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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

20 DONALD J. TRUMP FOR PRESIDENT,
21 INC.; REPUBLICAN NATIONAL
22 COMMITTEE; AND NEVADA
23 REPUBLICAN PARTY,

23 Plaintiffs,

24 v.

25 BARBARA CEGAVSKE, in her official
26 capacity as Nevada Secretary of State,

27 Defendant.

28 and

No. 2:20-cv-01445-JCM-VCF

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO INTERVENOR-
DEFENDANTS' MOTION TO DISMISS**

1 DNC SERVICES
2 CORPORATION/DEMOCRATIC
3 NATIONAL COMMITTEE, DCCC, and
4 NEVADA STATE DEMOCRATIC
5 PARTY,

Intervenor-Defendants.

6 INTRODUCTION

7 Donald J. Trump for President, Inc., the Republican National Committee, and the Nevada
8 Republican Party have challenged the constitutionality of various sections of Assembly Bill 4, a
9 recently and hastily passed 60-page bill that transforms how Nevada will conduct its November
10 2020 general election. In response, several entities associated with the Democratic Party
11 (collectively “Intervenors”) have moved to dismiss Plaintiffs’ amended complaint, asserting that
12 Plaintiffs’ claims assert no judicially cognizable harms supporting standing and fail to state claims
13 that survive Rule 12(b)(6)’s pleading standards. But Plaintiffs’ claims target the parts of AB4 that
14 transgress long-established federal statutory and constitutional requirements. And for each of those
15 claims, Plaintiffs have adequately alleged multiple independently sufficient grounds for standing
16 and sufficient facts establishing violations of their constitutionally protected rights. Accordingly,
17 the Court should deny Intervenors’ motion to dismiss.

18 LEGAL STANDARD

19 “To satisfy Article III’s standing requirements, a plaintiff must show (1) it has suffered an
20 injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or
21 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is
22 likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”
23 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 180–81 (2000)
24 (internal quotation marks omitted). The party invoking federal jurisdiction bears the burden of
25 establishing these elements. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). “In deciding
26 whether a plaintiff has made this showing,” the court must “accept as true all material allegations
27 of the complaint” and “construe the complaint in favor of the complaining party.” *Nat’l Council of*
28

1 *La Raza v. Cegavske*, 800 F.3d 1032, 1039 (9th Cir. 2015) (quoting *Maya v. Centex Corp.*, 658
2 F.3d 1060, 1068 (9th Cir. 2011)).

3 Additionally, a complaint survives a motion to dismiss if it contains “sufficient factual
4 matter to state a claim to relief that is plausible on its face. A claim has facial plausibility when the
5 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
6 defendant is liable for the misconduct alleged.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136,
7 1140 (9th Cir. 2012) (cleaned up).

8 ARGUMENT

9 Plaintiffs’ Amended Complaint adequately alleges facts establishing several independently
10 sufficient injuries to support standing. First, Plaintiffs have direct organizational standing because
11 AB4 compels them to divert their resources. Second, Plaintiffs have direct organizational standing
12 because AB4 harms their ability to achieve electoral success. Third, Plaintiffs have direct
13 organizational standing because AB4 imposes competitive disadvantages upon the Plaintiff
14 organizations. Fourth, Plaintiffs have adequately alleged associational standing to vindicate the
15 competitive harms that AB4 causes their member-candidates. Fifth, Plaintiffs have associational
16 standing to vindicate the harms caused to their voter-members by AB4’s dilution of their votes.
17 Sixth, Plaintiffs have associational standing to vindicate the harms caused to their voter-members
18 by AB4’s disparate treatment of rural voters. Any one of these independently sufficient grounds
19 sufficiently establishes Plaintiffs’ standing and requires denying Intervenors’ motion to dismiss.
20 *See Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (“For a legal dispute to qualify
21 as a genuine case or controversy, at least one plaintiff must have standing to sue.”); *see also Fair*
22 *Maps Nevada v. Cegavske*, No. 320CV00271MMDWGC, 2020 WL 2798018, at *6 (D. Nev. May
23 29, 2020). Additionally, this suit is ripe for review and justiciable. Further, Plaintiffs possess a right
24 of action under 42 U.S.C. §1983 to pursue their challenges under federal election laws and the
25 Fourteenth Amendment. Finally, Plaintiffs’ amended complaint adequately alleges facts
26 establishing violations of the Equal Protection Clause, the constitutional right to vote, and federal
27 election laws setting one uniform federal Election Day.
28

1 **I. Plaintiffs have standing to pursue Count I and have adequately alleged a violation of**
2 **federal election laws.**

3 Plaintiffs have standing to challenge §20.2 of AB4, which allows votes cast after the
4 uniform, national Election Day to be counted. Additionally, Plaintiffs have established that this
5 provision is preempted by federal law.

6 **A. Plaintiffs have representational and organizational standing to bring Count I.**

7 **1. Representational Standing**

8 Intervenors' assertion that Plaintiffs lack standing to challenge Nevada's violation of federal
9 election laws cannot be squared with courts' longstanding adjudication of claims that state laws
10 conflict with the federal laws setting the uniform Election Day. For example, in *Foster v. Love*, the
11 Court reached the merits of and affirmed injunctive relief for "Louisiana voters who sued ... the
12 State's Governor and secretary of state, challenging the open primary as a violation of federal law."
13 522 U.S. 67, 70 (1997). Similarly, in *Voting Integrity Project, Inc. v. Keisling*, the Ninth Circuit
14 reached the merits of a suit brought by an organization and individual voters seeking "declaratory
15 and injunctive relief" under §1983 "to establish that an Oregon statute that allows Oregonians to
16 vote by mail for a substantial period prior to or as well as on this federal election day violates the
17 federal election laws." 259 F.3d 1169, 1174 (9th Cir. 2001). Indeed, to Plaintiffs' knowledge, no
18 court has dismissed for lack of standing a suit alleging that a State law conflicts with the federal
19 laws setting the uniform Election Day. *See Millsaps v. Thompson*, 259 F.3d 535, 536 (6th Cir. 2001)
20 (reaching merits of §1983 suit "alleging that Tennessee's early voting system conflicts with federal
21 statutes that establish" the uniform Election Day); *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d
22 773, 774 (5th Cir. 2000) (reaching merits of §1983 suit alleging "sections of the Texas Election
23 Code, which permit unrestricted early voting in federal elections, are preempted by federal election
24 statutes" setting uniform Election Day).

25 The federal judiciary's consistent adjudication of such suits under §1983 confirms that state
26 laws that conflict with federal legislation setting the time of federal elections endanger the
27 fundamental right to vote—an injury that is judicially redressable. Federal laws establishing a
28 uniform Election Day are "safeguards which experience shows are necessary in order to enforce

1 the fundamental right involved.” *Smiley v. Holm*, 285 U.S. 355, 399 (1932). It is simply not the
2 case that laws allowing ballots cast after the uniform Election Day to be counted “benefit[] all
3 voters.” (ECF No. 40 at 8.) Instead, such laws violate a key congressionally mandated safeguard of
4 the right to vote. As the Supreme Court and Ninth Circuit have recognized, Congress adopted the
5 uniform Election Day during Reconstruction to address the well-known disenfranchisement,
6 hardship on voters, and fraud that was caused by the practice of multi-day voting. *See Foster*, 522
7 U.S. at 73-74; *Keisling*, 259 F.3d 1169 at 1174 (“Whenever you provide that elections shall take
8 place upon the same day, you do interpose a not inconsiderable check to frauds in elections, to
9 double voting, to the transmission of voters from one State to another, and you do allow the people
10 to vote for their Representatives undisturbed by considerations which they ought not to take at all
11 into account.” (quoting Cong. Globe, 42 Cong., 2d Sess. 618 (1872))). It is thus unsurprising that
12 no court has questioned voters’ standing to challenge state laws violating the uniform federal
13 Election Day statutes because those provisions have always been understood as congressional
14 protections for the fundamental right to vote.

15 Because Plaintiffs’ voter-members possess standing, Plaintiffs also have representational
16 standing to vindicate the injury to their fundamental right to vote caused by the State’s infringement
17 of the uniform Election Day laws. An organization has associational standing to sue on behalf of
18 its members when they would have standing in their own right, the members’ interests are germane
19 to the organization’s, and the members are not necessary parties to the suit. *See Hunt*, 432 U.S. at
20 343. Plaintiffs fit that bill: they brought this suit in their “representational capacity to vindicate the
21 rights of [their] ... affiliated voters,” “including three [RNC] members who are registered voters in
22 Nevada” and the “over 600,000 registered Republican voters in Nevada” represented by the
23 NVGOP. (ECF No. 29, ¶¶14, 19-20). Accordingly, Plaintiffs have adequately pleaded that the State
24 has infringed its members right to vote by violating the uniform Election Day statutes.

25 **2. Organizational Standing**

26 Plaintiffs also possess organizational standing. An organization satisfies its burden to plead
27 a direct injury in fact when it alleges that unlawful state action will cause it to divert resources. *Fair*
28 *Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir.

1 2012) (“We’ve held that an organization has direct standing to sue [when] it showed a drain on its
2 resources from both a diversion of its resources and frustration of its mission.” (internal quotation
3 marks omitted)). And “[t]he Court has also made clear that a diversion-of-resources injury is
4 sufficient to establish organizational standing at the pleading stage, even when it is broadly
5 alleged.” *Nat’l Council of La Raza*, 800 F.3d at 1040 (internal quotation marks omitted). That is so
6 even if the “added cost has not been estimated and may be slight,” because standing “requires only
7 a minimal showing of injury.” *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir.
8 2007), *aff’d*, 553 U.S. 181 (2008) (citing *Friends of the Earth, Inc.*, 528 U.S. at 180–84).

9 Plaintiffs readily clear that threshold. The Amended Complaint alleges that “AB4 forces the
10 RNC to divert resources and spend significant amounts of money educating Nevada voters on those
11 changes and encouraging them to still vote.” (ECF No. 29 ¶17.) It also alleges that AB4 “require[s]
12 the committee” to reelect President Trump “to change how it allocates its resources and the time
13 and efforts of its campaign staff, to achieve its electoral and political goals.” (*Id.* ¶11.) The Ninth
14 Circuit has consistently held that allegations of these precise resource-allocation harms suffice to
15 establish injury in fact. *See Nat’l Council of La Raza*, 800 F.3d at 1040 (“The complaint specifically
16 alleges that Plaintiffs expended additional resources that they would not otherwise have expended,
17 and in ways that they would not have expended them. ... The Supreme Court has made clear that
18 injuries of the sort that Plaintiffs allege are concrete and particular for purposes of Article III.”).
19 And the Supreme Court has unambiguously rejected the notion that resource diversion is merely an
20 “abstract” injury. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (“Such concrete
21 and demonstrable injury to the organization’s activities—with the consequent drain on the
22 organization’s resources—constitutes far more than simply a setback to the organization’s abstract
23 social interests.”). Rather, it is long established that a “new law injures” a political party when it
24 compels it “to devote resources to getting to the polls those of its supporters who would otherwise
25 be discouraged by the new law from bothering to vote.” *Crawford*, 472 F.3d at 951. Thus, Plaintiffs
26 have adequately alleged that they will suffer direct injury as a result of AB4 because the measure
27 forces them to divert and reallocate resources toward educating voters about the effects of AB4’s
28

1 new deeming rules, and acceptance of non-postmarked ballots, on their right to vote. *See Nat'l*
2 *Council of La Raza*, 800 F.3d at 1040–41.

3 Intervenor's reliance on *Paher* (ECF No. 40 at 9) is also misplaced. *Paher* had nothing to
4 do with organizational standing involving resource diversion. Instead the court had before it a
5 complaint that vaguely alleged injuries that “may be conceivably raised by any Nevada voter.”
6 *Paher v. Cegavske*, No. 3:20-cv-00243, 2020 WL 2089813, at *5 (D. Nev. Apr. 30, 2020). By
7 contrast, the Amended Complaint here alleges changes to significant expenditures of organizational
8 resources in response to AB4, placing this case comfortably within the long-established line of
9 cases discussed above holding that organizations possess standing to challenge state laws that cause
10 them to divert resources. *See, e.g., Feldman v. Arizona Sec’y of State’s Office*, 208 F. Supp. 3d
11 1074, 1080–81 (D. Ariz. 2016) (“[T]he ADP alleges that H.B. 2023 will reduce the likelihood that
12 its voters will timely return their ballots, thereby reducing the likelihood that the ADP will be
13 successful in electing Democratic candidates. These allegations are sufficient to establish a concrete
14 and particularized injury in fact that is fairly traceable to H.B. 2023 and likely to be redressed by a
15 favorable ruling on Plaintiffs’ preliminary injunction motion.” (citing *Crawford*, 472 F.3d at 951)).
16 There is nothing “speculative” about this injury (ECF No. 40 at 9); Plaintiffs have specifically
17 alleged that “AB4 forces the RNC to divert resources and spend significant amounts of money,”
18 (ECF No. 29, ¶17) (emphasis added), and requires Donald J. Trump for President, Inc. to “change
19 how it allocates its resources,” *id.* ¶11.

20 Beyond that, Intervenor's arguments attempt to change Plaintiffs’ pleading standard by
21 demanding specific proof of Plaintiffs’ resource diversion and discounting courts’ recognition of
22 standing for impending harms. At the pleading stage a court must “presum[e]” that Plaintiffs’
23 “general allegations embrace those specific facts that are necessary to support the claim.” *Nat'l*
24 *Council of La Raza*, 800 F.3d at 1040 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).
25 Indeed, the Ninth Circuit has faulted district courts for employing precisely the type of heightened
26 standard Intervenor's propose. *See Nat'l Council of La Raza*, 800 F.3d at 1039–41; *see also Common*
27 *Cause v. Brehm*, 344 F. Supp. 3d 542, 549 (S.D.N.Y. 2018) (“Defendants argue that Plaintiff's
28 diversion of resources claims are generalized and conclusory. [] However, Defendants place too

1 high of a burden on Plaintiff at this stage. Plaintiff need only ‘allege facts’ sufficient to demonstrate
2 an injury-in-fact at the motion to dismiss stage.” (quoting *Warth v. Seldin*, 422 U.S. 490, 504
3 (1975))). What’s more, “standing does not ‘uniformly require plaintiffs to demonstrate that it is
4 literally certain that the harms they identify will come about.’ Instead, proving a ‘substantial risk’
5 of injury is sufficient.” *Nelson v. Warner*, No. 3:19-cv-0898, 2020 WL 4582414, at *4 (S.D. W.
6 Va. Aug. 10, 2020) (quoting *Clapper v. Amnesty Int’l*, 568 U.S. 398, 414 n.5 (2013); *Susan B.*
7 *Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). Because Plaintiffs have adequately alleged
8 that AB4 causes them to divert their resources and undermines their ability to achieve electoral
9 success, they have pleaded an injury in fact caused by the state and redressable by a favorable court
10 decision. See *Nat’l Council of La Raza*, 800 F.3d at 1039–41.

11 **B. Plaintiffs have established, as a matter of law, that AB4 violates federal laws setting**
12 **one uniform Election Day.**

13 As an initial matter, Intervenor’s contentions that Count I should be dismissed for failure to
14 state a claim (ECF No. 40 at 10–11) appear to misunderstand the nature of the preemption inquiry
15 for Plaintiffs’ claim under the Election Clauses. Intervenor asks the Court to be “particularly wary”
16 about finding preemption here and quote a Supremacy Clause case admonishing courts to be
17 “cautious about conflict preemption where a federal statute is urged to conflict with state law
18 regulations within the traditional scope of a State’s police powers.” (ECF No. 40 at 11) (cleaned
19 up). But as the Ninth Circuit has recognized, states have no police powers to regulate federal
20 elections: “In contrast to the Supremacy Clause, which addresses preemption in areas within the
21 states’ historic police powers, the Elections Clause affects only an area in which the states have no
22 inherent or reserved power: the regulation of federal elections.” *Gonzalez v. Arizona*, 677 F.3d 383,
23 392–93 (9th Cir. 2012) *aff’d sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1
24 (2013). In consequence, “the ‘presumption against preemption’ and ‘plain statement rule’ that guide
25 Supremacy Clause analysis are not transferable to the Elections Clause context.” *Id.* (quoting
26 *Harkless v. Brunner*, 545 F.3d 445, 454 (6th Cir.2008)).

27 Beyond that, under established Elections Clause and Electors Clause principles, Plaintiffs’
28

1 allegations in Count I adequately state a claim. In fact, Plaintiffs are entitled to judgment as a matter
2 of law on Count I for the reasons described in their motion for motion for partial summary
3 judgment, *see* ECF No. 41, and reiterated below.

4 **1. Federal law requires elections for federal office to be consummated on**
5 **Election Day**

6 Though the Elections Clause grants states power to set the time, place, and manner of
7 congressional elections, U.S. Const. art. I, §4, cl. 1, it also subordinates that power to federal law.
8 The Clause expressly reserves to “Congress” the power to “at any time by Law make or alter such
9 Regulations, except as to the Places of chusing Senators.” *Id.* Congress also bears similar power
10 under the Electors Clause to “determine the Time of chusing the Electors” for the offices of
11 President and Vice President. *Id.* art. II, §1, cl. 4. “[T]hese comprehensive words embrace authority
12 to provide a complete code for congressional elections, not only as to times and places, but in
13 relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and
14 corrupt practices, counting of votes, duties of inspectors and canvassers, and making and
15 publication of election returns.” *Smiley*, 285 U.S. at 399.

16 Exercising those powers, Congress has passed a trio of federal statutes that “mandates
17 holding all elections for Congress and the Presidency on a single day throughout the Union.”
18 *Foster*, 522 U.S. at 70. The “Tuesday next after the 1st Monday in November” is the uniform,
19 national “day for the election” of members of the House of Representatives, 2 U.S.C. §7, and of
20 the Senate, *id.* §1, and for choosing presidential and vice-presidential electors, 3 U.S.C. §1. “By
21 establishing a particular day as ‘the day’ on which these actions must take place, the statutes simply
22 regulate the time of the election, a matter on which the Constitution explicitly gives Congress the
23 final say.” *Id.* at 71-72; *see also Keisling*, 259 F.3d at 1170 (“Without question, Congress has
24 authority to compel states to hold these elections on the dates it specifies.”). Congress’s choice to
25 adopt one uniform federal Election Day is both “binding on the States” and superior to conflicting
26 state law: “[T]he regulations made by Congress are paramount to those made by the State
27 legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be
28 operative.” *Foster*, 522 U.S. at 69 (quoting *Ex parte Siebold*, 100 U.S. 371, 384 (1879)).

1 These statutes serve sound policy goals. A uniform, national Election Day prevents “the
2 distortion of the voting process threatened when the results of an early federal election in one State
3 can influence later voting in other States.” *Foster*, 522 U.S. at 73. Before Congress adopted a
4 uniform Election Day during the Reconstruction era, the “diversity of” federal election dates gave
5 ““some states”” and ““some parties”” an ““undue advantage””; as one Senator from Maine put it
6 when opposing a uniform Election Day, ““we want in the future, as we have had in the past, the
7 position of indicating to the country the first sentiment on great political questions.”” *Keisling*, 259
8 F.3d at 1173. Beyond that, a uniform, national Election Day is a “check to frauds in elections, to
9 double voting, to the transmission of voters from one State to another, and ... allow[s] the people
10 to vote for the Representatives undisturbed by considerations which they ought not to take at all
11 into account.” *Id.* at 1174.

12 What constitutes “the election” those statutes mandate? That term “refer[s] to the combined
13 actions of voters and officials meant to make a final selection of an officeholder.” *Foster*, 522 U.S.
14 at 71. Put differently, it “means a ‘consummation’ of the process of selecting an official.” *Keisling*,
15 259 F.3d at 1175. Voters’ role in that process includes not just marking a ballot but also “having it
16 delivered to the election officials and” timely “deposited in the ballot box.” *Maddox v. Bd. of State*
17 *Canvassers*, 149 P.2d 112, 115 (Mont. 1944). For “[i]t is not the marking but the depositing of the
18 ballot in the custody of election officials which constitutes casting the ballot or voting.” *Id.* After
19 all, a ballot has “no effect until it is deposited with the election officials, by whom the will of the
20 voters must be ascertained and made effective.” *Id.*

21 Given those “binding” federal requirements, *Foster*, 522 U.S. at 69, state election regimes
22 violate federal law if “the combined actions of voters and officials meant to make a final selection
23 of an officeholder” occur “prior to federal election day.” *Id.* at 71, 72 n.4. That’s why the Supreme
24 Court unanimously invalidated a Louisiana election regime holding congressional elections in
25 October. Louisiana law deemed any candidate who won a majority in that October vote to be
26 “elected,” with “no further act ... done on federal election day to fill the office in question.” *Id.* at
27 70. Only “[i]f no candidate for a given office receive[d] a majority” in the October vote did
28 Louisiana hold another election, dubbed a “run-off,” on Election Day. *Id.* Louisiana’s regime was

1 thus constitutionally flawed because it established “a contested selection of candidates for a
2 congressional office that is concluded as a matter of law before the federal election day, with no
3 act in law or in fact to take place on the date chosen by Congress.” *Id.* at 468. That “clearly violates
4 [2 U.S.C.] §7.” *Id.*

5 Two conclusions follow from that holding. First, state regimes that count ballots cast before
6 Election Day do not violate federal law, *Keisling*, 259 F.3d at 1175-76; *Bomer*, 199 F.3d at 775-
7 77; *Millsaps*, 259 F.3d at 543-46, but only because early voting by itself does not consummate the
8 election before Election Day. Early absentee voting merely complements other “voting” that “still
9 takes place on” Election Day. *Keisling*, 259 F.3d at 1176; *see also Bomer*, 199 F.3d at 776
10 (“Allowing some voters to cast votes before election day does not contravene the federal election
11 statutes because the final selection is not made before the federal election day.”).

12 Second, state regimes that count ballots cast *after* Election Day *do* violate federal law. State
13 election regimes can no more require “the combined actions of voters and officials meant to make
14 a final selection of an officeholder” to stop “prior to federal election day” than they can allow those
15 combined actions to continue after it. *Foster*, 522 U.S. at 71, 72 n.4. Either type of regime
16 “purport[s] to affect the timing of federal elections”— an October election “requires no further act
17 by anyone to seal the election” on Election Day, *id.* at 73, and accepting ballots cast after Election
18 Day expressly contemplates “further act[s]” (late-cast votes) intended to influence the final result.
19 Thus, both types of election systems contravene Congress’s “final say” about when federal
20 elections must occur and “clearly violate[] [2 U.S.C.] §7,” 2 U.S.C. §1, and 3 U.S.C. §1. *Id.* at 72.

21 Other statutes confirm that Congress did not intend voting to continue after Election Day.
22 Federal law specifically enumerates only two instances in which an election for federal office can
23 be held at a later date: “(1) in states that required a majority vote for election, a runoff could be held
24 between federal election day and January when officials take office; and (2) an election could be
25 held on a different date if a vacancy occurred in the office.” *See Love v. Foster*, 90 F.3d 1026, 1029
26 (5th Cir. 1996), *aff’d*, 522 U.S. 67 (citing 3 U.S.C. §8). Nevada is not free to create a third “COVID”
27 exception. That is Congress’s job. *See Foster*, 522 U.S. at 71-72; *see also Keisling*, 259 F.3d at
28 1170 (“Without question, Congress has authority to compel states to hold these elections on the

1 dates it specifies.”). Additionally, the Reconstruction Congress enacted Act of May 23, 1872 to
2 appease concerns that Texas could not logistically hold an election on one day given its size and
3 lack of established precincts. It was “a one-time exception to the statutory and constitutional
4 requirement for a uniform day for selection of electors to address the circumstances of
5 Reconstruction-era Texas.” *Millsaps*, 259 F.3d at 542 (citing Cong. Globe, 42d Cong., 2d Sess.
6 3407-08). This provision’s existence *assumes* that votes cannot be cast under any circumstances
7 after the uniform Election Day, which cannot be “continued for more than one day” by a State
8 without congressional permission. *Id.* If votes could be validly cast after the uniform Election Day,
9 this provision would be a nullity. *Id.*

10 **2. Section 20.2 allows ballots cast after Election Day to be counted.**

11 “[A]s a matter of law,” §20.2 of AB4 allows “a contested selection of candidates for a
12 congressional office”—and for presidential and vice-presidential electors—to continue after “the
13 federal election day.” *Foster*, 522 U.S. at 72. Under §20.2, if a ballot is received by mail before
14 5:00 p.m. on the Friday after Election Day “and the date of the postmark cannot be determined, the
15 mail ballot shall be deemed to have been postmarked on or before the day of the election.” That
16 requires elections officials to count mail ballots that were mailed on the Wednesday or Thursday
17 *after* Election Day—as long as they arrive by Friday at 5:00 p.m. and bear no postmark (or an
18 indiscernible one). On its face, that morphs the singular “day for the election,” 2 U.S.C. §7, into
19 the plural “Election Day—and a few days after it.”

20 Nor is there a dispute about whether ballots satisfying both conditions will in fact arrive (and
21 thus be counted). USPS’s own statements confirm as much: it acknowledges that “there can be
22 breakdowns or exceptions to this process which could prevent a ballot from receiving a postmark,”
23 ECF No. 41-9 at 7, and that “[i]n some instances (short distance between ZIP Codes), it is possible
24 for [first-class] delivery to occur in one day,” ECF No. 41-13. Undisputed on-the-ground facts tell
25 the same story: Letters sent from Las Vegas by First-Class mail were received in Las Vegas the day
26 after they were mailed, confirming USPS’s First-Class overnight-delivery capabilities in Nevada.
27 *See* ECF No. 41-12. And the undisputed historical record of unpostmarked ballots received in
28 Wisconsin’s and New York’s 2020 primary elections—constituting as many as 13% of ballots

1 received for some New York races, *Gallagher v. N.Y. State Bd. of Elec.*, — F. Supp. 3d —, 2020
2 WL 4496849, at *16 (S.D.N.Y. Aug. 3, 2020)—show USPS’s commendable honesty by admitting
3 to the inevitable inconsistencies in its postmarking process.

4 **3. Because §20.2 conflicts with federal law, it is invalid.**

5 Section 20.2 deems some ballots cast after Election Day timely as a matter of law. That
6 irreconcilably conflicts with Congress’s decisions in 2 U.S.C. §§1, 7 and 3 U.S.C. §1 to require
7 that “the combined actions of voters and officials meant to make a final selection of an officeholder”
8 be “consummated” on one uniform, national Election Day. *Foster*, 522 U.S. at 71, 72 n.4. Indeed,
9 Plaintiffs are not the only ones to have identified this irreconcilable conflict so readily apparent in
10 the statutes’ plain text. *E.g.*, David B. Rivkin Jr. & Lee A. Casey, *Mail-In Voting Could Deliver*
11 *Chaos*, Wall St. J. (Aug. 25, 2020) (“no ballot cast after Nov. 3 is constitutionally valid,” and
12 “counting unpostmarked mailed ballots that arrive after Election Day would be unconstitutional, as
13 there would be no way to tell if they were cast in time”), <https://on.wsj.com/3jLMbT7> (ECF No.
14 41-17).

15 Supreme Court precedent leaves no doubt about the necessary remedy here. Given §20.2’s
16 facial “conflict[] with federal law,” it “is void.” *Foster*, 522 U.S. at 74. For “the regulations made
17 by Congress are paramount to those made by the State legislature; and if they conflict therewith,
18 the latter, so far as the conflict extends, ceases to be operative.” *Ex parte Siebold*, 100 U.S. at 384.

19 Voiding §20.2 furthers Congress’s reasons for establishing a uniform, national Election Day
20 for members of Congress and the President. Recall Congress’s “concern[]” that when voting
21 occurred on multiple days, “the results of an early federal election in one State” would “distort[]
22 ... the voting process” and “influence later voting in other States.” *Foster*, 522 U.S. at 73. And its
23 recognition that holding an election on one day “interpose[s] a not inconsiderable check to frauds
24 in elections [and] to double voting.” *Keisling*, 259 F.3d at 1174. Section 20.2’s post-Election Day
25 regime implicates both concerns. Under §20.2, persons dissatisfied with Tuesday night’s election
26 returns have an opening to try to distort and improperly influence any races whose preliminary
27 outcomes displease them. And with Clark County alone mailing more than 93,000 ballots this Fall
28 to voters whom County officials know *no longer live at their registered addresses*, opportunities

1 for obtaining and returning ballots after Election Day will not be hard to find.

2 Beyond that, voiding §20.2 will eliminate a potential threat to Nevada’s ability to cast its
3 Electoral College votes. Under federal law, the Electoral College meets and votes (this year) on
4 December 14. *See* 3 U.S.C. §7. What if a dispute exists about the appointment of Nevada’s electors?
5 If any such dispute exists and is resolved under existing state law before December 8, Congress
6 must conclusively accept Nevada’s slate of electors. *Id.* §5. But if any such dispute is *not* resolved
7 by December 8, the Nevada Legislature must decide how to appoint Nevada’s electors in time for
8 them to cast votes on December 14. *Id.* §2.

9 Together, those provisions require that disputes about the validity of ballots cast for
10 presidential electors must be resolved under Nevada law by December 8 for Congress to accept
11 Nevada’s electors’ votes “conclusive[ly]” on December 14. *Id.* §5. December 8 is just 32 days after
12 §20.2’s November 6 deadline for unpostmarked ballots. And New York’s primary election this year
13 is proof enough that disputes over the validity of unpostmarked ballots can take all of 32 days (and
14 more) to resolve. The primary election between Rep. Carolyn Maloney and Suraj Patel for New
15 York’s 12th District remained unresolved for *six weeks* after the election, based in part on disputes
16 over “the counting of certain mail ballots that arrived after Election Day but without a postmark to
17 prove when they were sent.” *An Autopsy of New York’s Mail-Vote Mess*, Wall St. J. (Aug. 7, 2020),
18 <https://on.wsj.com/3kT7d3y> (ECF No. 41-10). If it takes six weeks to resolve disputes over
19 unpostmarked absentee ballots counted under §20.2, Nevada will miss its safe-harbor deadline for
20 certifying its electors by 10 days—and with it federal law’s “conclusive” guarantee that Nevada’s
21 electoral votes will be counted as sent. And if that happens, and Nevada’s Electoral College votes
22 are not accepted, it would disenfranchise every voter in Nevada who voted for a presidential
23 candidate.

24 Voiding §20.2 avoids those risks. Disputes about unpostmarked ballots received after
25 Election Day will not exist if the law no longer allows counting unpostmarked ballots received after
26 Election Day. The Court should invalidate §20.2 to ensure that only ballots cast on or before
27 Election Day—the deadline federal law sets—will be counted.

1 **II. Plaintiffs have standing to pursue Count II and have adequately alleged facts**
2 **establishing a violation of the Equal Protection Clause.**

3 Plaintiffs have adequately alleged facts to establish standing to challenge Sections 11 and
4 12 of AB4, which allocate voting centers and polling places on the basis of population rather than
5 number registered voters. Additionally, they have pleaded facts establishing that these provisions
6 disparately burden rural voters in violation of the Equal Protection Clause.

7 **A. Standing**

8 The Amended Complaint here specifically alleges that §§11–12 of AB 4 will have a
9 disparate impact on rural voters because they require the establishment of more polling centers per
10 capita for urban voters than for rural voters. (ECF No. 29, ¶¶100, 124–38.) These sections do not
11 “value ... every vote equally.” *Citizens for Fair Representation v. Padilla*, No. 18-17458, 2020 WL
12 2510747, at *1 (9th Cir. May 15, 2020) (unpub). Rather, they specifically harm rural voters by
13 employing a formula that favors urban voters. *Cf. id.* This allegation is not speculative but the direct
14 function of §§11–12, which “discriminate against voters in rural counties by authorizing more
15 polling places and vote centers per capita in urban areas.” *Id.* ¶129. Plaintiffs extensively document
16 how these sections work together to systematically underserve rural areas as compared to urban
17 areas. *Id.* ¶¶126–34. This type of discriminatory treatment is a judicially cognizable injury directly
18 traceable to AB4. *See Gill*, 138 S. Ct. at 1929–30.

19 The Court can quickly dismiss Intervenors’ argument that enjoining §§11–12 would
20 actually make Plaintiffs worse off and therefore this injury is not redressable. Plaintiffs seek an
21 injunction against Nevada’s use of a county-population-based formula that results in disparate
22 treatment for rural areas. A voter unmistakably has standing to vindicate his “right to cast [his]
23 vote[] effectively.” *Rodriguez v. Newsom*, No. 18-56281, 2020 WL 5361884, at *8 (9th Cir. Sept.
24 8, 2020) (quoting *Dudum v. Arntz*, 640 F.3d 1098, 1106, 1109 (9th Cir. 2011)). Plaintiffs
25 extensively allege that the formula employed to distribute polling and voting centers “denie[s]
26 [them] an opportunity to cast a ballot at the same time and with the same degree of choice among
27 candidates available to other voters.” *Id.* Far from “inflicting greater harm on all voters,” ECF No.
28 40 at 13, eliminating those discriminatory provisions would allow the State to employ a non-

1 discriminatory method of apportioning polling stations in accordance with pre-AB4 law. *E.g.*, NRS
 2 §293.3072. That relief would redress the disparate harm faced by rural communities. *Cf. Am. Civil*
 3 *Liberties Union of Nevada v. Lomax*, 471 F.3d 1010, 1016 (9th Cir. 2006) (“[I]n determining
 4 redressability, courts ‘assume that plaintiff’s claim has merit.’ (quoting *Bonnichsen v. United*
 5 *States*, 367 F.3d 864, 873 (9th Cir. 2004))). Simply put, the current system implemented by §§11–
 6 12 results in fewer polling stations per capita in rural areas. Enjoining those sections would mean
 7 voting stations are allocated pursuant to a non-discriminatory system. By ensuring that the state
 8 establishes voting places in way that does not specifically devalue rural communities, Plaintiffs’
 9 requested injunction of §§11–12 would “actually improve[] their position.” *Townley v. Miller*, 722
 10 F.3d 1128, 1134 (9th Cir. 2013). That suffices to establish standing.

11 **B. Plaintiffs have adequately alleged that Sections 11 and 12 violate the Equal**
 12 **Protection Clause.**

13 Sections 11 and 12 of AB4 violate the “clear and strong command of our Constitution’s
 14 Equal Protection Clause” that “voters cannot be classified, constitutionally, on the basis of where
 15 they live.” *Reynolds v. Sims*, 377 U.S 533, 560, 568 (1964). Plaintiffs’ factual allegations more than
 16 plausibly establish that AB4 discriminates against rural voters. For example, by operation of §11,
 17 urban Washoe County has “at least 1 polling place for every 21,281 registered voters,” while rural
 18 Douglas County has one polling place for every 41,649 registered voters. Am. Compl. ¶¶130, 131.
 19 Similarly, by operation of §12, urban Washoe County has “at least 1 vote center for every 12,768
 20 registered voters” while rural Lyon county has only “1 vote center for every 40,816 registered
 21 voters.” Am. Compl. ¶¶131, 133. Those gross disparities in per-capita polling places—as great as
 22 double or triple the amount of polling places per capita for certain urban counties as compared to
 23 rural counties—plausibly establish that §§11 and 12 disparately harm rural counties.

24 Intervenors’ argument is less about the law and more about the sufficiency of Plaintiffs’
 25 pleadings and allegations. But the “significant relationship between the number of registered voters
 26 in a county and the need for polling locations” is self evident. ECF No. 40 at 15.¹ “[A]nalyzing the

27 _____
 28 ¹ *Reynolds*’ reliance upon population concerned only the actual apportionment of representatives. By contrast, voter registration rather than population is the only reasonably relevant metric when

1 sufficiency of a complaint’s allegations is a ‘context-specific task that requires the reviewing court
2 to draw on its judicial experience and common sense.’” *Sheppard v. David Evans & Assoc.*, 694
3 F.3d 1045, 1051 (9th Cir. 2012) (quoting *Iqbal*, 556 U.S. at 679). Plaintiffs have adequately alleged
4 facts that registered voters are those most likely to vote and therefore the reliable measure of the
5 need for polling stations. *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir.
6 2008) (“[T]he only question before us is whether the amended complaint pleads facts, if proven,
7 sufficient to establish that the defendants arbitrarily deny Ohioans the right to vote depending on
8 where they live.”). And Plaintiffs claim precisely that “the Nevada Legislature acted arbitrarily or
9 unreasonably in establishing minimum thresholds according to total population.” (ECF No. 40 at
10 15.) More than that, Plaintiffs specifically allege Nevada’s use of the population metric has resulted
11 in urban areas being accorded triple the amount of voting centers per capita of those likely to
12 actually vote, resulting in “serious and irreparable harm to” the “constitutional rights” of rural
13 voters. Am. Compl. ¶138. Such allegations of harms from the danger of insufficient polling places
14 have long been understood to suffice to state an Equal Protection Clause claim. *See, e.g., League*
15 *of Women Voters of Ohio*, 548 F.3d at 478 (“If true, these allegations could establish that Ohio’s
16 voting system deprives its citizens of the right to vote or severely burdens the exercise of that right
17 depending on where they live in violation of the Equal Protection Clause.”).

18 Contrary to Intervenor’s assertion, the State cannot hide behind “policy” discretion to justify
19 its discriminatory policy. Rather, “[j]udicial standards under the Equal Protection Clause are well
20 developed and familiar.” *Reynolds*, 377 U.S. at 557 (quoting *Baker v. Carr*, 369 U.S. 186, 226,
21 (1962)). As Intervenor acknowledges, Plaintiffs need only plausibly allege “that the Nevada
22 Legislature acted arbitrarily or unreasonably in establishing minimum thresholds according to total
23 population.” (ECF No. 40 at 15.) Plaintiffs have done precisely that and supported their allegation
24 with extensive facts demonstrating that Sections 11 and 12’s “discrimination reflects no policy but
25 simply arbitrary and capricious action.” *Reynolds*, 377 U.S. at 557 (quoting *Baker*, 369 U.S. at
26 226). These facts “allow[] the court to draw the reasonable inference that the defendant is liable

27 _____
28 considering how many polling places are actually needed in an area to accommodate the volume
of expected turnout.

1 for the misconduct alleged.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).
2 Indeed, Plaintiffs’ detailed allegations surpass their burden at the motion to dismiss stage of
3 alleging facts “plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*
4 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Accordingly, Plaintiffs have carried their pleading burden.

5 **III. Plaintiffs have standing to pursue Count III and have adequately alleged facts**
6 **establishing a violation of the Equal Protection Clause.**

7 Plaintiffs have adequately alleged facts supporting standing to challenge §22 of AB4, which
8 authorizes each local clerk to create different “procedures of the processing and counting of
9 ballots.” Additionally, Plaintiffs have adequately alleged facts establishing that this provision
10 violates their rights under the Equal Protection Clause.

11 **A. Standing**

12 Plaintiffs have established both representational and direct organizational standing to bring
13 Count III. As explained, an organization can bring claims on behalf of its members if its members
14 themselves would possess standing. Plaintiffs have adequately alleged that their members will be
15 harmed by §22’s “unequal, standardless treatment of Nevada voters across counties” in violation
16 of the Equal Protection Clause. Far from alleging a “generalized grievance,” Plaintiffs seek to
17 vindicate their individual right to vote, which will be impaired by the lack of “specific rules
18 designed to ensure uniform treatment.” *Bush v. Gore*, 531 US. 98, 105-06 (2000). Such injuries are
19 sufficiently definite to support standing. *League of Women Voters of Ohio*, 548 F.3d at 478 (finding
20 organization had standing to vindicate harms arising from arbitrary and standardless voting
21 system). And again, the injury is redressable by an injunction halting the enforcement of this
22 unconstitutional provision. *See Nat’l Council of La Raza*, 800 F.3d at 1041. And if the Court enjoins
23 §22—which supersedes conflicting provision of Nevada election law, AB4 §9—the existing ballot-
24 processing provisions would default back into existence for the 2020 election. *See* NRS §§ 293.317-
25 340, 293B.330-400 (“Processing of Ballots”). Plaintiffs thus seek the standard form of redress for
26 unconstitutional state legislation, which would address their injury stemming from §22.

1 **B. Plaintiffs have adequately alleged Section 22 violates their rights under the Equal**
2 **Protection Clause**

3 Section 22 violates Plaintiffs’ rights under the Equal Protection Clause because it dispenses
4 with “uniform rules” for the processing and counting of ballots in favor of standardless discretion
5 in the hands of local clerks. Plaintiffs have adequately alleged that AB4 “provides no ‘minimal
6 procedural safeguards’ to protect against the ‘unequal evaluation’ of mail ballots.” ECF No. 29,
7 ¶146.

8 Intervenors do not really dispute any of this. Instead, they assert that “Nevada’s preexisting
9 election code provide[s] the very standards that Plaintiffs claim are lacking from Section 22.” ECF
10 No. 40 at 17. But AB4 displaces the “full panoply of Nevada’s election laws governing who is
11 eligible to vote and which votes should be counted.” ECF No. 40 at 17. Section 9 of AB4 provides
12 that §22 “of this act supersede[s] and “preempt[s] any conflicting provisions of any other statute or
13 charter, ordinance, interpretation, regulation or rule governing the election.” Section 22, in turn,
14 delegates the power to “establish procedures for the processing and counting of mail ballots” to
15 “the county or city clerk.” And §22 grants the “county or city clerk” power to prescribe such rules
16 so long as they do “not conflict with” AB4—confirming that other election laws do not restrain
17 local officials in establishing election standards. Section 22 thus is incompatible with and
18 supersedes Nevada election law concerning the processing and counting of mail ballots, depriving
19 voters of the uniform standards provided by the “full panoply of Nevada’s election laws.” ECF No.
20 40 at 17. Indeed, because §22 requires new county processes not to conflict with AB4, and AB4
21 makes §22 superior to existing law, AB4 precludes the application of Nevada’s former “uniform
22 rules.” *Cf. Bush*, 531 U.S. at 106. By precluding reliance on Nevada’s existing “specific rules
23 designed to ensure uniform treatment,” §22 fails to provide even “minimal procedural safeguards.”
24 *Id.* at 105-09; *see also League of Women Voters of Ohio*, 548 F.3d at 478 (“[T]he use of
25 standardless manual recounts’ violates the Equal Protection Clause.”). Accordingly, Plaintiffs have
26 adequately alleged that §22 violates their rights under the Equal Protection Clause.

1 **IV. Plaintiffs have standing to pursue Count IV.**

2 Count IV challenges §25 of AB4, which provides that “[i]f two or more mail ballots are
3 found folded together to present the appearance of a single envelope,” and “a majority of the
4 inspectors are of the opinion that the mail ballots folded together were voted by one person, the
5 mail ballots must be rejected.” Intervenors misunderstand the basis of Plaintiffs’ asserted injury in
6 Count IV. Contrary to Intervenors’ assertion, Plaintiffs did not allege that “their supporters will be
7 disenfranchised.” ECF No. 40 at 18. Instead, Plaintiffs alleged that “Section 25 of AB4 requires
8 county or city clerks to count potentially fraudulent or invalid ballots, thereby diluting the votes of
9 honest citizens and depriving them of their right to vote in violation of the Fourteenth Amendment.”
10 Am. Compl. ¶ 102.

11 Vote dilution is a judicially cognizable injury and Plaintiffs have adequately alleged that
12 their members’ votes will be diluted as a result of AB4. *See Gill v. Whitford*, 138 S. Ct. 1916, 1920
13 (2018) (“The right to vote is individual and personal in nature, and voters who allege facts showing
14 disadvantage to themselves as individuals have standing to sue to remedy that disadvantage.”
15 (internal quotation marks and citations omitted); *see also Fair Maps Nevada*, 2020 WL 2798018,
16 at *17 (“Abridgement or dilution of a right so fundamental as the right to vote constitutes
17 irreparable injury.”). And this injury is certainly impending. *See Clapper*, 568 U.S. at 414 n.5.
18 Nothing about it is speculative: §25 provides no guidance whatsoever to local officials on whether
19 folded ballots should be counted or rejected. And Plaintiffs specifically allege facts establishing
20 that §25 will create a “substantial risk that the harm will occur” *Id.* As Plaintiffs allege, “Section
21 25 [does not] require inspectors to reject either of two or more ballots folded together when a
22 majority of the inspectors are of the opinion that the mail ballots were voted by *more than one*
23 person. In that case, Section 25 appears to contemplate that inspectors will count *all* of the ballots,
24 even though at least one of the voters has not complied with the bill’s signature-verification process.
25 This loophole invites fraud, coercion, theft, or otherwise illegitimate voting that dilutes the votes
26 of honest citizens and deprives them of their right to vote in violation of the Fourteenth
27 Amendment.” Am. Compl. ¶102. By enjoining this loophole, the risk of voter fraud and vote
28 dilution will be substantially reduced. Accordingly, Plaintiffs have easily met their burden of

1 alleging a judicially redressable injury in fact.

2 **V. Plaintiffs have standing to pursue Count V and have adequately alleged facts**
3 **establishing a violation of the constitutional right to vote.**

4 Plaintiffs have adequately alleged facts establishing standing to challenge various
5 provisions of AB 4 as diluting the votes of its members. Plaintiffs have also adequately alleged that
6 those provisions violate equal protection, federal election laws, and the constitutional right to vote.

7 **A. Standing**

8 Plaintiffs have adequately alleged that their members' votes will be diluted as a result of
9 AB4. As an initial matter, Intervenors cannot seriously contest that vote dilution is a cognizable
10 injury in fact. *See Gill*, 138 S. Ct. at 1920 ("The right to vote is individual and personal in nature,
11 and voters who allege facts showing disadvantage to themselves as individuals have standing to
12 sue to remedy that disadvantage." (internal quotation marks and citations omitted); *Bush*, 531 U.S.
13 at 105 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's
14 vote just as effectively as by wholly prohibiting the free exercise of the franchise." (quoting
15 *Reynolds*, 377 U.S. at 555)); *see also Fair Maps Nevada*, 2020 WL 2798018, at *17 ("Abridgement
16 or dilution of a right so fundamental as the right to vote constitutes irreparable injury.").

17 Rather, the center of gravity of Intervenors' argument is that Plaintiffs' vote dilution claim
18 is "unduly speculative and impermissibly generalized." ECF No. 40 at 20. But the Amended
19 Complaint contains extensive factual allegations demonstrating that AB4's implementation of a
20 universal vote-by-mail system for the 2020 election greatly increases the risk of fraudulent voting.
21 For example, it explains how specific provisions of AB4, such as its "deeming" rule, will interact
22 with United States Postal Service postmarking policies to increase the likelihood that untimely and
23 illegal ballots will be counted in violation of the Elections Clauses and constitutional voting rights.
24 (ECF No. 29, ¶¶90-97.) Those allegations alone suffice to survive Intervenors' motion to dismiss.
25 The Amended Complaint, however, goes beyond the pleading requirements and buttresses its
26 allegations with facts surrounding problems arising from recent vote-by-mail elections in
27 Wisconsin, New Jersey, Connecticut, and New York. (*Id.* ¶¶63-90.) Taken as true, as those
28 allegations must be at this stage, those allegations more than suffice to establish that provisions of

1 AB4 create a “substantial risk” of counting illegal votes and thereby diluting the votes of Plaintiffs’
2 members. That is all that is required for purposes of standing at the pleading stage. *See Clapper*,
3 568 U.S. at 414 n.5 (plaintiffs are not required “to demonstrate that it is literally certain that the
4 harms they identify will come about. . . . we have found standing based on a substantial risk that the
5 harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that
6 harm” (internal quotation marks omitted)).

7 *Paher* is not to the contrary. There, the plaintiffs pursued a theory of vote dilution that “may
8 be conceivably raised by any Nevada voter.” *Paher*, 2020 WL 2089813, at *5. In contrast, the
9 Amended Complaint here specifically alleges §§11–12 of AB 4 will have a disparate impact on
10 rural voters because they require the establishment of more polling centers per capita for urban
11 voters than for rural voters. (ECF No. 29, ¶¶100, 124–38.) And Plaintiffs have specifically alleged
12 that §20.2’s deadline disparately harms rural voters relative to urban voters. Additionally, another
13 element is present here that was lacking in *Paher*—organizational standing. Plaintiffs not only have
14 representational standing on behalf of their voters, but direct organizational standing to vindicate
15 the harm caused by the diversion of resources to educate their members about how to comply with
16 AB4. *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 800 (W.D. Tex. 2015)
17 (organization’s expenditure of resources to “prevent dilution of legitimate votes by illegal votes”
18 satisfies injury in fact requirement).

19 In sum, “voting fraud impairs the right of legitimate voters to vote by diluting their votes”
20 and “dilution [is] recognized to be an impairment of the right to vote.” *Crawford*, 472 F.3d at 952l
21 Plaintiffs have alleged specific facts demonstrating that AB4 creates a substantial risk of vote
22 dilution. They have thus adequately alleged they possess standing on behalf of their members to
23 vindicate their right to vote.

24 **B. Plaintiffs have adequately alleged that AB4 infringes their voting rights.**

25 Intervenors press only one argument that Plaintiffs have failed to state a claim under the
26 Equal Protection Clause: “Plaintiffs . . . have not alleged an equal protection claim suggesting that
27 Assembly Bill 4 values some other group of voters over their own.” ECF No. 40 at 21. But that is
28 precisely what Plaintiffs set out to do throughout the Amended Complaint. For example, Plaintiffs

1 allege that AB4’s three-day, post-election receipt deadline for non-postmarked ballots—coupled
2 with its deeming rule, the faster average mailing time in urban districts such as Clark County, and
3 the USPS’s practice of not postmarking prepaid mail—will likely result in significantly more
4 untimely ballots being counted from urban areas, violating federal election laws designed to protect
5 the fundamental right to vote. *See* ECF No. 29, ¶¶92-97; *cf. Smiley*, 285 U.S. at 399. The amended
6 complaint adequately alleges that a ballot mailed after Election Day in Clark County is far more
7 likely to be received within three days and therefore “deem[ed]” timely than one sent from a rural
8 district. ECF No. 29, ¶¶95–96. Thus, AB4 does not “devalue [] every vote equally,” and increases
9 the risk that rural voters’ votes in particular will be diluted. *Cf. Padilla*, 2020 WL 2510747, at *1
10 (unpub).

11 Additionally, §§11–12, as discussed more extensively above, impose severe burdens on the
12 rights of rural voters to vote by providing them with significantly fewer polling places and voting
13 centers per capita relative to urban voters. Indeed, the Sixth Circuit has specifically held that
14 allegations of insufficient polling places in an area are sufficient to state a claim for violation of
15 both the Equal Protection Clause and constitutional right to vote. *See League of Women Voters of*
16 *Ohio*, 548 F.3d at 477 (“If true, these allegations could establish that Ohio's voting system deprives
17 its citizens of the right to vote or severely burdens the exercise of that right depending on where
18 they live in violation of the Equal Protection Clause.”); *see also Ury v. Santee*, 303 F. Supp. 119,
19 124 (N.D. Ill. 1969) (noting “the assignment of excessive numbers of registered voters to the
20 precincts” can “hinder[] their right to cast ballots by reason of the excessively crowded conditions
21 at the polling places and their environs”).

22 Plaintiffs have thus more than adequately alleged that AB4 violates its members’
23 “constitutionally protected right to participate in elections on an equal basis with other citizens in
24 the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *see also Rodriguez v. Newsom*, No.
25 18-56281, 2020 WL 5361884, at *8 (9th Cir. Sept. 8, 2020) (“[E]ach and every citizen has an
26 inalienable right to full and effective participation in the political process. That includes the right
27 to cast one’s votes effectively, which requires that no voter be denied an opportunity to cast a ballot
28 at the same time and with the same degree of choice among candidates available to other voters.”

1 (cleaned up)).

2 **VI. Section (b) of the prayer for relief should not be dismissed or stricken.**

3 If the Court holds that one or more of the challenged provisions must be enjoined, it must
4 proceed to conduct a severability analysis to determine if the remainder of AB4 must be enjoined.
5 A state statute’s severability is “a matter of state law.” *Leavitt v. Jane L.*, 518 U.S. 137, 139, 116
6 S. Ct. 2068, 2069, 135 L. Ed. 2d 443 (1996). Nevada courts have adopted a two-part test for
7 severability: “a statute is severable only if the remaining portion of the statute, standing alone, can
8 be given legal effect, and if the Legislature intended for the remainder of the statute to stay in effect
9 when part of the statute is severed.” *Flamingo Paradise Gaming, LLC v. Chanos*, 217 P.3d 546,
10 555 (Nev. 2009). This decision thus must be made on the merits and cannot be avoided by striking
11 portions of the Amended Complaint under procedural rules.

12 **CONCLUSION**

13 For these reasons, the Court should deny the Intervenors’ motion to dismiss.

14
15 Respectfully submitted,

16
17 Dated: September 17, 2020

/s/ J. Colby Williams
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this pleading with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all counsel registered in this case.

Dated: September 17, 2020

/s/ J. Colby Williams
J. Colby Williams