plaintiffs recycle to support their claim in this case. This Court should do the same.

Second, Plaintiffs' Complaint fails to identify any deficiency in Nevada's existing list maintenance practices and operates in effect as a demand to engage in more aggressive voter purges than the law permits. Not only is it beyond the scope of what is legally required, but this would contradict the central purposes of the NVRA to facilitate voter registration and heightens the risk of disenfranchisement. When states rush into extensive purges without proper guardrails in busy election years, as this lawsuit essentially demands, eligible voters are invariably kicked off the rolls, making it more difficult or impossible for those voters to ultimately exercise their fundamental right to vote. The risks and burdens posed by aggressive purging also fall disproportionately on certain groups of voters, namely people of color, naturalized citizens, voters with disabilities, young voters, and military voters.

Amici respectfully request that the Court dismiss this Complaint and reject Plaintiffs' efforts to inflict harm on Nevada's voters and its election processes.

ARGUMENT

I. Plaintiffs' Claim Depends on a Misleading Theory That Courts Have Repeatedly Discredited.

Plaintiffs' lawsuit rests on the same misguided theory that has doomed nearly identical claims filed over the years in other states. Pointing to inaccurate measures of voter registration rates based on mismatched census data, Plaintiffs theorize that certain counties have more voters on the rolls than eligible

residents. They then argue that these "suspiciously" high rates *must* mean the state's list maintenance program violates Section 8 of the NVRA. *See* Compl. ¶¶ 49-64.

No court has ever found a Section 8 violation based on these facts. Instead, courts have affirmatively *debunked* such mix-and-match methods, finding them misleading and insufficient to demonstrate NVRA compliance or noncompliance because they compare data from incomparable sources, yielding statistics from which reasonable inferences about a state's list maintenance procedures cannot be drawn. *See, e.g.*, *Bellitto v. Snipes*, 935 F.3d 1192 (11th Cir. 2019); *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399 (M.D. Pa. 2021); *Va. Voter's Alliance, Inc. v. Leider*, 1:16-cv-00394 (E.D. Va. June, 17, 2016), ECF No. 25 (dismissing a similar complaint in open court for lacking sufficient factual basis and permitting the plaintiffs to refile "only after conducting an appropriate pre-filing investigation").

In *Bellitto v. Snipes*, for example, the Eleventh Circuit affirmed the dismissal of a challenge to Broward County's list maintenance program premised on this same theory. 935 F.3d at 1207. There, as here, the plaintiffs relied on the Census Bureau's five-year American Community Survey (ACS) estimates of citizen voting-age population (CVAP) to infer the number of eligible voters and argued that the county had to be in violation of Section 8 because registration rates in previous election cycles purportedly exceeded that number. *Id* at 1208. The district court rejected this claim as "misleading" because "[t]he data source used for the number of registered voters in [the] numerator [was] not commensurate with the source used for the number of eligible voters in [the] denominator." Order at 18, *Bellitto v. Snipes*, No. 16-cv-61474 (S.D. Fla. Mar. 30, 2018), ECF No. 244 (adding that "the sources include different groups of voters from different time periods").

More specifically, the district court found, and the circuit court agreed, that the plaintiffs' use of the five-year ACS in the denominator was inappropriate as it "significantly underestimate[s]" the voting eligible population. *Id.* at 19; 935 F.3d at 1208. Because the five-year ACS only counts those physically present in a jurisdiction during the two months before a survey is taken, it "*by design* . . . excludes many college students, military personnel, and persons who reside only part of the year" in the jurisdiction, all of whom may be eligible to vote even if the ACS counts them as part of the population in other areas. 935 F.3d at 1208 (emphasis added). The five-year ACS is also a poor proxy for the *current* population because

it is based on survey data collected between two and seven years ago and thus does not reflect growth in the intervening time.[2] *Id.* Plaintiffs' use of the *2018-2022* ACS data to infer eligible voters in *2024* suffers these same inherent flaws. Compl. ¶ 49.

With respect to the numerator, the *Bellitto* court discredited the plaintiffs' use of misleading "snapshots" reflecting the rolls just before an election when the number of new registrants was highest and when election officials are legally barred from removing people. 935 F.3d at 1208. It concluded that the snapshots yield "an inflated registration rate" which "c[an] in no way be taken as a definitive picture of what a county's registration rate is, much less any indication of whether list maintenance is going on and whether it's . . . reasonable." *Id.* (internal quotation omitted). If multiple snapshots do not suffice as evidence of a county's registration rate, then certainly a *single* one, like the one relied on by Plaintiffs here—from a point in time when Nevada cannot legally engage in any list maintenance activities,[3] Compl. ¶ 49—cannot do so. Nor can it be used to indicate that Defendants are not reasonably maintaining the voter registration list.

Beyond misleading registration rates, Plaintiffs allege little else to support their claim. They suggest that the state is not sufficiently purging voters who have changed residence because census relocation rates in some counties allegedly outpace removal rates, Compl. ¶¶ 59-64, but this factual predicate has likewise been found too "implausible" to sustain a list maintenance challenge. *Jud. Watch, Inc.*, 524 F. Supp. 3d at 407 (dismissing complaint for failure to state a claim). The removal rates Plaintiffs allege are from the two-year averages reported by the EAC, which is "unhelpful" because it "overlooks" the fact that removals based on failure to respond to an address-confirmation notice cannot lawfully occur

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[2] The Census Bureau has also cautioned that the five-year ACS "cannot be used to describe what is going on in any particular year in the period, only what the average value is over the full [five-year] period." U.S. Census Bureau, *American Community Survey Multiyear Accuracy of the Data (5-year 2018-2022)*, at 1, https://perma.cc/SLT2-MSEJ.

[3] As the Secretary of State explains in his motion to dismiss, ECF No. 26 at 14, the NVRA prohibits a state from engaging in any program to systematically remove voters from the rolls within 90 days before a federal primary or general election. *See* 52 U.S.C. § 20507. Because the 2024 Presidential Preference Primary was held on February 6, 2024 and the Primary Election is more than 90 days later on June 11, 2024, the state has not been permitted to systematically remove voters since early November 2023.

until after the voter fails to participate in two consecutive federal general elections, meaning "the vast majority of these removals necessarily occur in odd-numbered years." *Id.* Moreover, as in *Judicial Watch*, Plaintiffs compare these biennial removal rates with the Census Bureau's "most recent" estimate of residents who "were not living in the same house as a year ago," which includes voters who moved *within* the state or county and should therefore *not* be removed. Compl. ¶ 62; *see* 524 F. Supp. 3d at 407. In addition, Plaintiffs' suggestion that removals must "approach the number of moves estimated by the Census Bureau" ignores that a person who moves can have their voter registration removed in any number of ways," including by a voter's request. *Judicial Watch*, 524 F. Supp. 3d at 407-08. Their comparisons between removal and census relocation rates therefore cannot "nudge[]" their list maintenance claim "across the line from conceivable to plausible." *Id.* at 408 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009)).

Plaintiffs acknowledge the similarities of their claims to other unsuccessful cases filed across the country, including *Bellitto*. ECF No. 41 at 1, 17, 20-21. They draw this comparison to urge this Court to deny the motion to dismiss because the same was done in those cases, but this argument falls short. As an initial matter, the Complaint here contains significantly thinner factual allegations than in those cases. In *Bellitto*, for example, the district court denied a motion to dismiss because the complaint contained specific factual allegations of deficiencies in the defendants' existing voter registration practices. *See Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1365 (S.D. Fla. 2016) (noting allegations that defendant's procedures had not prompted removal of specific voters identified as deceased or no longer a resident of the jurisdiction). The same is true of the complaint found sufficient in *Public Interest Legal Foundation v. Benson*, a case Plaintiffs cite in their favor, which included extensive allegations regarding the workings of the defendants' list maintenance program. *See* Compl., *Pub. Int. Legal Found. v. Benson*, 2022 WL 21295936, No. 1:21-cv-00929 (W.D. Mich. Nov. 3, 2021), ECF No. 1 at ¶¶ 46-56. By contrast, the Complaint here includes *no* allegations regarding Nevada's existing procedures, let alone specific facts indicating they are unreasonable, which is the only question under Section 8. *See Boockvar*, 495 F. Supp. 3d at 395 ("Without allegation . . . of a specific breakdown in [defendants'] voter registration system, we cannot find that the many procedures currently in place are unreasonable."). Even in cases premised entirely on "registration

rates," like *Martinez-Rivera*, the complaint alleged a pattern of high rates over the course of several years, whereas here Plaintiffs rely on a single snapshot in time. *See* Compl., *Am. C.R. Union v. Martinez-Rivera*, No. 2:14-cv-00026 (W.D. Tex. Feb. 25, 2016), ECF No. 1. This negligeable factual support for their claim is insufficient to overcome a motion to dismiss.

Furthermore, of the numerous claims that have been filed over the years questioning list maintenance practices on similar factual predicates, *none* have been found meritorious. Many are dismissed at early stages for factual insufficiency,[4] and the vast majority are voluntarily dismissed by plaintiffs before adjudication of the merits.[5] In the few instances where cases have reached an evaluation of the merits, courts have found that facts and mismatched metrics like those Plaintiffs allege here are insufficient to demonstrate a Section 8 violation. *See Bellitto*, 935 F.3d at 1192 (11th Cir. 2019); *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2024 WL 1128565 (W.D. Mich. Mar. 1, 2024); *Pub. Int. Legal Found. v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020). Plaintiffs rely on these cases, *Bellitto* and *Benson* in particular, to support their argument. And they concede that courts have dismissed similar claims on the merits, but they ask this Court to ignore these ultimate outcomes because the dismissals did not occur at an earlier stage. ECF No. 1, 17. In essence, Plaintiffs ask this Court to expend time and resources, and let an unsupported case ride its course, even if it will end in ultimate dismissal. But assessing whether a complaint states a plausible claim for relief is ultimately "a context-specific task" requiring "the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at

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[4] *See, e.g.*, *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 405 (M.D. Pa. 2021) (dismissing claim for allegations based on outdated data); *Va. Voter's Alliance, Inc. v. Leider*, 1:16-cv-00394 (E.D. Va. June 17, 2016), ECF No. 25 (dismissing claim for insufficient pre-filing investigation); *Am. C.R. Union v. Phila. City Comm'rs*, No. CV 16-1507, 2016 WL 4721118, at *11 (E.D. Pa. Sept. 9, 2016) (dismissing allegation of failure to make reasonable efforts to conduct list maintenance for lack of facts to support the claim).

[5] These cases, including those cited by Plaintiffs, are often dropped because the defendant's list-maintenance practices are shown to be reasonable, with defendants often denying liability and maintaining that their existing practices complied with Section 8. *See, e.g.*, *Jud. Watch, Inc. v. Griswold*, No. 1:20-cv-02992 (D. Colo. Mar. 3, 2023), ECF No. 105-1; *Jud. Watch, Inc. v. N. Carolina State Bd. of Elections*, No. 3:20-CV-00211-RJC-DCK, 2022 WL 682372, at *1 (W.D.N.C. Mar. 7, 2022), ECF No. 71; *Am. C.R. Union v. Martinez-Rivera*, No. 2:14-cv-00026 (W.D. Tex. Feb. 25, 2016), ECF No. 59; *Daunt v. Benson*, No. 1:20-cv-00522 (W.D. Mich. Feb. 16, 2021), ECF No. 58; *Pub. Int. Legal Found. v. Winfrey*, No. 2:19-cv-13638 (E.D. Mich. June 30, 2020), ECF No. 56.

679; *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014). Judicial experience testing these threadbare allegations has repeatedly shown that, even when true, they are legally insufficient to demonstrate a Section 8 list-maintenance claim.

At bottom, Plaintiffs' Complaint attempts to piece together unrelated data points from incompatible sources and then brand the discrepancies as indication of systemic failures in voter-list maintenance, without identifying *any* actual alleged deficiencies in the state's procedures. While a complaint's factual allegations must generally be accepted as true, this Court is under no obligation to accept Plaintiffs' proposed "unwarranted deductions of fact" and "unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.") (internal citation omitted). Because Plaintiffs' complaint lacks any allegations regarding Defendants' actual list maintenance practices and rests entirely on misleading factual predicates that courts have deemed insufficient to demonstrate a violation of Section 8, it falls far short of the "factual content" necessary to "draw the *reasonable* inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (emphasis added). The Complaint therefore lacks facial plausibility and should be dismissed for failure to state a claim.

II. Plaintiffs' Desire for More Aggressive Purges is Contrary to the Purpose of the NVRA and Risks Disenfranchising Eligible Voters.

The NVRA strikes a balance between ensuring all eligible citizens can register to vote and empowering jurisdictions to take reasonable efforts to remove ineligible voters from the rolls. *Bellitto*, 935 F.3d at 1198. While these efforts are generally harmonious, where tension does exist between them, the text, purpose, and design of the NVRA make clear that protecting voters against wrongful removal is paramount. Plaintiffs seek to upset this balance, and instead demand that the Secretary embark on a campaign of excessive purging far beyond what the NVRA requires or allows.

The NVRA has four clearly enumerated purposes: 1) to establish procedures to increase the number of eligible citizens who register to vote, 2) to make it possible for governments to implement the Act in a manner that enhances the participation of eligible citizens as voters in federal elections, 3) to

protect the integrity of the electoral process, and 4) to ensure that accurate and current voter registration rolls are maintained. 52 U.S.C. § 20501(b).

In furtherance of these purposes, a state "shall," make "reasonable effort to remove the names of ineligible voters" for only two reasons: a registrant's death or change of address. 52 U.S.C. § 20507(a)(4). Removal of a registrant because of criminal conviction or mental incapacity is not required under the NVRA, but a state *may* do so "as provided by state law." *Id.* at (a)(3). A state does not violate the NVRA by choosing not to engage in activity that the statute clearly lists as optional. This "obvious distinction" between what is allowed under (a)(3) and what is required under (a)(4), has been repeatedly confirmed. *See, e.g., Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 183 (3d Cir. 2017) (citing Senate Report to further bolster analysis of the NVRA's plain text).

The mandatory language of (a)(4) applies only to voters who have died or moved, and efforts to argue otherwise have been roundly rejected. When an activist group repeatedly tried to argue that the NVRA's mandatory provisions swept more broadly, the district court threatened to impose sanctions for such a "blatant misrepresentation of the statute." *Am. C.R. Union*, 872 F.3d at 184. The Third Circuit affirmed the district court in rejecting the "statutory contortion" necessary to argue that the mandatory language in (a)(4) should be substituted for the "plainly permissive" language of (a)(3). *Id.*

Plaintiffs follow in the footsteps of these untenable readings of the NVRA in claiming that the Secretary is failing to meet his obligations under the statute by not conducting the required list maintenance. Compl. ¶¶ 93-97. Plaintiffs make no effort to explain how the Secretary is not taking "reasonable" steps to remove registrants who have died or moved, or to articulate what specific remedy they are seeking. As courts have made clear, the NVRA does not require the Secretary to accede to Plaintiffs' demands to purge the voter rolls, but rather only requires him to make a "reasonable effort" to remove voters who have died or moved. *See Bellitto*, 935 F.3d at 1195-96 (holding that the NVRA "could not be clearer" that states are required only to make "a reasonable effort to remove voters who become ineligible on account of death or change of residence, and only on those two accounts").

Plaintiffs attempt to suggest the NVRA requires something more by making references instead to the Help America Vote Act (HAVA). *See* Compl. ¶¶ 35-37. However, they misinterpret HAVA as

imposing additional list-maintenance requirements on states, when its plain text instead explicitly reaffirms that "if an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993." 52 U.S.C. § 21083(a)(2)(A)(i). Courts have been clear in their admonition that "[n]othing in HAVA broadens the scope of the NVRA's list-maintenance obligations." *Bellitto*, 935 F.3d at 1202; *see also Am. C.R. Union*, 872 F.3d at 184-85 (rejecting use of HAVA to enlarge obligations under the NVRA).

While the precise procedures Plaintiffs seek are unclear, what is clear is that they are asking this Court for declaratory and injunctive relief that would force Nevada to engage in more aggressive and unwarranted removal of voters from the rolls. Compl. ¶ 97. These voter purge goals are not only contrary to the NVRA but pose serious risks as well. When removal efforts are rushed, premised on flawed data, or conducted without sufficient care or safeguards, eligible voters can be erroneously dropped from the rolls—sometimes in the tens of thousands. In a comprehensive report, the Brennan Center analyzed voter purges and meritless lawsuits like this one that seek to increase them. Jonathan Brater, Kevin Moors, Myrna Pérez, & Christopher Deluzio, "Purges: A Growing Threat to the Right to Vote," Brennan Center for Justice (2018), https://perma.cc/JP8U-N2LF. The report found that purges nationwide have increased, as have flawed and erroneous purges. *Id.* at 1, 5-6 (discussing one erroneous purge that swept 200,000 eligible New York City voters off the rolls before the 2016 primary). One driver behind flawed purges was the significant rise in lawsuits like this one, which can have serious consequences. *Id.* at 9-10. For example, one 2015 suit against a small, poor Mississippi county resulted in about 1,500 of the county's 9,000 voters being made inactive, the first stage of being removed from the voter rolls altogether. *Id.* at 10.

As Congress understood when it enacted the NVRA, the improper removal of eligible voters "unnecessarily places additional burdens on the registration system because persons who are legitimately registered must be processed all over again." S. Rep. No. 103-6, at 18 (1993). When voters do not realize they have been improperly purged until they attempt to vote, they can be required to cast provisional ballots, creating longer lines and confusion at polling locations, and additional steps for voters to complete

in order for their vote to be counted.[6] These significant burdens from improper removal fall disproportionately on citizens who already face the greatest obstacles to voting, including voters of color, naturalized citizens, young voters, voters with disabilities, unhoused voters, and military voters,[7] and the "long history" of overly aggressive voter "purge systems" that "violate the basic rights of citizens," particularly "minority communities," was a core reason for the NVRA's passage. S. Rep. No. 103-6, at 18 (1993).

These risks are precisely what the NVRA seeks to guard against, and efforts to engage in such purges strike at the heart of the NVRA's purposes. Overzealous removal of potentially ineligible voters in purported accordance with Section 8(b)(4) not only infringes on the voter protective provisions in (b)(1) and (b)(2), but on the integrity and accuracy provisions in (b)(3) and (b)(4) as well. 52 U.S.C. §20501. Removing an eligible voter from the rolls infringes on the accuracy and currentness of the registration rolls every bit as much as overlooking an ineligible voter who remains on the rolls. And an election process in which eligible voters are removed (or fear their improper removal) does serious harm to the integrity of that system. *Amici* urge this Court to reject Plaintiffs' efforts to inflict this kind of harm on Nevada's voters and election system.

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[6] *See, e.g.*, U.S. Commission on Civil Rights, Briefing Report: Department of Justice Voting Rights Enforcement for the 2008 U.S. Presidential Election, at 17 (Washington: July 2009), https://perma.cc/4Q2R-RGLV; Michael Kaplan, Sheena Samu, & Major Garrett, *Eligible voters are being swept up in conservative activists' efforts to purge voter rolls*, CBS News (Dec. 4, 2023), https://perma.cc/Q9JN-KQ5C.

[7] *See, e.g.*, Br. of Nat'l Disability Rights Network, et al., Husted v. A. Philip Randolph Inst., No. 16-980, at 6-9, 27-32 (2018), https://perma.cc/TK96-44Y4; Br. of Nat'l Ass'n for the Advancement of Colored People and the Ohio State Conference of the NAACP, No. 16-980, at 17-19 (2018), https://perma.cc/9B6N-DPVT; Demos, "Protecting Voter Registration: An Assessment of Voter Purge Policies in Ten States," at 1-2, https://perma.cc/MKP2-CT3D.

CONCLUSION

Amici respectfully requests that the Court grant Defendants' Motion to Dismiss.

Dated this 3rd day of May 2024.

/s/ Sadmira Ramic
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