

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ORCUN SELCUK; ALAN DAVID
GWILLIAM; TINGTING ZHEN; MICHAEL
BROKLOFF; and THE LEAGUE OF
UNITED LATIN AMERICAN CITIZENS
OF IOWA,

Plaintiffs,

v.

PAUL D. PATE, in his official capacity as
the Iowa Secretary of State; BENJAMIN D.
STEINES, in his official capacity as the
Winneshiek County Auditor and Winneshiek
County Commissioner of Elections; JAMIE
FITZGERALD, in his official capacity as the
Polk County Auditor and Polk County
Commissioner of Elections, MELVYN
HOUSER, in his official capacity as the
Pottawattamie County Auditor and
Pottawattamie County Commissioner of
Elections, ERIN SHANE, in her official
capacity as the acting Johnson County
Auditor and acting Johnson County
Commissioner of Elections; and KERRI
TOMPKINS, in her official capacity as the
Scott County Auditor and Scott County
Commissioner of Elections,

Defendants.

Case No. 4:24-cv-00390

**STATE DEFENDANT’S REPLY
IN SUPPORT OF DEFENDANT
PAUL D. PATE’S MOTION TO DISMISS
AMENDED COMPLAINT**

COMES NOW Defendant Paul D. Pate (“State Defendant”) and, pursuant to Federal Rule
of Civil Procedure 12(b)(6) and Local Rule 7(g), submits his Reply in Support of Motion to
Dismiss Amended Complaint:

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INTRODUCTION

Plaintiffs challenge an election integrity measure that no longer exists—and will not be resurrected. This Court already recognized that State Defendant is no longer challenging named Plaintiffs’ voting eligibility (Dkt.32 at 3, 13), and these Plaintiffs cannot allege future challenges without straying “into the area of speculation and conjecture.” *O’Shea v. Littleton*, 414 U.S. 488, 497 (1974) (citation omitted). And while Plaintiffs allege that they need discovery, it is well established that “Rule 8 . . . does not unlock the doors of a discovery for a plaintiff armed with nothing more than conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

ARGUMENT

I. Plaintiffs completely ignore State and federal action mooted their claims.

Plaintiffs relied on a screenshot of the October 2024 List when they sued and asked for injunctive relief (Dkt.10, Ex. K), yet they object to the June 4, 2025 email to “Auditors, Deputies, and Staff” rescinding that List. Dkt.79 at 10–11. But “litigants are generally bound by the conduct of their attorneys, absent egregious circumstances.” *Gonzalez v. Barr*, 929 F.3d 595, 597 (8th Cir. 2019) (citation modified). And judicial admissions are binding. *Id.*; *Warner Bros. Entm’t v. X One X Prods.*, 840 F.3d 971, 978 (8th Cir. 2016). This principle applies to Secretary Pate’s list rescission.

Even putting the June rescission aside, Plaintiffs are wrong that Secretary Pate “has not identified any affirmative corrective actions” to ensure he does not act on the October 2024 List in the future. Dkt.79 at 13–14. Plaintiffs ignore the steps Secretary Pate has taken to obtain better citizenship data, including a federal lawsuit. Dkt.76-1 at 11–12. They also overlook Iowa’s new law requiring election officials to verify citizenship status at the time of registration, preventing the need for the last-minute verifications. Dkt.76-1 at 12 (citing Iowa Code § 48A.25A). Iowa also has obtained access to the Systematic Alien Verification for Entitlements (“SAVE”) program to assist in voter verification. Dkt.76-1 at 11. Surely publicly announced State-federal cooperation

and federal data access, a federal lawsuit to obtain additional data, and binding legislative action are not simply “say-so assurances.” *See* Dkt.79 at 13. In failing to address those arguments, Plaintiffs waived them, and this Court can dismiss their claims based on that alone.

Further, to avoid mootness, Individual Plaintiffs must show the conduct is capable of repetition *as to them*, yet evades review. They cannot. Secretary Pate has made judicial admissions that he “is no longer challenging the eligibility of the named Plaintiffs who submitted statements, under oath, in this proceeding, confirming they are United States citizens,” which this Court previously relied on. Dkt.32 at 13. These judicial admissions are binding. *See Gonzalez*, 929 F.3d at 597. And they replace the need for additional evidence on the matter no matter how much Plaintiffs insist otherwise. *See Warner Bros. Entm’t*, 840 F.3d at 978.

To find otherwise, the Court would need to assume: 1) Iowa will lose access to guaranteed federal data; 2) State Defendant will violate section 48A.25A; 3) Secretary Pate will learn of noncitizen voters weeks before the election; 4) he will create a new list using the same process that led to this litigation; 5) he will do so when Individual Plaintiffs still have not updated their drivers’ licenses; 6) he will set aside judicial admissions regarding Plaintiffs’ citizenship; and 7) local election officials also will disregard those admissions. These assumptions “are several ‘steps removed from reality’—‘so remote and speculative that . . . there [is] a want of a subject matter on which any judgment of this Court could operate.’” *Simes v. Ark. Judicial Discipline & Disability Comm’n*, 734 F.3d 830, 835–36 (8th Cir. 2013) (quoting *Super Tire Eng’g Co. v. McCorkle*, 416 U.S. 115, 123 (1974) (rejecting a similarly attenuated causal chain)).

II. Plaintiffs’ Prayer for Relief neither creates standing nor saves them from mootness.

“[P]laintiff[s] ‘bear[] the burden of establishing standing as of the time [they] brought th[e] lawsuit and maintaining it thereafter.’” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Carney v. Adams*, 592 U.S. 53, 59 (2020)). Thus, they “bear the burden of establishing standing as

of the time the lawsuit was brought and throughout the pendency of the case.” *Students for Life Action v. Jackley*, 746 F. Supp. 3d 668, 679 (D.S.D. 2024) (quoting *Carney*, 592 U.S. at 59); *see also Arkansas v. U.S. Dep’t of Educ.*, 742 F. Supp. 3d 919, 927 (E.D. Mo. 2024).

And “standing . . . is a jurisdictional prerequisite and thus a threshold issue that [federal courts] are obligated to scrutinize, sua sponte if need be.” *Smith v. Golden China of Red Wing, Inc.*, 987 F.3d 1205, 1208–09 (8th Cir. 2021) (citation and internal quotation marks omitted); *see also City of Clarkson Valley v. Mineta*, 495 F.3d 567, 570 (8th Cir. 2007) (district court erred in deferring standing question pending factual development of the case). Because “it is elementary that standing relates to the justiciability of a case and cannot be waived by the parties,” “any argument based on waiver must fail.” *United States v. Rodriguez-Arreola*, 270 F.3d 611, 616–17 (8th Cir. 2001) (quoting *Sierra Club v. Robertson*, 28 F.3d 753, 757 n.4 (8th Cir. 1994)). This includes alleged error requiring citation to a specific Rule of Civil Procedure. *See* Dkt.79 at 7–8.

Plaintiffs are eligible for neither monetary damages nor equitable relief.

Federal law does not allow Plaintiffs to recover money damages against the State, and Plaintiffs cannot base standing or avoid mootness on relief they cannot legally recover. The State has Eleventh Amendment immunity from money damages claims under section 1983. *See Kruger v. Nebraska*, 820 F.3d 295, 302 (8th Cir. 2016). The same immunities apply to state officials in their official capacities. *Smith v. Reynolds*, 139 F.4th 631, 635 (8th Cir. 2025) (citation omitted). And Plaintiffs alleged facts that Secretary Pate was acting in his official capacity. Plaintiffs also cannot recover money damages under the NVRA or VRA. *See* 52 U.S.C. § 20510(b)(2) (private right of action for declaratory and injunctive relief only); *Arkansas United v. Thurston*, 2025 WL 2103706, at *2–3 (8th Cir. Jul. 28, 2025) (no VRA private right of action available).

While *Ex parte Young* permits prospective injunctions, *Smith*, 139 F.4th at 635, this Court

recognized that equitable relief will not redress the alleged harm. Dkt.32 at 13; *id.* at 14. And bare allegations Plaintiffs “will be ‘subjected to similar treatment in future elections’” (Dkt.79 at 10) (quotation omitted) fail too. Past exposure “does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects” or “sufficient likelihood that [plaintiffs] will again be wronged in a similar way.” *In re Pre-Filled Propane Tank Antitrust Litig.*, 893 F.3d 1047, 1054 (8th Cir. 2018) (citation omitted); *see also Rinne v. Camden Cnty.*, 65 F.4th 378, 386 (8th Cir. 2023) (denying injunction where defendant stated the challenged ban was repealed and would not be reinstated); *Park v. Forest Serv. of U.S.*, 205 F.3d 1034, 1037 (8th Cir. 2000) (no standing to challenge vehicle checkpoint that “was no longer being used”). Plaintiffs cannot meet this standard.

III. LULAC must be dismissed.

Plaintiffs still have not identified a LULAC member on the October 2024 List, so have waived arguments that LULAC has standing to sue on its members’ behalf. And the Amended Complaint does not support Plaintiffs’ new “core business activities” argument. *See* Dkt.79 at 11–12. Plaintiffs allege LULAC has “had to spend resources it would otherwise have devoted to continuing [voter education and registration] efforts to instead informing concerned members” about the October 2024 List. Dkt.66 at ¶ 22. “This forced LULAC to divert resources from its voter engagement efforts.” *Id.*; *see also id.* ¶ 123. That “diversion-of-resources” standing is foreclosed. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395–96 (2024).

IV. Plaintiffs have not stated claims for relief based on federal and State law.

NVRA—Plaintiffs try to sidestep their judicial admission that “Secretary Pate has not removed anyone from the voter rolls, but rather has simply required the use of provisional ballots.” Dkt.32 at 14. They assert that *NVRA* claims do not require “removal.” Dkt.79 at 16. But that argument misses the difference between ballot challenges and registration removals. Dkt.76-1 at

17–18. It also ignores recent precedent permitting “the outright removal of approximately 1,600 voters from the voter rolls in Virginia based on a mismatch between voter registration information and one or more agency databases.” Dkt.32 at 2 (citing *Beals v. Va. Coal. for Immigrant Rts.*, 2024 WL 4608863 (U.S. Oct. 30, 2024); *see also Trump v. Boyle*, 145 S. Ct. 2653, 2654 (U.S. July 23, 2025)). Thus, *Beals* directly undercuts Plaintiffs’ arguments. *See* Dkt.79 at 16–18.

Discrimination—Plaintiffs ignore the finding that the October 2024 List “contains, at most, only a tiny percentage of [naturalized] citizens, and [Secretary Pate] did not formulate the list based on national origin in and of itself, but rather based on the mismatch between voter registration information and information provided to the Iowa Department of Transportation.” Dkt.32 at 3. And Plaintiffs still have not identified authority making distinctions between “American-born” and “all foreign-born” persons national origin discrimination in voting. Dkt.79 at 20–21. *Graham v. Richardson* addressed whether States could favor U.S. citizens for welfare benefits, 403 U.S. 365, 372 (1975), where lawful resident aliens did not face the same legal bar. *Id.* at 378.

Disclosure—Even if the October 2024 List were part of an NVRA “removal program,” any obligation to disclose it to Plaintiffs under a court discovery order does not affect NVRA *public* disclosure obligations. *See* 18 U.S.C. § 2721(b)(4). And they are wrong that Driver’s Privacy Protection Act (“DPPA”) records can be disclosed. *See* Dkt.79 at 19 (citing *PILF v. N.C. State Bd. of Elections*, 996 F.3d 257, 259 (4th Cir. 2021) (excluding DPPA record disclosure); *PILF v. Dahlstrom*, 673 F. Supp. 3d 1004, 1015 (D. Alaska 2023) (allowing some data disclosure, but noting the DPPA “prohibits States from revealing protected personal information contained in state motor vehicle department records notwithstanding language in the NVRA that might otherwise allow disclosure”) (citing *PILF v. Boockvar*, 431 F. Supp. 3d 553, 562–63 (M.D. Pa. 2019))).

CONCLUSION

For these reasons, Plaintiffs’ Amended Complaint must be dismissed.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties of record by delivery in the following manner on August 29, 2025:

- | | |
|---|------------------------------------|
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> Email |
| <input type="checkbox"/> Hand Delivery
Courier | <input type="checkbox"/> Overnight |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> CM/ECF | |

Signature: /s/Breanne A. Stoltze