

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS; TEXAS LEAGUE OF UNITED
LATIN AMERICAN CITIZENS; LEAGUE OF
UNITED LATIN AMERICAN
CITIZENS COUNCIL 102; and COMMON
CAUSE,

Plaintiffs,

v.

JANE NELSON, in her official capacity as the
Texas Secretary of State; PAUL ADAMS, in his
official capacity as Dallas County Elections
Department Administrator; FRANK PHILLIPS,
in his official capacity as Denton County
Elections Administrator; and KALEB
BREAUX, in his official capacity as Collin
County Elections Administrator,

Defendants.

Case No. 1:26-cv-00729-ADA

**PLAINTIFFS' RESPONSE IN OPPOSITION TO SECRETARY OF STATE
DEFENDANT'S MOTION TO DISMISS**

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INTRODUCTION AND CONCISE STATEMENT

At the Secretary of State’s instruction, the State of Texas has undertaken a voter purge program that relies on unvetted, outdated citizenship data to remove voters from rolls in a discriminatory and inconsistent manner (the “Purge Program”). The Purge Program discriminates against and wrongfully removes naturalized, derived, and acquired U.S. citizens from the voter rolls, requiring them to prove their citizenship to maintain their ability to vote, a step not required of their U.S.-born peers. Section 8(b)(1) of the National Voter Registration Act (“NVRA”) requires that voter list maintenance programs—the process through which election jurisdictions ensure that state voter lists are accurate and update-to-date—must be “uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1). The Purge Program thus violates federal law by failing to ensure that U.S. citizens born abroad are entitled to the same voting rights and protection as all other U.S. citizens.

While the State and its top officials have been vocal supporters of the Purge Program, they now attempt to abdicate responsibility for its non-uniform implementation and discriminatory impact. In her motion to dismiss, ECF No. 27 (“SOS MTD Br.”), Defendant Jane Nelson, the Texas Secretary of State (“the Secretary”) argues that Plaintiffs lack standing to bring the present challenge and that it is barred by sovereign immunity. However, the Secretary’s attempts to evade responsibility for the Purge Program are disingenuous and unsupported by Fifth Circuit precedent. Thus, the Secretary’s motion to dismiss should be denied.

LEGAL BACKGROUND

“For many years, Congress left it up to the States to maintain accurate lists of those eligible to vote in federal elections.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). In 1993, however, Congress imposed minimum federal standards for voter registration and voter roll list maintenance by enacting the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20501 *et seq.* The NVRA balances “two main objectives: increasing voter registration and removing

ineligible persons from the States’ voter registration rolls.” *Husted*, 584 U.S. at 761; see 52 U.S.C. § 20501(b).

To achieve the first objective, Congress required covered states to allow citizens to register by mail, at designated state agencies, and when applying for a driver’s license. 52 U.S.C. §§ 20503-20506. In addition, to prevent the cancellation of valid registrations and avoid requiring unnecessary re-registrations, Congress limited the circumstances in which states may remove names from their voter rolls. *See* 52 U.S.C. § 20507(a)(3), (b), (c), & (d). To achieve the second objective, Congress required states to engage in general list maintenance programs to remove the names of voters who have died or moved away and permits states to remove other ineligible individuals under certain circumstances. 52 U.S.C. § 20507(a)(3) & (4).

This case concerns Section 8(b)(1) of the NVRA, which requires that voter list maintenance programs undertaken by states and election jurisdictions responsible for maintaining voter rolls be “uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1). This provision protects against list maintenance programs that are not uniformly applied or that discriminate against particular groups of voters, such as naturalized citizens. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 714-15 (9th Cir. 2025).

A person “aggrieved” by a violation of the NVRA must provide notice of the violation to the chief election officer of the relevant state prior to filing suit. 52 U.S.C. § 20510(b)(1). If the violation is not corrected within 90 days, or within 20 days if the violation occurred within 120 days before a federal election, the aggrieved person may file suit for declaratory or injunctive relief in federal court. *Id.* § 20510(b)(2).

FACTUAL AND PROCEDURAL BACKGROUND

In March 2025, the Texas Secretary of State’s office signed a memorandum of agreement with the United States Citizenship and Immigration Service (“USCIS”) allowing the State of Texas

to compare Texas voter registration records with USCIS’s Systematic Alien Verification for Entitlement (“SAVE”) system of records. Compl. ¶ 81.¹ The SAVE system was not designed as a voter registration tool. Instead, in the rush to create a national citizenship database, the agency transformed a pre-existing data set that had no information on U.S.-born persons, by relying on data sources that are known to be stale, unreliable and incomplete in launching the updated SAVE system. Compl. ¶¶ 107-40.

USCIS allowed states, including Texas, to begin using SAVE for voter verification even while the agency knew of SAVE’s shortcomings and inaccuracies, and as the federal government continued to try to tweak the system to address those known problems. *Id.* The result is a SAVE system that, when used for voter verification, consistently provides incomplete and unreliable information, particularly for naturalized, acquired, and derived citizens. Compl. ¶¶ 188-205. Indeed, USCIS has specifically said that it is up to a state to decide how to use SAVE data and whether individuals flagged by SAVE should be removed from voter rolls. Compl. ¶ 121.

Nonetheless, in October 2025, the Texas Secretary of State chose to use SAVE data to direct a purge of Texas’s voter rolls. Compl. ¶ 92. The Secretary of State did so without any evidence of the reliability or origin of the data and without taking any steps to check its own

¹ SAVE is a federal system that was previously used by government agencies to verify noncitizens’ eligibility for benefits. The overhauled SAVE system is now being used for voter verification in some states, despite being prone to errors stemming from unreliable data, particularly for non-U.S. born citizens. *See* Compl. ¶ 101-21. A federal court recently vacated and set aside the recent modifications made to SAVE, finding that “states have partnered with the federal government to access the database and are actively removing United States citizens from voter rolls based on inaccurate information.” And that deploying SAVE for voter verification “trampled on the privacy rights of American citizens in a manner that threatens the sacred right to vote.” The court held that the modifications made to the SAVE system by the federal government violated the Privacy Act, the Social Security Act, and the Administrative Procedure Act. *League of Women Voters v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-3501 (SLS), 2026 WL 1784297, at *1 (D.D.C. June 22, 2026), *appeal docketed*, No. 26-5243 (D.C. Cir. June 29, 2026).

citizenship verification data maintained by the State’s own Department of Public Safety (DPS).² Compl. ¶¶ 141-63.

Based solely on the results of matching SAVE data to the voter registration list, the Secretary of State sent lists of purported non-citizens to county election officials (“Purge Lists”) with guidance that a voter’s presence on the list was sufficient reason to begin the removal process. Compl. ¶ 13. Counties implemented the purge instigated by the State in various, non-uniform ways. Compl. ¶¶ 164-87. Some counties took no action in response to the Purge Lists, while others undertook further investigation before removing voters. *Id.* Each of the Defendant Counties here undertook no further investigation (such as consulting DPS records) before sending notice letters demanding that voters prove their citizenship within a number of days or else be removed from the voter rolls.

In letters sent on January 15, 2026 and February 24, 2026, Plaintiffs provided notice of their intent to sue unless the violations of Section 8(b)(1) were corrected, Compl. ¶¶ 206-08, and thereafter filed this lawsuit on March 26, 2026.

LEGAL STANDARD

A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction “should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *see also Venable v. Louisiana Workers’ Comp. Corp.*, 740 F.3d 937, 941 (5th Cir. 2013); *Umphress v. Hall*, 133 F.4th 455, 462 (5th Cir. 2025). Plaintiffs’ burden varies depending upon the stage of the

² DPS maintains a record of the proof of citizenship or proof of legal residence documents provided by individuals who apply for Texas driver’s licenses or identification cards. These records are, of course, snapshots in time that can become stale for some immigrants who subsequently naturalize. But they are reliable records of an individual’s citizenship at the time of their DPS interaction, for those who provide that documentation.

litigation. To survive a motion to dismiss at the pleading stage, plaintiffs need only “allege facts that give rise to a plausible claim” of standing. *Cornerstone Christian Schs. v. Univ. Interscholastic League*, 563 F.3d 127, 134 (5th Cir. 2009); *see also Barilla v. City of Houston, Texas*, 13 F.4th 427, 431 (5th Cir. 2021). In evaluating a motion to dismiss, courts presume “that general allegations embrace those specific facts that are necessary to support the claim.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

ARGUMENT

I. Defendants’ Rule 12(b)(1) Motion should be denied because Plaintiffs have sufficiently alleged their standing.

The Secretary argues that Plaintiffs cannot establish standing to challenge the Purge Program simply because it is an activity “undertaken to investigate potential noncitizens on the voter rolls.” SOS MTD Br. at 4. However, the Secretary’s characterization of the Purge Program as an “investigatory activit[y] directed at individual voters,” *id.*, does not make it immune to a legal challenge under the NVRA. To the contrary, it is precisely such list maintenance programs that are governed by it.

The Secretary’s arguments fall short because Plaintiffs have sufficiently pleaded standing. Plaintiffs “(1) [suffered] an ‘injury in fact’ (2) that is ‘fairly traceable’ to the challenged conduct and (3) redressable by a favorable decision.” *Lewis v. Hughes*, 475 F. Supp. 3d 597, 611 (W.D. Tex. 2020) (quoting *Lujan*, 504 U.S. at 560-61); *see also OCA-Greater Houston v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017). The injuries suffered by Plaintiffs under the Purge Program are direct injuries to its members that establish associational standing and injury to their core work that establish organizational standing. League of United Latin American Citizens (LULAC), Texas LULAC, and LULAC Council 102 (“LULAC Plaintiffs”) are organizations that provide voter registration and education services to their members and other Texas voters, particularly

naturalized citizens. *See* Compl. ¶¶ 25-41. Common Cause is a grassroots organization that works to increase civic participation, including by promoting voter participation among its Texas members. *See* Compl. ¶¶ 42-50. In addition to directly registering voters, Common Cause assists voters experiencing registration-related problems. *See* Compl. ¶ 45. Each Plaintiff advances specific allegations that the Purge Program will put its registered voter members at heightened risk of removal, hamper the groups’ voter registration and engagement efforts by threatening the registration status of voters and adding barriers to register or maintain registration, force Plaintiffs to expend more resources to recruit and train volunteers to assist voters experiencing problems due to Defendants’ actions, and cause a diversion of resources from other core program priorities to combat the harm caused by the Program. These harms are fairly traceable to the Secretary and can be redressed by a decision permanently enjoining Defendants from implementing and enforcing the Program. The Secretary’s arguments amount to a disagreement with the constitutional requirements, not a failure of Plaintiffs’ Complaint.

A. All Plaintiffs adequately pleaded injury-in-fact.

Courts in this District recognize, “[t]he injury in fact requirement under Article III is qualitative, not quantitative, in nature,” and the injury ‘need not be substantial.’” *Richardson v. Texas Sec’y of State*, 485 F. Supp. 3d 744, 758 (W.D. Tex. 2020), *rev’d in part, vacated in part sub nom.*, *Richardson v. Flores*, 28 F.4th 649 (5th Cir. 2022) (quoting *OCA-Greater Houston*, 867 F.3d at 612). Plaintiffs satisfy the injury in fact requirement if they can demonstrate harm amounting to anything more than an “identifiable trifle.” *United States v. Students Challenging Regul. Agency Procedures*, 412 U.S. 669, 689 n.14 (1973); *OCA-Greater Houston*, 867 F.3d at 612 (quoting *Ass’n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999)). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific

facts that are necessary to support the claim.” *Apodaca-Fisk v. Allen*, No. EP-19-cv-00259-DCG, 2020 WL 7493196, at *6 (W.D. Tex. Dec. 21, 2020) (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990)).

i. Plaintiffs have sufficiently pleaded associational standing.

Associational standing exists when the entity’s “members would otherwise have standing to sue in their own right, the interests at stake are germane to the [entity’s] purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *La Union del Pueblo Entero v. Abbott*, 614 F. Supp. 3d 509, 517 (W.D. Tex. 2022) (finding that LULAC had associational standing to challenge a Texas voting statute). Secretary Nelson argues that Plaintiffs lack associational standing because Plaintiffs “have not alleged that any of their members have been identified as potential noncitizens unlawfully registered to vote, removed from the voter registration list or prevented from voting in an election.” SOS MTD Br. at 8. Contrary to the Secretary’s assertions, an organization does not need to “set forth the name of a particular member in its complaint in order to survive a Rule 12(b)(1) motion to dismiss based on a lack of associational standing.” *Hancock Cty. Bd. of Supervisors v. Ruhr*, 487 F. App’x 189, 198 (5th Cir. 2012); *id.* at 198 n.5 (quoting *Bldg. & Constr. Trades Council of Buffalo v. Downtown Dev., Inc.*, 448 F.3d 138, 145 (2d Cir. 2006)) (“[D]efendants cite to no authority—nor are we aware of any—that supports the proposition that an association must ‘name names’ in a complaint in order properly to allege injury in fact to its members.”). Where an association generally alleges “that some of its members” fall within the group of affected citizens, the associational plaintiff has “adequately alleged that some of its members were suffering a concrete, particularized injury” and has standing to proceed. *Hancock*, 487 F. App’x at 198-99; *see Lewis*,

475 F. Supp. 3d at 613.³

Plaintiffs meet this pleading standard. LULAC Plaintiffs and Common Cause each have members who are registered voters in the State of Texas. Compl. ¶¶ 25-50. Plaintiffs have sufficiently alleged that the Purge Program will harm this membership. LULAC adequately alleges that LULAC’s naturalized citizen members have standing because they are “acutely at risk of being erroneously removed from the voter rolls,” and that its volunteers will be deterred from their voter registration and education activities. Compl. ¶¶ 27-28, 30-33. Texas LULAC and LULAC Council 102 similarly allege that their primarily Latino membership is at heightened risk of removal as a result of the Purge Program and that their voter registration and engagement programs targeting newly naturalized citizens will be frustrated. Compl. ¶¶ 34-41. And as alleged in the Complaint, Common Cause’s members are vulnerable to removal because of their citizenship status and that its volunteers’ voter registration, education, and election protection work will be thwarted by the Purge Program. Compl. ¶¶ 42-50. Courts have found standing in similar circumstances where purge programs put naturalized citizens at a higher risk of removal because of errors databases produce in checking citizenship status. *See Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (organizations had associational standing where naturalized citizens members established program relies on databases that produced errors in checking immigration status in the 90 days before an election); *Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 986-87 (D. Ariz. 2024) (finding standing where “relatively clear” at least one of each organization’s members would be impacted by database checks).

³ Defendants’ insistence that Plaintiffs identify individual affected members is particularly unreasonable in light of its refusal to provide the list of affected voters under the NVRA’s Public Disclosure Provision and its argument that Plaintiffs suffer no cognizable injury from that lack of access. Further, given the non-uniform implementation of this Program, not all affected voters have yet received notice of their presence on this list and therefore are unaware of whether they may, at a later date, be removed because of the Program.

The factual allegations in Plaintiffs' Complaint satisfy Plaintiffs' burden at the pleading stage to make "general factual allegations" demonstrating at least a minimal showing of injury. *See Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 209 (W.D. Tex. 2020); *Hancock*, 487 F. App'x at 198-99; *Lewis*, 475 F. Supp. 3d at 612-13.

ii. Plaintiffs have organizational standing.

Plaintiffs have established injury in fact under an organizational standing theory by demonstrating that they have "diverted significant resources to counteract the defendant's conduct" where that conduct "significantly and 'perceptibly impaired' the organization's ability to provide its 'activities—with the consequent drain on the organization's resources.'" *NAACP v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). In *Havens*, the plaintiff alleged that "its efforts to assist equal access to housing through counseling and other referral services" were frustrated because it "had to devote significant resources to identify and counteract" the defendant's discriminatory program. 455 U.S. at 379; *see Food & Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (finding it "[c]ritical[]" that plaintiff "not only was an issue-advocacy organization, but also operated a . . . service[]"). In finding standing, the Court relied on the fact that the defendant's actions interfered with plaintiff's core business activities, and because the challenged conduct "perceptibly impaired HOME's ability to provide" its services, the organization "suffered injury in fact"—a "concrete and demonstrable injury to [its] activities" with a "consequent drain on [its] resources." *Havens*, 455 U.S. at 379.

The Secretary incorrectly asserts that Plaintiffs' diversion of resources is insufficient to confer standing. SOS MTD Br. at 7. In support of this, the Secretary wrongly asserts that the Supreme Court blanketly "reject[ed] the proposition that 'standing exists when an organization diverts its resources in response to a defendant's actions.'" *Id.* at 5. In fact, *Alliance* affirmed that

organizational standing exists where a challenged action “directly affect[s] and interfere[s] with [its] core business activities.” *Alliance*, 602 U.S. at 395 (citing *Havens*). What *Alliance* clarified, however, is that an organization “cannot ‘spend [its] way into standing’ by voluntarily using resources to counter” the challenged action. *Tenn. Conf. of NAACP v. Lee*, 139 F.4th 557, 565 (6th Cir. 2025) (quoting *Alliance*, 602 U.S. at 394). Applying that standard, the *Alliance* Court found plaintiffs lacked standing when they only expended resources on “public advocacy and . . . education” to “oppose [the defendant’s] actions[,]” instead of showing that the defendant’s actions impeded their core activities. 602 U.S. at 394-95. The Court held that an organization that has not otherwise suffered a concrete injury “cannot spend its way into standing simply by expending money to gather information and advocate against” the action, but it did not disturb *Havens*’ rule that organizational standing exists when a policy impairs a plaintiff’s core activities or forces a diversion of resources from those activities. *Id.*

Unlike in *Alliance*, Plaintiffs here allege direct interference with their core activities: registering and assisting voters. Plaintiffs thus fall within the scope of *Havens*. The Complaint plausibly alleges that the Purge Program directly impairs LULAC Plaintiffs’ core activities, including their voter registration and education efforts, as well as other programs designed to increase voter turnout among its members and the Hispanic community in Texas. Compl. ¶¶ 25-41. The Purge Program relies on SAVE and its underlying citizenship data for voter purges, despite its inaccuracy for non-U.S. born citizens and that it will result in the erroneous removal of eligible voters. *Id.* ¶¶ 80-100; 107-21. This will undermine the efficacy of LULAC’s core activities by making it more difficult to register and engage with non-U.S. born citizens who are eligible voters. *Id.* ¶¶ 32-33; 35-37; 40-41; 48-50. The Complaint further alleges that to continue registering voters, particularly naturalized citizens, Plaintiffs must “divert resources to mitigate the Program’s effects

and to educate LULAC’s constituents and members—especially non-U.S. born citizen voters—on how to respond to unlawful removals and how to attempt to re-register to vote.” *Id.* ¶ 30. Because the challenged provisions have perceptibly impaired LULAC Plaintiffs’ ability to provide voter registration assistance, they have concretely and demonstrably injured Plaintiffs beyond a mere “setback to the organization’s abstract social interests[,]” leaving “no question that [Plaintiffs] ha[ve] suffered injury in fact.” *Havens*, 455 U.S. at 379.

The Complaint also alleges that the Purge Program impairs Common Cause’s core activities of “empowering Americans, including Texans, to increase their civic participation and make their voices heard in the political process.” Compl. ¶ 43. Crucial to this mission are Common Cause’s voter registration and voter assistance activities. Common Cause alleges that the Purge Program hampers these core activities by “threatening the registration status of voters and adding barriers to register or maintain registration.” *Id.* ¶ 46. The Complaint further alleges that the Program will cause it to “divert resources to educating its members” including naturalized citizens who are vulnerable to being improperly flagged and removed under the Purge Program because of their previous citizenship status. *Id.* ¶ 47. This is not diversion of resources to advocate against the Defendant’s program, like in *Alliance*, but rather diversion of resources to counteract the specific harms caused by the Program to Common Cause’s core voter registration efforts. To counteract those harms, Common Cause must divert time and resources that it has budgeted for other activities, including, but not limited to, “organizing petition campaigns directed to state and local government officials, letter-writing and phone-banking campaigns, town halls, workshops and rallies.” *Id.* ¶ 48.

The factual allegations include precisely the kind of concrete operational harm—the ability to reach fewer people in furtherance of an organization’s mission—that the Fifth Circuit has held

sufficient for standing purposes. *See OCA-Greater Houston*, 867 F.3d at 612 (finding that OCA had standing to challenge a statute which frustrated its ability to “get out the vote[,]” which was a vital part of its mission); *Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014) (finding that injury due to increased time spent on voter registration drives constituted sufficient injury in fact to confer standing); *see also Lewis*, 475 F. Supp. 3d at 613 (finding that organizational plaintiffs may establish standing where “getting out their membership’s vote is germane to their purpose”). Therefore, these allegations are more than sufficient at the pleading stage to challenge the implementation of the Purge Program under a diversion of resources theory.

iii. Plaintiffs establish injury for their public disclosure claim.

The Secretary is wrong that “Plaintiffs here make the same claim of informational injury that the Fifth Circuit rejected in *Campaign Legal Center*.” SOS MTD Br. at 7. Plaintiffs do not seek the records for the sole purpose of receiving them nor is the injury from Defendant’s failure to disclose speculative. Instead, as outlined in the Complaint and above, Plaintiffs offer several examples of the “downstream consequences” that flow from Defendant’s failure to disclose and establish both associational and organizational standing. *Campaign Legal Center v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022).⁴ Plaintiffs know that the Program is fatally flawed and targets naturalized citizens from the public reporting available. For example, without the list of affected voters, Plaintiffs cannot fully identify their members or other constituents that have been harmed to assist them in rectifying their registration. Defendant is simply incorrect to argue that these Plaintiffs “have not claimed organization standing on behalf of any Texas voter members.” SOS MTD at 7.

⁴ Unlike *Scott*, Defendants cannot plausibly assert that Plaintiffs “do not allege that identification of voter names and identification numbers will directly lead to action relevant to the NVRA or any other statute, nor that their direct participation in the electoral process will be hindered.” *Id.* To the contrary, Plaintiffs have already brought other NVRA claims in this suit based on the publicly known errors to the Program and the information sought will only further shed light on the harms of the Program, including to Plaintiffs’ members, that is the subject of this suit.

Plaintiffs offer more than enough facts to sufficiently allege that these consequences will impact their members, including eligible Texas voters.

B. Plaintiffs’ alleged injuries are traceable to and redressable by Defendants.

Simply stated, if Defendants ceased operation of the Purge Program—the injunctive relief sought by the Complaint—it would substantially lessen the harm alleged in the Complaint. Whether the injury suffered by Plaintiffs’ voting and volunteer members is fairly traceable to and redressable by the Secretary of State and County Defendants is a straightforward inquiry. Plaintiffs may satisfy the traceability element by showing “a causal connection between the injury and the conduct complained of.” *See OCA-Greater Houston*, 867 F.3d at 610 (quoting *Kyle*, 626 F.3d at 237). Plaintiffs may satisfy the redressability requirement by showing that “it is likely . . . that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). Plaintiffs are not required to demonstrate that the relief sought will completely cure the injury, showing that the desired relief “could potentially lessen its injury” is sufficient. *See Sanchez v. R.G.L.*, 761 F.3d 495, 506 (5th Cir. 2014). For the same reasons discussed above and below, Plaintiffs’ injuries are traceable to Defendants, who are the state actors charged with the administration and enforcement of the Purge Program. The Secretary created the Purge List and sent it to county officials with instructions to use the list to begin removal procedures. And the County Defendants did just that. The injunctive relief sought here will necessarily lessen the harm alleged in the Complaint. Traceability and redressability are thus satisfied.

II. Notice letter on Public Disclosure Provision

On January 14, 2026, LULAC Plaintiffs, through their counsel, sent a records request for records pertaining to Defendant Secretary’s “efforts to verify the citizenship status of registered voters or voter registration applicants and/or to remove noncitizens from the voter rolls, including

but not limited to names identified by the federal government’s Systematic Alien Verification for Entitlements, or ‘SAVE,’ program” pursuant to the public disclosure provision of the NVRA.” Compl ¶¶ 215, 218. Secretary Nelson, among other things, eventually refused to provide a publicly available version of the voter list and the records of individuals who had provided proof of citizenship and cannot be subject to further investigation. *Id.* at 225-27.

LULAC Plaintiffs’ request for these records under the NVRA was plainly notice to Secretary Nelson that those records were required to be released under that statute. Secretary Nelson’s denial of the request was a clear indication that she would not be resolving the violation. As such, Secretary’s Nelson’s complaint for lack of notice falls flat. In any event, Plaintiffs noticed Secretary Nelson’s violation of the Public Disclosure Provision of the NVRA on July 6, 2026. Ex. A, LULAC NVRA Disclosure Provision Notice Letter. Plaintiffs intend to seek leave to file their first amended complaint asserting this violation on July 26, 2026 if Defendants do not cure the violation. *See Voice of the Experienced v. Ardoin*, 813 F. Supp. 3d 600, 644-45 (M.D. La. 2025) (concluding that “the NVRA notice provision indicates that Plaintiffs can amend their complaint to allege subsequent notice[.]” because allowing subsequent notice allows defendants “the opportunity to correct any violations” prior to the filing of the amended complaint).

III. Secretary Nelson is a proper defendant, and sovereign immunity does not bar this suit.

Secretary Nelson is a proper defendant here and the Eleventh Amendment does not bar this suit against her. The Eleventh Amendment bars suits against a state in federal court unless the suit falls within the *Ex Parte Young* exception. 209 U.S. 123 (1908). Under that exception, private parties may sue state officials in their official capacity to seek prospective injunctive or declaratory relief based on an individual state actor’s violation of federal law. *McKinley v. Abbott*, 643 F.3d 403, 406 (5th Cir. 2011).

The *Ex Parte Young* exception includes three initial requirements: (1) a plaintiff must name individual state officials as defendants in their official capacities; (2) the plaintiff must allege an ongoing violation of federal law; and (3) the relief sought must be properly characterized as prospective. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024).

Plaintiffs easily meet all three of the initial *Ex Parte Young* requirements. Each Defendant in this case is named in their official capacity. Compl. at 1. Plaintiffs allege two ongoing violations of the NVRA, Sections 8(b) and 8(i). Compl. at 45-48. On both counts, Plaintiffs clearly state that the violations are ongoing. Compl. at 45 (“Texas’s Purge Program *is* not uniform and therefore *violates*” the NVRA) (emphasis added), (“Texas’s Purge Program *is* discriminatory and therefore *violates*” the NVRA) (emphasis added); Compl. at 48 (“Defendant Secretary of State’s *continuing* refusal to provide the requested records up to and including the time of filing of this lawsuit is unlawful.”) (emphasis added). Finally, Plaintiffs seek only prospective declaratory and injunctive relief, as all the relief Plaintiffs request is properly forward-looking. *See Jackson v. Wright*, 82 F.4th 362, 368 (5th Cir. 2023). Plaintiffs ask this Court: (1) to declare that the Purge Program “violates” the NVRA; (2) to enjoin Defendants from “implementing and enforcing” the Purge Program; (3) to order counties to “place” back on the rolls purged voters; (4) to order the Secretary to “issue” a directive effectuating the reinstatement of purged voters; and (5) to order the Secretary to “provide” access to the public voter registration list. Compl. at 48-49; *see also Jackson*, 82 F.4th at 368 (finding plaintiff’s relief as properly prospective because it “focused on the legality of the university’s current actions” and “would restrain the [] defendants from taking future actions that violate [plaintiff’s] rights”).

Beyond the initial requirements, *Ex Parte Young* requires that “a plaintiff must sue the right defendants and ask for the right remedy.” *Jackson* 82 F.4th at 367. To sue the right defendants, the

“officers who are sued must have ‘some connection with the enforcement’ of challenged law or policy.” *Id.* (quoting *Ex Parte Young*, 209 U.S. at 157). This circuit has offered a few guideposts for understanding when an officer has some connection to the challenged law or policy. First, “[a]ll that is required is a mere scintilla of enforcement by the relevant state official with respect to the challenged law.” *Jackson*, 82 F.4th at 367 (internal quotations omitted). Second, the official “must have more than ‘the general duty to see that the laws of the state are implemented.’” *Id.* (quoting *City of Austin v. Paxton*, 943 F.3d 993, 999-1000 (5th Cir. 2019)). Finally, in the context of the *Ex Parte Young* analysis, enforcement “typically involve[s] compulsion or constraint[.]” such that “[i]f the official does not compel or constrain anyone to obey the challenged law, enjoining that official could not stop any ongoing constitutional violation.” *Mi Familia Vota v. Ogg*, 105 F.4th 313, 332 (5th Cir. 2024) (quoting *Texas All. for Retired Americans v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022)).

Plaintiffs have sued the right defendants and asked for the right remedy. Secretary Nelson undoubtedly has much more than a scintilla of connection with the enforcement of the Purge Program and Plaintiffs have properly alleged as much. *See* Compl. at 12 (describing the Secretary’s authority over local election officials), 17-20 (describing the Secretary directing county officials to comply with her Purge Program directives); ECF No. 1-11 (Plaintiffs’ request to Secretary Nelson to remedy the violations); ECF No. 1-12 (same). Indeed, the Secretary is the central figure in Texas’s Purge Program, signing at least two SAVE Memoranda of Agreement with USCIS, managing the SAVE system voter roll matching process, creating the lists of purported noncitizens, and, critically, sending those lists to the counties and instructing them to purge from the rolls voters whose citizenship could not be confirmed. Secretary Nelson instructs the counties to purge voters from the rolls, as demonstrated by her October 21, 2025 directive to counties, and does so pursuant

to an existing directive issued by the Secretary of State in 2021. ECF No. 1-6. The Secretary is the “chief election officer of the state,” Tex. Election Code § 31.001(a), is required to “maintain uniformity in the application, operation, and interpretation” of Texas’s election code and other election laws, *id.* § 31.003, and is required to issue directives (as she has done here) to local election authorities, *id.* (“[T]he secretary shall prepare detailed and comprehensive written directives and instructions relating to and based on this code and the election laws outside this code.”). She has failed to do so. She also has substantial directive and oversight authority over county election officials. *See* Tex. Election Code §§ 31.003, 31.004, 31.005, 31.017-22. It is hardly clear how the Secretary would lack connection with the enforcement of the Program or the compulsion to order counties to implement it when that is precisely what she has done since at least October 2025.

The Purge Program was created, continues to exist, and is only operable under the direction of Secretary Nelson. Everything about Texas’s Voter Purge Program indicates that Secretary Nelson has substantial “connection with the enforcement of the challenged” Program. *Paxton*, 943 F.3d at 997. The *Young* exception concerns itself with the scenario where a defendant may be improper if enjoining that official would not resolve the violation. Not so here. Secretary Nelson has more than a “general duty” to enforce the Purge Program, because she created it and is plainly capable of terminating the Program by ceasing to send counties lists of purported noncitizens derived from her office’s use of the SAVE system and by directing counties to reinstate voters for whom there is no conclusive evidence of non-citizenship. *See Jackson*, 82 F.4th at 367-68 (distinguishing cases in which state officials did not have sufficient connection to the challenged law or policy because the state officials had “no role whatsoever in the alleged constitutional violations—not even a supervisory role over the individuals who were allegedly violating constitutional rights”).

The Secretary suggests that Plaintiffs have done nothing to connect the Purge Programs to Plaintiffs or their members. Again, not so. Plaintiffs described the myriad ways in which Defendant Nelson’s Purge Program harms their organizations and members. *See infra* at Part I. Nothing about the Purge Program is hypothetical or potential; Plaintiffs detailed the ongoing manner in which the Secretary has directed counties to implement the Purge Program by reviewing lists of purported noncitizens and removing supposedly ineligible voters. Secretary Nelson has quite definitely “taken some step to enforce” the challenged Voter Purge Program against Plaintiffs. SOS MTD Br. at 10.

The Secretary is not protected by sovereign immunity for a suit properly alleging violations of federal law, directed at her in her official capacity, for an unlawful program she orchestrated, directed the implementation of and retains ongoing authority over, and for which the requested remedies address only prospective relief. The Eleventh Amendment is no bar to litigation because the *Ex Parte Young* exception permits this suit against the Secretary.

CONCLUSION

For the foregoing reasons, Defendant’s motion to dismiss pursuant to Rules 12(b)(1) should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2026, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. The electronic filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Daniel Brophy
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