IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:22-cv-01365-SKC-MDB

CITIZENS PROJECT, COLORADO LATINOS VOTE, LEAGUE OF WOMEN VOTERS OF PIKES PEAK REGION, and BLACK/LATINO LEADERSHIP COALITION,

Plaintiffs,

v.

CITY OF COLORADO SPRINGS, AND SARAH BALL JOHNSON, IN HER OFFICIAL CAPACITY AS CITY CLERK,

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT (ECF NO. 95)

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case challenges election timing the City of Colorado Springs (the City) has used since the 1870s. Not one minority voter joined the suit. The City's Black mayor opposes it, as he is "unaware of any grassroots effort in the Black and Hispanic communities to change the timing of Colorado Springs elections." ECF No. 60-5 at 2 (¶ 9). The four Plaintiff entities operated under the City's election timing for decades and came to court only after the Harvard Election Law Clinic "roam[ed] the country in search of governmental wrongdoing" and recruited them for this test case. *FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (citation omitted). Unable to claim a voting-related injury, Plaintiffs complain that, under the City's election timing, they conduct "civic education efforts *twice* that they otherwise would have to do *once* if municipal election coincided with other elections." ECF No. 95, Motion to Alter or Amend Judgment (Mot.) 13. But Plaintiffs "are not challenging the holding of November odd year local elections," ECF No. 62 at 16, and thus do not request relief that would enable civic education on federal, state, and municipal contests at "*once*."

More fundamentally, injury-in-fact does not arise simply because a plaintiff could advocate about government more efficiently if the government conducted its affairs differently. That is the holding of *Alliance for Hippocratic Medicine*. In dismissing this case on the summary-judgment record, *see* ECF No. 93, Dismissal Order (Order), the Court properly "consider[ed] the issue of standing," whether or not

it was "raised by the parties," *Kitchen v. Herbert*, 755 F.3d 1193, 1201 (10th Cir. 2014), and applied "the law in effect at the time it render[ed] its decision," *Bradley v. Sch. Bd. of City of Richmond*, 416 U.S. 696, 711 (1974). Plaintiffs establish no basis for reconsideration under Rule 59(e). Their motion should be denied.

ARGUMENT

Relief from the judgment is not "appropriate in this case." Mot. 2. "Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Plaintiffs do not specify which ground they invoke. *See* Mot. 2. They establish none of them.

A. Plaintiffs Present No Newly Discovered Evidence

While reconsideration can be warranted in cases of previously unavailable evidence, *Servants of Paraclete*, 204 F.3d at 1012, this is not such a case. Plaintiffs present more than 500 pages of new materials, *see* ECF No. 95-1, but it consists of deposition transcripts and exhibits "available throughout this litigation." *Chandhok v. Companion Life Ins. Co.*, 555 F. Supp. 3d 1092, 1125 (D.N.M. 2021). This submission is improper. "When supplementing a Rule 59(e) motion with additional evidence, the movant must show either that the evidence is newly discovered [and] if the evidence was available at the time of the decision being challenged, that counsel made a diligent yet unsuccessful effort to discover the evidence." *Comm. for First*

Amend. v. Campbell, 962 F.2d 1517, 1523 (10th Cir. 1992) (citation omitted). Plaintiffs do not attempt to meet that standard. Instead, Plaintiffs suggest they did not know to present the evidence sooner because they "understood Defendants not to be arguing that Plaintiffs lacked Article III standing." Mot. 1. This is unpersuasive.

1. The Court was correct to note that "the parties argue over whether Plaintiffs have Article III standing." Order 2. It rightly observed that "Defendants argue[d] Plaintiffs lack Article III standing" and did not concede standing. *Id.* at 7; *see* ECF No. 63 at 2–3; ECF No. 60 at 9. Moreover, Plaintiffs' summary-judgment opposition argued that Plaintiffs "have both Article III and statutory standing," and "that an organization has standing in its own right where there is 'demonstrable injury to the organization's activities—with the consequent drain on the organization's resources.'" ECF No. 62 at 8–9 & n.1 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). They claimed this "diversion-of-resources injury" establishes "standing for voter engagement organizations like Plaintiffs here." *Id.*

Plaintiffs presented multiple points of fact for their diversion-of-resources theory, *see* ECF No. 62 at 2 (¶ 5), 4–5 (¶¶ 17–21), along with evidence, including excerpts of deposition transcripts from which they now present more excerpts. *See* ECF Nos. 62-1, 62-2, 62-3, 62-7, 62-8, 62-9, 62-10. Although Plaintiffs presented no evidence of diverted resources, they cite no reason for that omission.[1] The Court had

[1] The City's reply brief observed that Plaintiffs presented no evidence of diverted resources. ECF No. 63 at 3. Plaintiffs could at that time have moved to introduce such evidence if they believed the record was deficient.

no trouble discerning that Plaintiffs "contend[] the City's election timing causes them to divert and duplicate resources for their voter outreach" and that "moving municipal elections to November would enable them to fund more activities because outside organizations are more willing to fund voter outreach in November of even years than the spring of odd years." Order 4; *see also id.* at 8 ("each Plaintiff claims a diversion of its resources for purposes of the injury-in-fact component of Article III standing"); *id.* at 10–12 (addressing a "diversion-of-resources" theory of standing). The Court examined Plaintiffs' evidence, and Plaintiffs do not explain why the materials they now submit were unavailable for its prior consideration.

2. Plaintiffs' argument fails even on its own terms because they ignore how statutory and Article III standing interrelate. Statutory standing can only be coterminous with or narrower than Article III standing, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014), but not broader, *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). The statutory-standing question is whether a plaintiff must show more—not less—than the Article III minimum. *See Lexmark*, 572 U.S. at 132. For example, in Plaintiffs' principal authority, *Havens Realty*, "[t]he precise issue . . . was whether the organizational plaintiff had statutory standing," but under the governing statute, "the inquiry into statutory standing collapsed into the question of whether the injuries alleged met the Article III minimum of injury in fact." *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165 n.14 (11th Cir. 2008).

Likewise, the parties' dispute over whether VRA § 2 is coextensive with Article III could never have yielded an outcome excusing Plaintiffs from the "irreducible constitutional minimum." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Indeed, Plaintiffs advocated "an expansive reading of who may sue under the VRA," and they apparently proposed that proof of "Article III … standing" would suffice.[2] ECF No. 62 at 8, 10. Plaintiffs must have known it was necessary to prove Article III standing.

3. Plaintiffs in all events knew or should have known that "the party invoking the federal court's jurisdiction bears the burden of proof," even "[i]f the parties do not raise the question of lack of jurisdiction." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974); *see also, e.g.*, *Kitchen v. Herbert*, 755 F.3d 1193, 1201 (10th Cir. 2014) ("We first consider the issue of standing, although it was not raised by the parties."). The law is clear that, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Accordingly, "standing is a prerequisite to subject matter jurisdiction that [courts] must address, *sua sponte* if necessary, when the record reveals a colorable standing issue." *Rivera v. Internal Revenue Serv.*, 708 F. App'x

[2] The City cited cases finding no right of action to assert Article III injuries under VRA § 2. ECF No. 60 at 7–8 & n.2. In fact, in *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023), the Eighth Circuit held that the NAACP lacked a statutory right of action to enforce VRA § 2. Besides, every case in which a § 2 plaintiff failed to show Article III standing was necessarily one where the plaintiff lacked statutory standing. *See* Order 14.

508, 513 (10th Cir. 2017); *see also Rector v. City & Cnty. of Denver*, 348 F.3d 935, 942 (10th Cir. 2003) (same).

That rule applies at the summary-judgment stage. *See Dr. John's, Inc. v. City of Roy*, 465 F.3d 1150, 1155–56 (10th Cir. 2006). The Supreme Court and Tenth Circuit have dismissed claims *sua sponte* on summary-judgment records, *see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990); *Essence, Inc. v. City of Fed. Heights*, 285 F.3d 1272, 1280–81 (10th Cir. 2002); *PeTA v. Rasmussen*, 298 F.3d 1198, 1202–03 (10th Cir. 2002), and even based on pleadings, *see Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1175–78 (10th Cir. 2009); *Rivera*, 708 F. App'x at 513. Plaintiffs cannot credibly claim to have been blindsided by their standing burden at the district-court level when the Supreme Court and Tenth Circuit have *sua sponte* found that same burden unmet on appeal—after the trial record had long since closed. District courts, meanwhile, have frequently dismissed claims *sua sponte* in this posture. *See, e.g.*, *Hebert v. Barnes & Noble, Inc.*, 2020 WL 3969915, at *1–2 (S.D. Cal. July 14, 2020); *Isler v. New Mexico Activities Ass'n*, 2013 WL 12328907, at *3 (D.N.M. Sept. 25, 2013).

Such rulings are common, but Plaintiffs cite no case granting reconsideration solely because dismissal occurred *sua sponte*.[3] Nor do Plaintiffs justify waiting until

[3] Plaintiffs lean heavily (Mot. 2–4) on a district-court opinion with a test that differs from what the Tenth Circuit later announced, including a factor phrased to render reconsideration proper for "a decision outside the adversarial issues presented." *Gregg v. Am. Quasar Petroleum Co.*, 840 F. Supp. 1394, 1401 (D. Colo. 1991). That

now to present more than 500 pages of new material. Instead, Plaintiffs fault the Court for (as they put it) believing it was presented with "an affirmative Article III standing argument." Mot. 2. As shown, that question was before the Court. But this dispute does not ultimately matter: "a party is not excused from establishing standing simply because the opposing party did not" raise the issue. *Teamsters Loc. Union No. 117 v. Wash. Dep't of Corr.*, 789 F.3d 979, 986 (9th Cir. 2015). In light of this law, Plaintiffs' belated submission is unjustified.

B. Plaintiffs Cite No Intervening Change in Controlling Law

This case does not involve "an intervening change in the controlling law." *Servants of Paraclete*, 204 F.3d at 1012. Plaintiffs cite no case issued after this Court's ruling that "affects" it. *United States v. Trent*, 884 F.3d 985, 995 (10th Cir. 2018). Plaintiffs quarrel with how this Court read already issued decisions like *Alliance for Hippocratic Medicine* and *Havens Realty*. But "a motion for reconsideration . . . is not appropriate to revisit issues already addressed." *Servants of Paraclete*, 204 F.3d at 1012. The Court need not analyze these decisions again.

Plaintiffs note that *Alliance for Hippocratic Medicine* was not issued until after summary-judgment briefing closed. Mot. 4. "Far from being an intervening change in the law, this" decision "formed part of the basis for the district court's decision." *U.S. ex rel. SNAPP, Inc. v. Ford Motor Co.*, 618 F.3d 505, 513 (6th Cir. 2010). "An

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decision neither found reconsideration proper nor involved a jurisdictional question that courts must consider. *See id.* at 1401–04.

'intervening change in the controlling law' is a change that happens *after* a district court has issued its decision." *Casale v. Ecolab Inc.*, 2022 WL 1910126, at *3 (D. Me. Jun. 3, 2022); *accord Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 568 n.3 (5th Cir. 2003); *Marshack v. Comm'r of Soc. Sec.*, 2021 WL 5923264, at *2 (D.N.J. Dec. 15, 2021); *Gambrell v. United States*, 2023 WL 5346385, at *2 (W.D. Mo. Jun. 28, 2023). It is "rare" for intervening changes in law "to emerge within Rule 59(e)'s strict 28-day timeframe." *Banister v. Davis*, 590 U.S. 504, 508 n.2 (2020). This is not such a case.

C. Plaintiffs Identify No Clear Error

That leaves Plaintiffs to establish a "need to correct clear error or prevent manifest injustice." *Servants of Paraclete*, 204 F.3d at 1012. Post-judgment motions are "not intended to be a substitute for a direct appeal." *Id.* at 1009; *see also Sweet v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 2019 WL 3306029, at *2 (D. Utah July 23, 2019), *aff'd*, 831 F. App'x 874 (10th Cir. 2020). Accordingly, courts require a showing of "*clear* error," *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.4 (9th Cir. 1999), not merely "differing interpretations" of legal principles. *S.E.B.M. by & through Felipe v. United States*, 2023 WL 7496220, at *4 (D.N.M. Nov. 13, 2023); *accord Williams v. Swaney*, 2024 WL 2927741, at *1 (E.D. Ky. June 5, 2024). "In essence, a judgment must be 'dead wrong' to qualify as being clearly erroneous." *H & A Land Corp. v. City of Kennedale, Tex.*, 2005 WL 6803499, at *2 (N.D. Tex. Oct. 24, 2005) (citation omitted). Plaintiffs do not argue that this

standard is met. They oddly bifurcate their assertion that reconsideration "is appropriate," Mot. 2, from their challenge to this Court's ruling, *see id.* at 4–15. That should end the matter. In any event, Plaintiffs' contentions lack merit.

1. *Alliance for Hippocratic Medicine* rejected the notion that "standing exists when an organization diverts its resources in response to a defendant's actions." 602 U.S. at 395. The plaintiffs there could not claim standing on the basis that government acts made their abortion-related advocacy more expensive. *Id.* at 394–96. Here, Plaintiffs cannot claim standing based on City actions allegedly making their election-related advocacy more expensive. Order 7–15. The Sixth Circuit recently doubted that the NAACP could show standing from a law that "made the nonprofit's voter-registration efforts *more costly* by requiring it to spend 'extra time and money' on those efforts."[4] *Tennessee Conf. of the NAACP v. Lee*, 105 F.4th 888, 905 (6th Cir. 2024) (citation omitted); *see also RNC v. Burgess*, 2024 WL 3445254, at *5 (D. Nev. July 17, 2024) (holding that "organizations who train and hire poll watchers and ballot counters do not have standing to challenge the expansion of access to mail voting merely because it might create more work for them").

Plaintiffs largely direct their arguments past *Alliance for Hippocratic Medicine* and toward *Haven's Realty*. Mot. 5–10. But Plaintiffs ignore what the Supreme Court just said about this decision: "*Havens* was an unusual case, and this Court has been

[4] Plaintiffs' assertion that this decision turned on "the relative weakness" of evidence, Mot. 15, overlooks its discussion of *Alliance for Hippocratic Medicine*. *See* 105 F.4th at 904–05.

careful not to extend the *Havens* holding beyond its context." *Alliance for Hippocratic Med.*, 602 U.S. at 396; Order 10 (quoting this). That leaves no room for Plaintiffs' puzzling assertion that "*FDA* did not upend the existing *Havens* framework," Mot. 10, by which they appear to mean extrapolations from *Havens Realty*, *see id.* at 5–10. That framework is indeed upended. The Supreme Court limited *Havens Realty* "to the facts presented" and "surely did not approve" broader readings. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 329 (2002) (citations omitted); *see, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (criticizing litigant's reliance on decision the Supreme Court had more recently confined to its facts).

Havens Realty cannot apply. As Plaintiffs recount, the defendant in *Havens Realty* "lied to Black prospective renters about the availability of apartments," which stifled the organization's truthful referral services. Mot. 5. *Alliance for Hippocratic Medicine* called this "an informational injury" that is "not dissimilar to [injury caused by] a retailer who sues a manufacturer for selling defective goods to the retailer." 602 U.S. at 395–96. But "[t]he present case does not involve false information." *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 n.1. (6th Cir. 2014). Plaintiffs do not allege that the City lies to minority voters about its election timing.

2. Plaintiffs match their erroneously expansive reading of *Havens Realty* with an unnaturally restrictive reading of *Alliance for Hippocratic Medicine*. In Plaintiffs' view, that case turned on the content of advocacy: the plaintiffs spoke "*in opposition to* [the] policy" they challenged. Mot. 11. Plaintiffs insist their own speech

is broader, as "[t]heir missions involve broadening political participation, engaging the community, educating voters, and advancing racial justice." *Id.* at 6. Plaintiffs describe at length their "advocacy," such as "educational events," "conversations on matters of public concern," "legislative report card[s]," and "issue guides."[5] *Id.* at 6–10. But no quantity of this can make a difference. It is implausible that the plaintiffs in *Alliance for Hippocratic Medicine* would have fared better by describing a broader array of activities, such as engaging the community about the harms of abortion, educating women about the dangers of abortion-inducing drugs, working to achieve pro-life justice for the unborn, and so forth. The problem was that the government did not "require or forbid some action by the plaintiff," as would occur if it prohibited or set conditions on speech. 602 U.S. at 382.

As in *Alliance for Hippocratic Medicine*, the City's election timing does not regulate Plaintiffs' civic education or "force[]" them to do anything. Mot. 12; *see* 602 U.S. at 394 (rejecting assertion "that FDA has 'caused' the associations" to engage in research and outreach). *Alliance for Hippocratic Medicine* rejects the notion that any plaintiff has standing to direct government affairs in a manner that would reduce the cost of the plaintiff's advocacy. *See* 602 U.S. at 395. Its holding governs

[5] Even if not viewed as advocacy, the voter-registration drives Plaintiffs cite, *see* Mot. 8–9, cannot give rise to injury-in-fact because the election timing causes no duplication in those efforts: once a person registers to vote, the person is entitled to vote in all elections. Colo. Rev. Stat. § 1-2-201(3)(a). Those who register as part of drives before November elections remain registered for April elections, so no work of the registration drive is wasted and no duplication is required.

here, where Plaintiffs want all governments (federal, state, and local) to conduct their affairs (i.e., elections) at (concurrent) times when it is most convenient and inexpensive for Plaintiffs to engage the public their preferred issues. If standing arose from that desire, anyone could spend $2 on speech and sue because $1 would suffice if government only conducted its affairs in some other way.

3. Plaintiffs lack standing for the independent reason that it is "speculative" whether a new election date would ameliorate their alleged resource diversion. *Colorado Taxpayers Union, Inc. v. Romer*, 963 F.2d 1394, 1396 (10th Cir. 1992). As this Court observed, the City's election timing dates "as early as 1873," and Plaintiffs have never labored under different timing. Order 11. Under "the facts of this case," *id.* at 11 n.8, an assertion of cost savings from an injunction lacks "specific" evidentiary support. *Tennessee Conf. of the NAACP*, 105 F.4th at 905 (citation omitted).

Nor can such savings properly be inferred. Plaintiffs desire to conduct "*once*" efforts they now conduct "*twice*," Mot. 13, but they claim not to challenge "the holding of November odd-year local elections." ECF No. 62 at 16. Under that outcome, Plaintiffs would still advocate about federal, state, and municipal contests "*twice*." That aside, even November even-year elections would not fix the problem Plaintiffs allege. The City would still have its own government and issues, and different election timing would not make it cheaper to research and speak about them. Concurrent elections would change the timing of costs but nothing else. A "legislative report card"

might be consolidated for November even-year elections, Mot. 7, but it would be much longer and more expensive to mail. Likewise, "candidate forums" would still occur "ahead of municipal elections," *id.* at 9, but these are contest-specific, not election-date specific, so just as many will occur regardless of election timing. *See* ECF No. 95-1 at 131 (LWV Dep. 145:4–10). The same deficiencies plague Plaintiffs' assertions about other forms of advocacy and outreach.[6]

4. Trying to establish an "existing" "framework," Mot. 10, Plaintiffs discuss precedents pre-dating *Alliance for Hippocratic Medicine*, *see id.* at 5–6, 10, 12–15. But that decision "susses out the narrow scope of the diversion-of-resources injury claimed by Plaintiffs here." Order 14–15. The opinions Plaintiffs cite will be reassessed in their circuits in due course, as their "reasoning may (or may not) survive *Alliance for Hippocratic Medicine*." *Tennessee Conf. of the NAACP*, 105 F.4th at 906. For present purposes, it is enough that Plaintiffs' layers of extrapolation—that various decisions (1) remain good law and (2) genuinely support Plaintiffs' position—do not show the Court's ruling was "dead wrong." *H & A Land Corp.*, 2005 WL 6803499, at *2 (citation omitted). Notably, Plaintiffs ignore many decisions this Court considered. *See, e.g.*, Order 14.

[6] Another potential outcome is that Plaintiffs would limit attention to municipal contests and focus on national and state contests. But Plaintiffs cannot claim injury from a system that affords a unique opportunity to engage on local matters. Plaintiffs' desire to collapse municipal, state, and national issues into one advocacy process only proves "the strength of the [City's] interests" in its election timing. *See Brnovich v. DNC*, 594 U.S. 647, 671 (2021). Outreach opportunities cause no injury-in-fact.

Regardless, in no cited decision finding standing was the injury to an entity akin to what Plaintiffs allege. Their principal authorities involve organizational efforts to assist voters in navigating recent and labyrinthian systems, such as one governing voters unable to speak English, *OCA-Greater Houston v. Texas*, 867 F.3d 604, 607–08, 610–12 (5th Cir. 2017), another setting convoluted registration requirements, *Florida State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1156–58, 1164–66 (11th Cir. 2008), and another removing voters from the rolls under difficult-to-discern conditions, *Common Cause Indiana v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019). Each of these (and other) decisions proposed a dubiously expansive reading of *Havens Realty*, *see, e.g.*, *id.* at 949–51, but they still do not apply here. They treat allegedly confounding systems like the falsehoods addressed in *Havens Realty*.[7]

This case is different. Plaintiffs would prefer not to "duplicate" outreach and advocacy, Mot. 13, and thus propose election timing that (they hope) would optimize their operational efficiency. Plaintiffs cite no case finding standing from such aspirations. Nor are Plaintiffs like "a political party" desiring to "marshal its forces more effectively," *Fair Elections Ohio*, 770 F.3d at 460, as they admit they are non-partisan entities not seeking to elect a slate of candidates. *See* Mot. 13. Their interest in voter participation is an "abstract social interest[]." *Alliance for Hippocratic Med.*,

[7] Where voter confusion and burden are alleged as links in a longer chain of injury to organizations, the recency of the challenged system is certainly relevant, as simple and established systems are entirely unlike falsehoods. *See* Order 10–12.

602 U.S. at 394 (citation omitted). While their views may be "sincere," even admirable, they do not confer standing. *Id.* at 386.

CONCLUSION

The Court's decision was correct. It should deny Plaintiffs' motion for relief from the judgment. Even if the Court were to rule otherwise, Plaintiffs would not be entitled to trial. The Court did "not address whether Plaintiffs have statutory standing under the VRA" or "the parties' additional arguments on the merits." Order 15 n.10. Plaintiffs' recent arguments only reiterate that they lack statutory standing because they are not voters who "claim that [their] right to vote has been infringed because of [their] race." *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989). By analogizing their injuries to the injuries of those seeking to elected preferred candidates, Plaintiffs have confirmed they fall outside any right of action that exists to enforce § 2. *See* ECF No. 60 at 8.

Dated: August 26, 2024

Respectfully submitted,

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AI CERTIFICATION

Pursuant to Section C.2 of Judge Crews' Standing Order for Civil Cases, I certify that no portion of this memorandum in opposition to Plaintiffs' motion to alter or amend the judgment was drafted by AI.

/s/ Richard B. Raile
Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on this 26th day of August, 2024, the foregoing was filed on the Court's EM/ECF system. Notice of this filing will be sent to all counsel of record by the Court's system. Copies of this filing can be obtained from the Court's system.

/s/ Richard B. Raile
Counsel for Defendants