

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)
DOUGLAS M. PRESS, Assistant County Counsel (S.B. #168740)
2 MARY E. HANNA-WEIR, Deputy County Counsel (S.B. #320011)
KIM H. HARA, Deputy County Counsel (S.B. # 258763)
3 JULIA B. SPIEGEL, Deputy County Counsel (S.B. #292469)
OFFICE OF THE COUNTY COUNSEL
4 70 West Hedding Street, East Wing, Ninth Floor
San José, California 95110-1770
5 Telephone: (408) 299-5900
Facsimile: (408) 292-7240
6 Email: julia.spiegel@cco.sccgov.org

7 Attorneys for Defendant
SHANNON BUSHEY, REGISTRAR OF
8 VOTERS FOR THE COUNTY OF SANTA
CLARA
9

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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 ELECTION INTEGRITY PROJECT
CALIFORNIA, INC., JAMES P.
15 BRADLEY, AJA SMITH, ERIC
EARLY, ALISON HAYDEN, JEFFREY
16 GORMAN, MARK REED, BUZZ
PATTERSON, MIKE CARGILE,
17 KEVIN COOKINGHAM, GREG
RATHS,
18

19 Plaintiffs,

20 v.

21 ALEX PADILLA, CALIFORNIA
SECRETARY OF STATE, XAVIER
22 BECERRA, CALIFORNIA ATTORNEY
GENERAL, GAVIN NEWSOM,
23 GOVERNOR OF THE STATE OF
CALIFORNIA, RIVERSIDE COUNTY
24 REGISTRAR OF VOTERS REBECCA
SPENCER, LOS ANGELES COUNTY
25 REGISTRAR OF VOTERS DEAN
LOGAN, VENTURA COUNTY
26 REGISTRAR OF VOTERS MARK A.
LUNN, SAN BERNARDINO COUNTY
27 REGISTRAR OF VOTERS BOB PAGE,
MONTEREY COUNTY REGISTRAR
28 OF VOTERS CLAUDIO

No. 2:21-cv-00032-AB-MAA

**NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
COUNTY DEFENDANTS' MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT**

Date: April 9, 2021
Time: 10:00 a.m.
Crtrm: 7B
Judge: Hon. André Birotte Jr.

1 VALENZUELA, SACRAMENTO
 2 COUNTY REGISTRAR OF VOTERS
 3 COURTNEY BAILEY-KANELO,
 4 ALAMEDA COUNTY REGISTRAR OF
 5 VOTERS TIM DUPUIS, CONTRA
 6 COSTA COUNTY REGISTRAR OF
 7 VOTERS DEBORAH R. COOPER,
 8 SANTA CLARA COUNTY
 9 REGISTRAR OF VOTERS SHANNON
 10 BUSHEY, SAN BENITO COUNTY
 11 REGISTRAR OF VOTERS JOE PAUL
 12 GONZALEZ, SANTA CRUZ COUNTY
 13 REGISTRAR OF VOTERS GAIL L.
 14 PELLERIN, FRESNO COUNTY
 15 REGISTRAR OF VOTERS BRANDI
 16 ORTH, ORANGE COUNTY
 17 REGISTRAR OF VOTERS NEAL
 18 KELLEY,

Defendants.

NOTICE OF MOTION TO DISMISS

TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

15 PLEASE TAKE NOTICE that on **April 9, 2021 at 10:00 a.m. in Courtroom**
 16 **7B** of the United States District Court of the Central District of California, located at
 17 First Street Court House, 350 West First Street, Los Angeles, California 90012,
 18 Defendants Rebecca Spencer, Riverside County Registrar of Voters; Dean C. Logan,
 19 Los Angeles County Registrar-Recorder/County Clerk;¹ Mark A. Lunn, Ventura
 20 County Registrar of Voters; Bob Page, San Bernardino County Registrar of Voters;
 21 Courtney Bailey-Kanelos, Sacramento County Registrar of Voters;² Tim Dupuis,
 22 Registrar of Voters for the County of Alameda; Deborah Cooper, Contra Costa
 23 County Registrar of Voters; Shannon Bushey, Registrar of Voters for the County of
 24 Santa Clara; Joe Paul Gonzalez, San Benito County Clerk-Auditor-Recorder-Registrar

¹ Erroneously sued herein as Los Angeles County Registrar of Voters, Dean Logan.

² Erroneously sued herein as Sacramento County Registrar of Voters, Courtney Bailey-Kanelo.

1 of Voters;³ Gail Pellerin, Santa Cruz County Registrar of Voters; Brandi L. Orth,
2 County Clerk/Register of Voters for the County of Fresno;⁴ and Neal Kelley, Registrar
3 of Voters for the County of Orange (“County Defendants”⁵) will and hereby do move
4 the Court pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) for an order
5 dismissing the Plaintiffs’ Complaint on file in this action in its entirety for lack of
6 subject matter jurisdiction and for failure to state a claim upon which relief can be
7 granted.

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25 ³ Erroneously sued herein as San Benito County Registrar of Voters, Joe Paul
26 Gonzales.

27 ⁴ Erroneously sued herein as Fresno County Registrar of Voters Brandi Orth.

28 ⁵ County of Santa Clara Registrar of Voters Shannon Bushey submits this motion on
behalf of all the County Defendants, except for Monterey, which contests proper
service of Plaintiffs’ complaint.

1 This motion is based on this Notice of Motion and Motion, the Memorandum of
2 Points and Authorities below, the Plaintiffs' Complaint and documents incorporated
3 by reference therein, the arguments that may be presented at the hearing on this
4 Motion, and any other matters the Court deems relevant. This motion is made
5 following the conference of counsel pursuant to Local Rule 7-3, which took place on
6 February 5, 2021.

7 Dated: February 12, 2021

Respectfully submitted,

8 JAMES R. WILLIAMS
9 COUNTY COUNSEL

10 By: /s/ Julia B. Spiegel
11 JULIA B. SPIEGEL
12 Deputy County Counsel
13 Douglas M. Press, Assistant County Counsel
14 Mary E. Hanna-Weir, Deputy County Counsel
15 Kim H. Hara, Deputy County Counsel

16 Attorneys for Defendant
17 Shannon Bushey, Registrar of Voters for the
18 County of Santa Clara

19 Dated: February 12, 2021

DONNA ZIEGLER
County Counsel

20 By: /s/ Raymond Lara
21 RAYMOND LARA
22 Senior Deputy County Counsel

23 Attorneys for Defendant
24 Tim Dupuis, Registrar of Voters for
25 the County of Alameda

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Dated: February 12, 2021

SHARON L. ANDERSON
County Counsel

By: /s/ Rebecca Hooley
REBECCA HOOLEY
Deputy County Counsel

Attorneys for Defendant
Deborah Cooper, Contra Costa
County Registrar of Voters

Dated: February 12, 2021

DANIEL C. CEDERBORG
County Counsel

By: /s/ Kyle R. Roberson
KYLE R. ROBERSON
Deputy County Counsel

Attorneys for Defendant
Brandi L. Orth, County Clerk/Register of
Voters for the County of Fresno

Dated: February 12, 2021

RODRIGO CASTRO-SILVA
County Counsel

By: /s/ Eva W. Chu
EVA W. CHU
Deputy County Counsel

Attorneys for Defendant
Dean C. Logan, Los Angeles County Registrar-
Recorder/County Clerk

///
///
///
///
///

1 Dated: February 12, 2021

LEON J. PAGE
County Counsel

2

3

By: /s/ Rebecca S. Leeds

4

REBECCA S. LEEDS

5

Senior Deputy

6

Mark D. Servino, Supervising Deputy
Suzanne E. Shoai, Senior Deputy

7

Attorneys for Defendant

8

Neal Kelley, Registrar of Voters for
the County of Orange

9

10 Dated: February 12, 2021

GREGORY P. PRIAMOS
County Counsel

11

12

By: /s/ Ronak N. Patel

13

RONAK N. PATEL

14

Deputy County Counsel

15

Attorneys for Defendant

16

Rebecca Spencer, Riverside County
Registrar of Voters

17 Dated: February 12, 2021

LISA A. TRAVIS
County Counsel

18

19

By: /s/ Krista C. Whitman

20

KRISTA C. WHITMAN

21

Assistant County Counsel

22

Attorneys for Defendant

23

Courtney Bailey-Kanelos, Sacramento County
Registrar of Voters

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Dated: February 12, 2021

BARBARA THOMPSON
County Counsel

By: /s/ Joseph Wells Ellinwood

JOSEPH WELLS ELLINWOOD
Assistant County Counsel

Attorneys for Defendant
Joe Paul Gonzalez, San Benito County Clerk-
Auditor-Recorder-Registrar of Voters

Dated: February 12, 2021

MICHELLE D. BLAKEMORE
County Counsel

By: /s/ Laura L. Crane

LAURA L. CRANE
Supervising Deputy County Counsel

Attorneys for Defendant
Bob Page, San Bernardino County
Registrar of Voters

Dated: February 12, 2021

JASON M. HEATH
County Counsel

By: /s/ Melissa C. Shaw

MELISSA C. SHAW
Assistant County Counsel

Ruby Marquez, Chief Assistant County Counsel

Attorneys for Defendant
Gail Pellerin, Santa Cruz County
Registrar of Voters

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Dated: February 12, 2021

MICHAEL G. WALKER
County Counsel

By: /s/ Matthew A. Smith
MATTHEW A. SMITH
Assistant County Counsel

Attorneys for Defendant
Mark A. Lunn, Ventura County
Registrar of Voters

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21 *Hendon v. North Carolina State Bd. of Elections*
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22

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6 *League of Women Voters of Ohio v. Brunner*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The November 3, 2020 Presidential General Election is over—and it has been over for several weeks. Some 17.5 million Californians cast their votes more than three months ago. In early December, county registrars across California duly counted and certified those votes, as did the California Secretary of State. Governing boards and the California Legislature then declared local and state contest results throughout the state. Less than one month later, a joint session of Congress performed its ministerial role of accepting and tabulating the presidential electors for each state in the country. With the winners of the presidential and other contests decided, victorious candidates took their oaths and assumed their new roles.

And yet, Plaintiffs—a non-profit corporation and certain unsuccessful California Congressional candidates—now seek to nullify the will of the people of California. And they do so by repackaging speculative fraud and voting irregularity claims that have already been debunked and rejected by state and federal courts across the country.¹ Although court after court has summarily rejected these same arguments, Plaintiffs assert them again here, making no effort to substantiate their claims or cure their many deficiencies—because they cannot. Plaintiffs’ claims must fail.

First, Plaintiffs lack Article III standing, having failed to articulate a cognizable injury for any of their causes of action or relief that would redress their alleged injury. Rather, Plaintiffs assert little more than speculation and conjecture in their attempt to disenfranchise an entire state of voters. Though difficult to discern from the complaint, Plaintiffs appear to claim that, due to alleged “irregularities” in the conduct

¹ See, e.g., *Donald J. Trump for President, Inc. v. Sec’y Commonwealth of Penn.*, 830 Fed. Appx. 377 (3d Cir. 2020); *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020); *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020).

1 of the election, some votes cast in a random smattering of counties may have been
2 diluted by illegal votes or by suspected vote tally changes. But Plaintiffs do not
3 contend that any such irregularities could have impacted the outcome of any electoral
4 contests, making clear they have no concrete or particularized injury. And even if
5 they did allege a cognizable injury, this Court could not redress it through the
6 evidence preservation, private audit, and de-certification of state-wide election results
7 that Plaintiffs seek. Further, Plaintiffs’ Guarantee Clause claim is non-justiciable
8 based on clear U.S. Supreme Court precedent. And, having filed this lawsuit many
9 weeks after the close of voting and certification of the election—and after expiration
10 of all statutory deadlines for filing challenges to those contests—Plaintiffs’ claims are
11 plainly moot. Consequently, this Court lacks subject matter jurisdiction to entertain
12 Plaintiffs’ claims, and it must dismiss them under Federal Rule of Civil Procedure
13 12(b)(1).

14 *Second*, Plaintiffs’ claims are barred by the doctrine of laches and principles of
15 equity. As in parallel cases across the country, Plaintiffs were aware of claims of
16 alleged irregularities by Election Day, and with respect to many of the laws they
17 challenge, years before. Yet Plaintiffs give no reason, much less a legitimate one, for
18 sitting on their claims. Plaintiffs now ask this Court to allow their private “experts” to
19 conduct an invasive audit of highly sensitive election administration infrastructure and
20 material with the aim of invalidating election results across the State of California—a
21 dangerous and unprecedented request. The County Defendants—and the public—
22 would suffer overwhelming prejudice should such a request be granted.

23 *Third*, Plaintiffs fail to state any claim for relief against the County Defendants.
24 Their allegations about election irregularities amount to little more than a list of
25 scattershot idiosyncrasies in the elections process that have no bearing on the
26 Elections or Guarantee Clauses, and that in no way infringe on Plaintiffs’ Equal
27 Protection and Due Process rights. Despite these glaring deficiencies, Plaintiffs ask
28 this Court to grant them the extraordinary right to conduct a wholesale audit of the

1 County Defendants’ election apparatuses as a step toward disenfranchising California
2 voters. Such relief is plainly out of proportion to the alleged injury (which does not
3 exist) and should not be granted. For all these reasons, Plaintiffs’ claims fail under
4 Federal Rule of Procedure 12(b)(6) as well.

5 The Court should dismiss this action with prejudice, as there is no way for
6 Plaintiffs to remedy the many deficiencies in their complaint.

7 **II. FACTUAL & PROCEDURAL HISTORY**

8 By the close of voting on November 3, 2020, approximately 17.5 million
9 Californians had cast their votes in the Presidential General Election. Over the next
10 30 days, county registrars across the State completed their official canvass, processing
11 and adjudicating ballots and completing their State-mandated audits of the tallied
12 results using either a one-percent manual tally or a risk-limiting audit. *See* Cal. Elec.
13 Code §§ 15300-15376. By December 3, 2020, the county registrars of voters across
14 the state certified their election results, completing their role in administering the
15 election. Cal. Elec. Code § 15372.

16 Plaintiffs did not file an election contest or request a recount in any of the
17 County Defendant jurisdictions or statewide. Under California law, recount requests
18 by voters must be made within five days after certification—in this case, by December
19 8, 2020. Cal. Elec. Code § 15620(a). Election contests involving presidential electors
20 had to have been filed within 10 days of the results being declared, which California
21 Governor Newsom did on December 5, 2020.² Cal. Elec. Code § 16401(c); 3 U.S.C. §
22 6. However, because such contests must be resolved “at least six days before the first
23 Monday after the second Wednesday in December,” those contests also had to have

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26
27 ² Certificate of Ascertainment for Electors of President and Vice President of the
28 United States of America (December 5, 2020),
<https://www.archives.gov/files/electoral-college/2020/ascertainment-california.pdf>
(last accessed February 8, 2021).

1 been filed by December 8, 2020. Cal. Elec. Code § 16003. Plaintiffs filed no such
2 challenges.

3 On December 11, 2020, the Secretary of State certified the statewide results.³
4 Cal. Elec. Code §§ 15503, 15505. California’s presidential electors then met and cast
5 their electoral votes on December 14, 2020, as did electors in states across the nation.
6 3 U.S.C. § 7; Cal. Elec. Code §§ 6904-06. Meanwhile, governing boards across the
7 state—from school districts to the state assembly—declared the results of the election,
8 and new local and state officeholders took their oaths of office. Cal. Elec. Code §
9 15400.

10 On January 4, 2021, many weeks after local and state authorities certified and
11 declared the election results, Plaintiffs—a non-profit corporation and ten registered
12 California voters who were unsuccessful Congressional candidates, Dkt. 1, ¶¶ 14-24—
13 filed this action. Plaintiffs sued California’s Governor, Secretary of State, Attorney
14 General, and the Registrars of Voters for thirteen of the State’s 58 counties.⁴ *Id.*, ¶¶
15 25–40.

16 Plaintiffs allege that all Defendants violated: (1) the Elections Clause, U.S.
17 Const. art. I, § 4, cl. 1; (2) the Equal Protection Clause, U.S. Const. amend. XIV, § 1;
18 (3) the Due Process Clause, U.S. Const. amend. XIV, § 1; and (4) the Guarantee
19 Clause, U.S. Const. art. IV, § 4. In their Prayer for Relief, Plaintiffs seek preservation
20 of a wide range of election-related materials; de-certification of the November 2020
21 election; declaratory judgments finding unconstitutional several California statutes,
22

23
24 ³ Certificate of the Secretary of State, Alex Padilla (December 11, 2020).
25 <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/17-cert.pdf> (last accessed
February 8, 2021).

26 ⁴ The thirteen named Registrars of Voters are the county elections officials for the
27 Counties of Alameda, Contra Costa, Fresno, Los Angeles, Monterey, Orange,
28 Riverside, Sacramento, San Benito, San Bernardino, Santa Clara, Santa Cruz, and
Ventura. County of Santa Clara Registrar of Voters Shannon Bushey submits this
memorandum of authorities on behalf of all County Defendants, except for Monterey,
which is contesting proper service of Plaintiffs’ Complaint.

1 executive orders, regulations, and procedures for election observers; costs; and
2 attorney’s fees. Dkt. 1, Prayer, ¶¶ A–G.

3 The day after filing this action, and before properly serving most Defendants,
4 Plaintiffs filed an application for a temporary restraining order and an order to show
5 cause why a preliminary injunction should not issue, seeking preservation of two
6 dozen categories of highly sensitive election administration-related infrastructure,
7 records, security access tokens, passwords, and other materials, and the right to audit
8 that evidence using Plaintiffs’ own “experts.” Dkt. 21, pp. 3-7.

9 On January 6, 2021, a joint session of the U.S. Congress performed its
10 ceremonial role of counting those electoral votes and confirming that Joseph R. Biden,
11 Jr. had won the presidency. 3 U.S.C. § 15. In the following days, due to improper
12 service, Defendants from the State and the Registrars of the Counties of Orange, San
13 Bernardino, Fresno, Santa Clara, and Riverside specially appeared to oppose
14 Plaintiffs’ temporary restraining order application. Dkt. 27, 28, 29, 31, 32, 33.

15 On January 11, 2021, this Court denied in its entirety Plaintiffs’ application and
16 request for an order to show cause why a preliminary injunction should not issue. The
17 Court found that Plaintiffs failed to demonstrate irreparable injury as they presented
18 no “valid reason or need to order Defendants not to destroy evidence” since
19 Defendants were already required to preserve evidence under both California
20 Elections Code section 17300 *et. seq.* and federal law. Dkt. 35, pp. 3-4.

21 On January 20, 2021, President Biden assumed his new role. A week later,
22 Plaintiffs, the State Defendants, and the County Defendants stipulated to a common
23 responsive pleading deadline of February 12, 2021. Dkt. 39.

24 **III. LEGAL STANDARD**

25 Under Rule 12(b)(1), a court must dismiss a case if it lacks subject matter
26 jurisdiction. Rule 12(b)(1) attacks can be facial or factual. *White v. Lee*, 227 F.3d
27 1214, 1242 (9th Cir. 2000). Facial attacks require the defendants to show that the
28 allegations in a complaint are “insufficient on their face to invoke federal

1 jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).
2 Factual attacks require the defendants to challenge “the truth of the allegations that, by
3 themselves, would otherwise invoke federal jurisdiction.” *Id.* A factual attack allows
4 a court to “look beyond the complaint to matters of public record,” and it “need not
5 presume the truthfulness of the plaintiffs’ allegations.” *Lee*, 227 F.3d at 1242. The
6 plaintiffs bear the burden of establishing subject matter jurisdiction. *See Kokkonen v.*
7 *Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

8 A court must also grant a motion to dismiss under Federal Rule of Civil
9 Procedure 12(b)(6) if a plaintiff fails to allege “enough facts to state a claim to relief
10 that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
11 (2007). The plaintiff must sufficiently plead each required element of a cause of
12 action. *Ashcroft v. Iqbal*, 556 U.S. 662, 675–77 (2009). Although courts considering
13 a motion to dismiss must draw reasonable inferences in the plaintiff’s favor,
14 “pleadings that, because they are no more than conclusions, are not entitled to the
15 assumption of truth.” *Iqbal*, 556 U.S. at 679. “[L]abels and conclusions” are
16 insufficient, and “a formulaic recitation of the elements of a cause of action will not
17 do.” *Twombly*, 550 U.S. at 555. A court must disregard conclusory allegations and
18 “draw on its judicial experience and common sense” to make a context-specific
19 determination as to whether a complaint states a plausible claim. *Iqbal*, 556 U.S. at
20 679. When ruling on a 12(b)(6) motion, courts must consider the complaint “in its
21 entirety,” including documents incorporated into the complaint by reference. *Tellabs,*
22 *Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Courts may also
23 consider matters of judicial notice. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

24 IV. LEGAL ARGUMENT

25 A. Plaintiffs Lack Standing to Assert Any of Their Claims

26 Plaintiffs’ action must be dismissed because they lack Article III standing to
27 pursue any of the causes of action they assert. Article III of the Constitution restricts
28 federal court jurisdiction to “Cases” and “Controversies.” U.S. Const. art. III, § 2,

1 cl. 1. “The purpose of the standing requirement is to ensure that the parties have ‘such
 2 a personal stake in the outcome of the controversy as to assure that concrete
 3 adverseness which sharpens the presentation of issues upon which the court so largely
 4 depends for illumination of difficult constitutional questions.’” *McLain v. Meier*, 851
 5 F.2d 1045, 1048 (8th Cir. 1988) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).
 6 To establish standing, a plaintiff must demonstrate (1) that he suffered an injury in
 7 fact—i.e., an invasion of a legally protected interest that is both concrete and
 8 particularized, as well as actual or imminent, not conjectural or hypothetical; (2) that
 9 there is a causal connection between the injury and the conduct complained of, such
 10 that the injury is fairly traceable to the challenged action of the defendant; and (3) that
 11 the injury will likely be redressed by a favorable decision. *See Lujan v. Defenders of*
 12 *Wildlife*, 504 U.S. 555, 560–61 (1992).

13 Standing is not dispensed in gross. *See Davis v. FEC*, 554 U.S. 724, 734
 14 (2008); *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). While not all Plaintiffs need to
 15 demonstrate standing to pursue all causes of action, at least one Plaintiff “must
 16 demonstrate standing for each claim [they] seek[] to press” and for “each form of
 17 relief sought.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (citation
 18 omitted). Plaintiffs bear the burden of demonstrating Article III standing. *See*
 19 *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990).

20 **i. Plaintiffs Fail to Demonstrate Injury-In-Fact**

21 To demonstrate the first prong, “injury in fact,” the injury must be
 22 “particularized,” such that it “affect[s] the plaintiff in a personal and individual
 23 way.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (citations omitted). The
 24 injury also must be “concrete,”—i.e., it must be “real” and not “abstract.” *Id.* A
 25 plaintiff cannot show a particularized and concrete injury by showing “that he has
 26 merely a general interest common to all members of the public.” *Ex parte Levitt*, 302
 27 U.S. 633, 634 (1937). A plaintiff also may not use a “federal court as a forum in
 28 which to air his generalized grievances about the conduct of government.” *United*

1 *States v. Richardson*, 418 U.S. 166, 174 (1974) (quoting *Flast v. Cohen*, 392 U.S. 83,
2 106 (1968)). But that is precisely what Plaintiffs have done.

3 First, the plain text of the Guarantee Clause provides a guarantee *to the states*
4 and does not confer upon individuals or organizations standing to pursue any rights
5 *against* a state or, by extension, political subdivisions of a state (or their officials).
6 *See Largess v. Supreme Jud. Ct. for the State of Mass.*, 373 F.3d 219, 224 n.5 (1st Cir.
7 2004) (per curiam). As such, Plaintiffs have no basis to assert a Guarantee Clause
8 claim.

9 Second, the Elections Clauses vest authority in “the Legislature” of each state to
10 regulate congressional and presidential elections. U.S. Const. art. I, § 4, cl.1, art. II, §
11 1, cl. 2. The U.S. Supreme Court has held that private citizens do not have standing to
12 assert a claim under the Elections Clauses absent a “particularized stake in the
13 litigation.” *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (claims that are “plainly
14 undifferentiated and common to all members of the public” are generalized grievances
15 that do not confer standing). Plaintiff EIPCa surely does not have such a stake. But
16 neither do the individual plaintiffs who were congressional candidates in the
17 November 2020 election, Dkt. 1 ¶¶15–24, as they have failed to assert that the
18 outcome of their individual congressional contests would have changed due to
19 sufficient vote counting errors. *See Bognet v. Secretary Commonwealth of*
20 *Pennsylvania*, 980 F.3d 336, 351 (3d Cir. 2020) (holding candidate did not have
21 standing to raise Elections Clause challenge to state law regarding absentee ballot
22 timeliness rules without allegations that later arriving ballots were more likely to be
23 cast for his opponent). Rather, the complaint focuses on the Presidential contest, for
24 which none of the Plaintiffs have a particularized stake distinct from any other
25 California voter.

26 Third, regarding Plaintiffs’ final two causes of action, courts have consistently
27 held that individual voters lack standing to bring an Equal Protection or Due Process
28 Clause claim for vote dilution due to unlawful or invalid ballots. *See Wood v.*

1 *Raffensperger*, No. 1:20-cv-5155, 2020 WL 7706833, at *3 (N.D. Ga. 2020)
 2 (collecting cases); *see also Rucho v. Common Cause*, 139 S. Ct. 2484, 2501
 3 (2019) (“[V]ote dilution’ in the one-person, one-vote cases refers to the idea that each
 4 vote must carry equal weight.”). As one court recently observed in dismissing similar
 5 claims brought by the campaign for former President Trump, “the claimed injury of
 6 vote dilution ... is too speculative to be concrete” because the same alleged injury
 7 could be claimed by any voter in the state. *See Donald J. Trump for President v.*
 8 *Boockvar*, No. 2:20-cv-966, 2020 WL 5997680, at *32 (W.D. Penn. Oct. 10, 2020);
 9 *see also Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 406–07 (E.D. Pa.
 10 2016) (rejecting vote-dilution claim premised “on speculation that fraudulent voters
 11 may be casting ballots elsewhere” in the state). Rather, vote dilution amounts to a
 12 general grievance that cannot support a finding of particularized injury, as required by
 13 Article III. *See Donald Trump for President, Inc. v. Cegavske*, No. 2:20-cv-1445 JCM
 14 (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (“[P]laintiffs’ claims of a
 15 substantial risk of vote dilution ‘amount to general grievances that cannot support a
 16 finding of particularized injury.’”); *see also Martel v. Condos*, No. 5:20-cv-131, 2020
 17 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (rejecting vote-dilution theory as
 18 conferring standing because it constituted a generalized grievance); *Paher v.*
 19 *Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (noting that because
 20 “ostensible election fraud may conceivably be raised by any Nevada voter,” the
 21 plaintiffs’ “purported injury of having their votes diluted” does not “state a concrete
 22 and particularized injury”); *Nolles v. State Comm. for Reorg. of Sch. Dists.*, 524 F.3d
 23 892, 900 (8th Cir. 2008) (concluding that voters lacked standing to pursue substantive
 24 due process claim based on alleged violation of right to a free and fair election
 25 because they did not demonstrate a particularized injury).

26 Plaintiffs’ limited allegations that vote tallies were more likely to change in
 27 favor of President Biden as counties adjudicated ballots and finalized results, Dkt. 1,
 28 ¶¶ 107, 109, 113, 114, do not transform their generalized grievances into a

1 particularized injury. Plaintiffs are not representatives of the allegedly aggrieved
 2 candidate (former President Trump),⁵ have failed to allege irregularities that would
 3 change the outcome, and have alleged no protected class of voters who they claim had
 4 their votes diluted. Plaintiffs have identified no voters who were deprived of the right
 5 to vote, nor any voters who illegally submitted a vote-by-mail ballot. Any so-called
 6 “dilution” could not amount to an injury, because the impact of the alleged
 7 “irregularities” would have an infinitesimal impact on the value of individual votes in
 8 the presidential contest, which would be felt by all California voters equally. At base,
 9 Plaintiffs’ allegations amount to an alleged incremental undermining of confidence in
 10 the election results. Such a “generalized grievance” is insufficient for Article III
 11 standing. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. at 344 (standing lacking where
 12 plaintiff “suffers in some indefinite way in common with people generally”); *see*,
 13 *e.g.*, *Paher v. Cegavske*, 457 F. Supp. 3d at 926 (voters’ speculation that all-mail
 14 election would increase fraud, diluting their votes, was a generalized grievance,
 15 insufficient to confer standing); *Stein v. Cortes*, 223 F. Supp. 3d 423, 432–33 (E.D.
 16 Pa. 2016) (candidate’s speculation that election’s integrity was compromised was too
 17 generalized to support standing); *Lance v. Coffman*, 549 U.S. at 441–42 (claims that
 18 are “plainly undifferentiated and common to all members of the public” are
 19 generalized grievances that do not confer standing).

20 For the same reasons that individual voters do not have standing to pursue these
 21 claims, EIPCa has also failed to demonstrate an injury in fact under either
 22 organizational or associational standing. To demonstrate an injury to the organization,
 23 EIPCa would need to demonstrate that the actions of Defendants have caused a
 24 “concrete and demonstrable injury to the organization’s activities—with the
 25 consequent drain on the organization’s resources” that is “more than simply a setback
 26 _____

27 ⁵ The individual Plaintiffs who lost their Congressional races do not contend that the
 28 outcomes of their own races were impacted by vote dilution. Dkt. 1.

1 to the organization’s abstract social interests.” *Havens Realty Corp. v. Coleman*, 455
 2 U.S. 363, 379 (1982). The complaint does not—and could not—identify any such
 3 injury to the organization when the injury alleged is generalized vote dilution.
 4 Further, in order for an association to have standing to bring suit on behalf of its
 5 members, the association must demonstrate that “its members would otherwise have
 6 standing to sue in their own right, the interests at stake are germane to the
 7 organization’s purpose, and neither the claim asserted nor the relief requested requires
 8 the participation of individual members in the lawsuit.” *Friends of the Earth, Inc. v.*
 9 *Laidlaw Env’tl. Servs., Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Washington State*
 10 *Apple Advertising Com’n*, 432 U.S. 333, 343 (1977)). EIPCa does not even attempt to
 11 establish that it has either of these bases for standing: it fails to identify its members or
 12 allege that its members have been injured to lay the foundation for organizational or
 13 associational standing. But even if it did include these basic assertions, such
 14 allegations would fail to establish standing because generalized grievances are
 15 insufficient.

16 **ii. Plaintiffs’ Alleged Injury is Not Redressable by the Relief**
 17 **Sought**

18 Turning to the final prong of the standing analysis, Plaintiffs’ purported injury
 19 for all four causes of action—vote dilution—would not be remedied by the relief
 20 sought. *See Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (“A plaintiff’s remedy
 21 must be tailored to redress the plaintiff’s particular injury.”); *DaimlerChrysler Corp.*
 22 *v. Cuno*, 547 U.S. at 353. Denying the right to vote to millions of Californians by
 23 decertifying the election, Dkt. 1, Prayer, ¶ C, would not remedy the alleged vote
 24 dilution. Instead, it would reduce the value of all votes cast to zero, delegitimizing
 25 every Californian’s vote. Also, as more fully explained below in addressing how
 26 Plaintiffs’ claims are moot, the time to challenge the election results has long since
 27 passed. The election is over, and the results must stand.

1 The declaratory relief Plaintiffs seek also would not redress the injury alleged.
 2 Plaintiffs’ request for a declaratory judgment that the “restrictions imposed on citizen
 3 observers by Defendant County Registrars during and after the November 2020
 4 election” are unconstitutional, Dkt. 1, Prayer, ¶ D(e), is vague and overbroad.
 5 Moreover, the California Elections Code provides reasonable limits on election
 6 observers to protect the integrity of the process and permit election officials to
 7 complete their work. *See* Cal. Elec. Code § 2300(a)(9)(B). Also, it is unclear how the
 8 declaratory relief sought—a forward-looking remedy—would directly redress the
 9 purported injury of vote dilution in the already passed election. Finally, Plaintiffs’
 10 request for the County Defendants to preserve evidence, and unprecedented efforts to
 11 seek a burdensome and duplicative audit of that evidence by their own “experts,”
 12 provides no relief to remedy their purportedly diluted votes since the results of the
 13 past election will not change.

14 In sum, Plaintiffs lack Article III standing. Consequently, this Court has no
 15 jurisdiction over this action and the complaint should be dismissed in its entirety.

16 **B. Plaintiffs’ Guarantee Clause Claim is Nonjusticiable**

17 Plaintiffs attempt to assert a cause of action under the U.S. Constitution’s
 18 Guarantee Clause, which provides that “[t]he United States shall guarantee to every
 19 State in this Union a Republican Form of Government,” U.S. Const. art. IV, § 4, also
 20 fails. The U.S. Supreme Court has repeatedly held that claims under the Guarantee
 21 Clause are nonjusticiable, political questions reserved to disputes among the political
 22 branches. *See Rucho v. Common Cause*, 139 S. Ct. at 2506 (“This Court has several
 23 times concluded, however, that the Guarantee Clause does not provide the basis for a
 24 justiciable claim.”); *City of Rome v. United States*, 446 U.S. 156, 182 n.17 (1980)
 25 (declining to reach Guarantee Clause claim because it is nonjusticiable); *Baker*
 26 *v. Carr*, 369 U.S. at 209 (“complaints based on that clause have been held to present
 27 political questions which are nonjusticiable.”); *Pac. States Tel. & Tel. Co. v. Oregon*,
 28 223 U.S. 118, 147–51 (1912) (finding Guarantee Clause claims regarding state law

1 permitting referendum nonjusticiable); *Luther v. Borden*, 48 U.S. 7 (1849) (case of
2 first impression finding claims under the Guarantee Clause nonjusticiable).
3 Consequently, Plaintiffs are barred from asserting a claim under the Guarantee
4 Clause.⁶

5 **C. Plaintiffs’ Claims Are Moot**

6 Plaintiffs’ complaint suffers from other fatal deficiencies as well. Having filed
7 this action weeks after the close of the election, Plaintiffs’ claims are moot. In
8 essence, Plaintiffs seek to reverse the General Presidential Election results by asking
9 the Court to order the State Defendants to de-certify the election results and the
10 County Defendants to preserve—and withhold from using in their upcoming March
11 and May elections—an exceedingly wide range of machinery, materials, and
12 information related to county election administration. Dkt. 1, Prayer, ¶¶ A–C.
13 Although not styled as a request for relief, Plaintiffs also request an audit of the
14 Counties’ election infrastructure “to determine the extent and effect of the
15 irregularities and fraud” it alleges. Dkt. 1, ¶¶ 140–43. But there is no “live” case or
16 controversy regarding the November 2020 Presidential General Election—which
17 came to a close months ago—nor relief available. *See U.S. Parole Comm’n v.*
18 *Geraghty*, 445 U.S. 388, 396, 410 (1980).

19 Under the California Elections Code, a contest of the election of presidential
20 electors must be brought in time for judgment to “be rendered at least six days before
21 the first Monday after the second Wednesday in December.” Cal. Elec. Code
22

23
24 ⁶ Various courts have suggested that there may be limited circumstances in which a
25 claim may be pursued under the Guarantee Clause. *See, e.g. New York v. United*
26 *States*, 505 U.S. 144, 185 (1992); *Reynolds v. Sims*, 377 U.S. 533, 582, 84 S. Ct.
27 1362(1964) (concluding that “some questions raised under the Guarant[ee] Clause are
28 “this difficult question.” *New York*, 505 U.S. at 185. And any uncertainty in the
doctrine is irrelevant here because Plaintiffs have provided no basis to believe that this
case would be the rare exception to this doctrine. And in any event, Plaintiffs lack
standing to pursue their Guarantee Clause claim.

1 § 16003. For the November 2020 Presidential General Election, that deadline was
2 December 8, 2020. California Governor Newsom declared the results of the
3 Presidential electors on December 5, 2020, which means that Plaintiffs could have,
4 and should have, filed any related action between December 5, 2020 and December 8,
5 2020. Cal. Elec. Code § 16401. They did not do so. Instead, Plaintiffs seek to undo
6 the results of a Presidential General Election via a complaint improperly served on
7 January 4, 2021, about an election that was certified weeks earlier, based on statutory
8 deadlines that have been in place for years.

9 This case is plainly moot as there is no “live” controversy for the Court to
10 decide. *See Deakins v. Monaghan*, 484 U.S. 193, 199 (1988); *Already, LLC v. Nike,*
11 *Inc.*, 568 U.S. 85, 91 (2013). As the Eleventh Circuit explained in a similar post-
12 certification challenge, the Court “cannot turn back the clock and create a world in
13 which the 2020 election results are not certified.” *Wood v. Raffensperger*, 981 F.3d
14 1307, 1317 (11th Cir. 2020) (internal quotation marks omitted). Because de-
15 certification is not possible,⁷ the other relief Plaintiffs seek would be “meaningless.”
16 *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261, at *12 (D. Ariz.
17 Dec. 9, 2020); *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198, at *5 (E.D.
18 Mich. Dec. 7, 2020) (“[T]he evidence Plaintiffs seek to gather by inspecting voting
19 machines and software and security camera footage only would be useful if an avenue
20 remained open for them to challenge the election results.”). This Court accordingly
21 lacks subject matter jurisdiction and should dismiss the case. *Lewis v. Cont’l Bank*
22 *Corp.*, 494 U.S. 472, 477 (1990).

23 ///

24 _____
25
26 ⁷ In addition to Plaintiffs’ claims being moot, this Court lacks the authority to de-
27 certify state election results. *See Bowyer*, 2020 WL 7238261, at *11 (“[I]f de-
28 certification were possible, it would only be possible through an action brought in
[state] superior court ... This [federal] Court has no power to de-certify the results.”)

1 **D. Plaintiffs’ Claims Are Barred by Laches and Principles of Equity**

2 Plaintiff’s claims are also barred by the doctrine of laches. To establish laches,
 3 a defendant must show that a plaintiff unreasonably delayed in filing suit, causing
 4 prejudice to the defendant or the administration of justice. *Danjaq LLC v. Sony Corp.*,
 5 263 F.3d 942, 951–52 (9th Cir. 2001). In the elections context, courts have strongly
 6 disfavored delays in bringing lawsuits during an election cycle, much less after one.
 7 *Perry v. Judd*, 840 F. Supp. 2d 945, 950 (E.D. Va.), *aff’d*, 471 F. App’x 219, 227 (4th
 8 Cir. 2012) (“The Supreme Court has repeatedly expressed its disapproval of such
 9 disruptions.”); *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (“In the context
 10 of elections, ... any claim against a state electoral procedure must be expressed
 11 expeditiously.”).

12 Plaintiffs sat on their claims for weeks, without any legitimate reason.
 13 Plaintiffs waited one month after California’s presidential electors cast their electoral
 14 votes (December 14, 2020)—and two months after the close of voting (November 3,
 15 2020)—to (improperly) file their complaint. By their own admission, Plaintiffs knew
 16 of their claims by the close of voting on November 3, 2020 at the very latest. Dkt. 1,
 17 ¶¶ 95–103 (alleging impediments to in-person election observation as early as October
 18 31, 2020), 105-116 (alleging in-person voting irregularities).⁸ And their general
 19 allegations about Dominion and Smartmatic voting systems are rooted in claims made
 20 by “multiple entities” dating as far back as 2016. Dkt. 1, ¶¶ 127–37. And yet
 21 Plaintiffs proffered no explanation, much less a “legitimate excuse,” for their delay in
 22 filing this action. *See Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 997 (9th Cir.
 23 2006).

24 Such a significant delay in filing this lawsuit undoubtedly caused prejudice to
 25 the County Defendants and to the administration of justice. While Plaintiffs slept on
 26

27
 28 ⁸ What is more, the statutes that Plaintiffs challenge have been in effect for many
 years—and in some cases, decades. *See* Dkt. 1, ¶¶ 47–64.

1 their rights, *Piper Aircraft Corp. v. Wag-Aero, Inc.*, 741 F.2d 925, 939 (7th Cir. 1984)
2 (Posner, J., concurring), millions of Californians cast their votes. Dkt. 1, ¶ 66. The
3 County Defendants and the remaining California counties tabulated and certified those
4 votes, the Secretary of State certified the election results on behalf of the electorate of
5 the entire state (as did states across the country), newly elected state and local officials
6 took office, and the Electoral College met to tabulate the votes for the next President.
7 Dkt. 1, ¶¶ 13, 117. The relief Plaintiffs now seek, long after the close of the election,
8 “would be extreme, and entirely unprecedented.” *Bowyer v. Ducey*, 2020 WL
9 7238261, at *11; *SW Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919
10 (9th Cir. 2003) (“Interference with impending elections is extraordinary, ... and
11 interference with an election after voting has begun is unprecedented.”); *see also*
12 *King*, 2020 WL 7134198, at *7 (barring an “after the fact” lawsuit alleging similar
13 claims of widespread voter irregularities and fraud due to laches, among other
14 grounds). Moreover, interfering with election results months after their closure would
15 “harm the public in countless ways.” *Wood v. Raffensperger*, No. 1:20-cv-04651-
16 SDG, 2020 WL 6817513, at *13 (N.D. Ga. Nov. 20, 2020), *aff’d*, 981 F.3d 1307 (11th
17 Cir. 2020).

18 Plaintiffs’ claims should also be rejected under basic principles of equity.
19 Plaintiffs seemingly waited until the outcome of the election was clear, and other
20 attempts to reverse that outcome had failed, to claim election irregularities and fraud.
21 Only then—despite their allegations being rooted in actions taken weeks before,
22 Dkt. 1, ¶¶ 95–103, 105–16—did they sue to invalidate the outcome and disenfranchise
23 all California voters. Nor did they follow the State’s clear provisions for bringing
24 election contests. This gamesmanship should not be tolerated. *See, e.g., Toney v.*
25 *White*, 488 F.2d 310, 314 (5th Cir. 1973) (“[T]he failure to require prompt pre-
26 election action ... as a prerequisite to post-election relief may permit, if not
27 encourage, parties who could raise a claim to lay by and gamble upon receiving a
28 favorable decision of the electorate and then, upon losing, seek to undo the ballot

1 results in a court action.”) (internal quotation marks omitted)). Plaintiffs’ claims are
2 barred by laches as well as principles of equity and cannot be allowed to proceed.

3 **E. Plaintiffs Fail to State a Claim for Relief**

4 For all the reasons above, this Court should dismiss Plaintiffs’ complaint
5 pursuant to Federal Rule of Civil Procedure 12(b)(1). But if this Court were to reach
6 the merits of Plaintiffs’ complaint (which it need not do), Plaintiffs’ claims are equally
7 unavailing and should be dismissed.

8 Plaintiffs bring suit pursuant to 42 U.S.C. § 1983, alleging Equal Protection and
9 Due Process Clause violations, as well as violations under the Elections Clause and
10 Guarantee Clause. Dkt. 1, ¶¶ 144-75. To state a claim for a civil rights violation
11 pursuant to Section 1983, a plaintiff must allege that he or she was deprived of a right
12 secured by the U.S. Constitution or the laws of the United States, and that this
13 deprivation occurred at the hands of someone acting under the color of state law.
14 *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 475 (6th Cir. 2008). But
15 “[i]t is hornbook law that Section 1983 does not provide a right of action for ‘garden
16 variety election irregularities.’” *Soules v. Kauaians for Nukolii Campaign Comm.*,
17 849 F.2d 1176, 1183 (9th Cir. 1988) (citation omitted). “Only a pervasive error which
18 undermines the ‘organic processes’ of the ballot is sufficient to trigger constitutional
19 scrutiny.” *Id.* (citation omitted).

20 As discussed, *infra*, Plaintiffs cannot establish that the County Defendants
21 performed any action under color of state law which deprived Plaintiffs of any right,
22 privilege, or immunity granted them under the Constitution or under federal law.
23 Plaintiffs’ allegations—many of which do not address actions or omissions of the
24 County Defendants and instead are a smattering of allegations arising from other
25 jurisdictions—operate merely to cast aspersions on third party vendors not before this

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1 court and are largely untethered from the causes of action asserted. Even if true, the
2 allegations would not entitle Plaintiffs to the sweeping relief requested.⁹ While
3 Plaintiffs purport to assert each cause of action against all Defendants, the core factual
4 allegations against County Defendants related to election observers and election
5 security are more clearly asserted as violations of the Equal Protection and Due
6 Process Clauses. In both instances, Plaintiffs fail to plead a violation of either
7 constitutional provision. Similarly, the Elections Clause does not provide a cause of
8 action for the allegations Plaintiffs assert, and Plaintiffs do not plead a cognizable
9 claim under the Guarantee Clause. Therefore, this Court should dismiss the action
10 pursuant to Federal Rule of Civil Procedure 12(b)(6).

11 **i. Plaintiffs Fail to State a Claim for Relief Under the Elections**
12 **Clause**

13 Plaintiffs’ complaint alleges that Defendants usurped the California
14 Legislature’s authority to regulate elections, which in turn allegedly diminished the
15 value of Plaintiffs’ vote, without providing any allegations that tie County
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18 ⁹ The complaint is essentially a haphazard collection of speculations about alleged
19 election idiosyncrasies without specific allegations of any ballot actually being
20 illegally cast or illegally thrown out, let alone allegations of sufficient irregularities to
21 question the validity of the certified election results. Further, the complaint does little
22 to tie the factual allegations to the causes of action, particularly given that the State
23 Defendants and the County Defendants are not similarly situated. The complaint
24 lacks allegations that tie each County Defendant to the alleged injury suffered and
25 much of the relief sought is outside of the County Defendants’ control. Further,
26 numerous paragraphs of the complaint relate to allegations that took place in other
27 jurisdictions and in previous years without any indication or allegation that the same
28 hardware, software, or use procedures were in operation anywhere in California
during the November 2020 election. Dkt. 1, ¶¶ 120, 127-135. As a result, the
complaint gives the impression of throwing spaghetti at the wall hoping some of the
facts asserted will stick to one of the causes of action, rather than providing each
Defendant with a clear understanding of how their alleged conduct violated the law.
Put simply, the complaint does not pass muster under Federal Rule of Civil Procedure
8(a)(2). *Ashcroft v. Iqbal*, 556 U.S. at 679 (“But where the well-pleaded facts do not
permit the court to infer more than the mere possibility of misconduct, the complaint
has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’ Fed.
Rule Civ. Proc. 8(a)(2).”)

1 Defendants’ actions to that alleged injury.¹⁰ Dkt. 1, ¶¶ 146-47. Allegations of County
 2 Defendants following state law and regulations to adjudicate ballots and verify
 3 signatures, Dkt. 1, ¶¶ 107, 109, 111, are insufficient to state a claim under the
 4 Elections Clause. *See, e.g., Miller v. Treadwell*, 736 F. Supp. 2d 1240, 1243 (D.
 5 Alaska 2010) (following state law in counting write-in votes did not violate the
 6 Elections Clause).

7 **ii. Plaintiffs Fail to State a Claim for Relief Under the Guarantee**
 8 **Clause**

9 Plaintiffs do not—and could not—state a claim under the Guarantee Clause.
 10 Notwithstanding their lack of standing and the nonjusticiability of such claims, the
 11 alleged vote dilution and irregularities have not deprived Plaintiffs of a republican
 12 form of government. Courts have held that even if the Guarantee Clause claims are
 13 justiciable, the Clause could “only [be] offended in highly limited circumstances,”
 14 such as those involving the “aboli[tion] [of] the legislature” or the “establishment of a
 15 monarchy by a state.” *See, e.g., Largess v. Supreme Judicial Court for Mass.*, 373
 16 F.3d at 220. Clearly, the complaint alleges no such circumstances.

17 **iii. Plaintiffs Fail to State a Claim for Relief Under Both the Equal**
 18 **Protection and Due Process Clauses**

19 Plaintiffs’ Equal Protection and Due Process claims are no more availing. The
 20 “Constitution is not an election fraud statute.” *Bodine v. Elkhart County Election Bd.*,
 21 788 F.2d 1270, 1271 (7th Cir. 1986). “It is not every election irregularity . . . which
 22 will give rise to a constitutional claim.” *Id.* The Constitution “is implicated only
 23 when there is ‘willful conduct which undermines the organic processes by which
 24 candidates are elected.’” *Id.* at 1272 (emphasis omitted) (citation omitted). Therefore,
 25

26 ¹⁰ Plaintiffs’ failure to tie County Defendants’ actions to the usurping of the power of
 27 the State Legislature also undermines their standing for that claim, as they fail to
 28 demonstrate a causal connection between the injury alleged and County Defendants’
 conduct. *See Lujan*, 504 U.S. at 561 (to demonstrate standing “there must be a causal
 connection between the injury and the conduct complained of”).

1 “garden variety election irregularities that could have been adequately dealt with
2 through the procedures set forth in [state] law” do not support constitutional Due
3 Process claims. *Id.*; *see also Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998)
4 (“[G]arden variety election irregularities do not violate the Due Process Clause, even
5 if they control the outcome of the vote or election.”).

6 Despite Plaintiff EIPCa’s allegedly extensive training of its volunteer election
7 observers, *see* Dkt. 1, ¶ 14, EIPCa did not challenge the alleged irregularities during
8 the canvass. But, had Plaintiffs swiftly brought their claims in state court and in the
9 unlikely event that their allegations were substantiated as unlawful, expedited relief
10 would have been available at that time; state courts give priority to election matters,
11 including allegations of an “error, omission, or neglect [that] is in violation of [the
12 California Elections] code or the Constitution.” Cal. Elec. Code § 13314(a)(2); *see*
13 *also* Cal. Code Civ. Proc. § 35 (election matters have priority).

14 Plaintiffs’ allegations regarding the operations of County Defendants are
15 insufficient to state a claim under either the Equal Protection Clause or the Due
16 Process Clause as “there is no authority to support a finding of burden [on the right to
17 vote] based solely on a speculative ... possibility that election irregularities might [or
18 did] occur.” *Donald J. Trump for President, Inc. v. Boockvar*, 2020 WL 5997680, at
19 *71. Plaintiffs point to sporadic instances where election observers were dissatisfied
20 with the level of access and ability to observe provided by County Defendants and to
21 alleged deficiencies in election security without making *any* assertions that those
22 irregularities rise to the level of a constitutional violation that impedes the right to
23 vote.¹¹ Dkt. 1, ¶¶ 95–116. Although Plaintiffs allege to have collected similar
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27 ¹¹ There are no allegations related specifically to the operations of the San Benito
28 County Clerk-Auditor-Recorder-Registrar of Voters, and therefore the complaint is
entirely deficient in stating a claim vis-à-vis Defendant Joe Paul Gonzalez. *See* Fed.
R. Civ. P. 8.

1 incident reports, they fail to demonstrate a reasonable inference that the election was
2 inherently flawed.

3 In overseeing the November 2020 Presidential Election, Defendants were faced
4 with a historically complex election, with record voter turnout during an
5 unprecedented global pandemic. Defendants have a strong interest in ensuring the
6 “orderly and efficient administration of elections.” *Libertarian Party of Pa. v.*
7 *Governor of Pa.*, 813 F. App’x 834, 835 (3d Cir. 2020). County Defendants were
8 operating under state and local public health orders requiring social distancing and
9 other health and safety protocols designed to reduce the risk of transmission of the
10 coronavirus that causes COVID-19.¹² Different jurisdictions may vary in the
11 complexity of their elections and the resources available for managing election
12 observers. For instance, they may adopt different practices that serve those
13 jurisdictions’ “interests in efficiently allocating [their] election resources and
14 administering elections in an orderly manner,” changes that outweigh any minimal
15 burden on Plaintiffs’ rights. *See Mays v. LaRose*, 951 F.3d 775, 783 (6th Cir.
16 2020); *see also Harlan v. Scholz*, 866 F.3d 754, 755-756 (7th Cir. 2017). Nothing
17 about these variations in County Defendant practices or policies make the County
18 Defendants’ practices or policies unlawful.

19 In the end, Plaintiffs’ claims are fundamentally flawed because the “theory of
20 harm in this case is not the denial of the right to poll watch,” which would fail to give
21 rise to a federal constitutional claim for similar reasons, “but instead dilution of votes
22 from fraud caused from the failure to have sufficient poll watchers.” *Donald J. Trump*
23 *for President, Inc. v. Boockvar*, 2020 WL 5997680, at *36. Plaintiffs’ concerns about
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26 ¹² Also, the federal government, through Centers for Disease Control and Prevention
27 (CDC), encouraged election officials to “[m]odif[y] layouts and procedures” by
28 “ensur[ing] sufficient space for social distancing and other measures.” CDC, *Polling*
Locations and Voters (Oct. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last accessed February 8, 2021).

1 election observer access and alleged opportunities for misconduct fail to state a claim
2 of vote dilution; rather, the allegations rest primarily on speculation that voters may
3 have cast invalid ballots or that election workers may have changed results without
4 well plead allegations that such misconduct did occur. *See, e.g., Republican Party of*
5 *Pa. v. Cortes*, 218 F. Supp. 3d at 407 (rejecting vote dilution claim arising out of
6 alleged barriers to election observing giving rise to the possibility of misconduct
7 going unseen and unchallenged).¹³

8 Thus, just as Plaintiffs have no injury, they have no claims for relief under the
9 Elections, Guarantee, Due Process, or Equal Protection Clauses.

10 **F. Plaintiffs’ Request for an Audit is Disproportionate to Their**
11 **Purported Injury**

12 Setting aside that Plaintiffs’ claims against County Defendants are not viable,
13 Plaintiffs make an extraordinary request for election-related “evidence” to be
14 preserved, and for their “experts” to be allowed to conduct an audit of the County
15 Defendants’ highly sensitive election administration equipment and material. Dkt. 1,
16 ¶¶ 140–43. To the extent that Plaintiffs seek an elections audit as a remedy (even if
17 not expressly so), such an audit would be disproportionate to Plaintiffs’ alleged injury
18 (which does not exist).

19 First, Plaintiffs offer no reason to believe that there is any possibility, much less
20 an “imminent” one, that the County Defendants will engage in “evidence tampering.”
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23 ¹³ Federal courts have uniformly found that election irregularities greater in degree to
24 those alleged by Plaintiffs also do not rise to the level of Due Process violations. *See*
25 *Hennings v. Grafton*, 523 F.2d 861, 864 (7th Cir. 1975) (malfunctioning of voting
26 machines); *Gold v. Feinberg*, 101 F.3d 796, 801-02 (2d Cir. 1996) (human error
27 resulting in miscounting of votes and delay in arrival of voting machines); *Curry v.*
28 *Baker*, 802 F.2d 1302, 1316 (11th Cir. 1986) (allegedly inadequate state response to
illegal cross-over voting); *Bodine v. Elkhart County Election Bd.*, 788 F.2d at 1272
(mechanical and human error in counting votes); *Hendon v. North Carolina State Bd.*
of Elections, 710 F.2d 177, 182 (4th Cir.1983) (technical deficiencies in printing
ballots); *Powell v. Power*, 436 F.2d 84, 85-86 (2d Cir.1970) (mistakenly allowing
non-party members to vote in a congressional primary); and *Johnson v. Hood*, 430
F.2d 610, 612– 13 (5th Cir.1970) (arbitrary rejection of ten ballots).

1 Dkt. 1, ¶¶ 140–43. Under California Elections Code sections 17300 to 17306, the
 2 County Defendants are required to retain election documents and materials for 22
 3 months after an election. *See Citizens Oversight, Inc. v. Vu*, 35 Cal. App. 5th 612,
 4 618, 247 (2019). Further, the County Defendants have a “duty to preserve evidence
 5 [that they] know[] or should know is relevant to imminent [and ongoing] litigation.”
 6 *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 193 (C.D. Cal. 2006) (citing
 7 *Dillon v. Nissan Motor Co.*, 986 F.2d 263, 267 (8th Cir. 1993)). As this Court found
 8 in denying Plaintiffs’ temporary restraining order application, Dkt. 21, 3-4, Plaintiffs
 9 make no allegations, and have presented no evidence to suggest, that the County
 10 Defendants are not complying with these obligations.

11 Second, California law requires all county registrars to complete their own
 12 election audit prior to certifying the election results. Cal. Elec. Code §§ 15360,
 13 15365-15367. These audits can either take the form of a public manual tally of at
 14 least one percent of the ballots tabulated using a voting system, including vote by mail
 15 ballots (a general area of concern raised by Plaintiffs, *see, e.g.*, Dkt. 1, ¶¶ 80–83); or a
 16 risk-limiting audit, involving human inspection of ballots to ensure a full manual tally
 17 of the ballots would not show different outcomes than the voting system results.¹⁴ *Id.*
 18 An additional audit by Plaintiffs’ *private* “experts” of the County Defendants’ critical
 19 election-related equipment and materials is not only unwarranted and duplicative, but
 20 it would risk violating the privacy rights of millions of voters, undermining election
 21 security, and interfering with the proprietary rights of third-party vendors. Such an
 22 audit would necessarily pierce the secrecy of the ballot box by allowing private
 23 individuals—after certification—to view ballots and review adjudication logs,
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 28 ¹⁴ All but one of the County Defendants conduct the default one percent manual tally
 pursuant to Cal. Elec. Code § 15360. The Orange County Registrar of Voters conducts
 a risk-limiting audit as part of a state pilot program. *See* “Orange County, CA
 Elections to Conduct Risk Limiting Audit of Presidential General Election Results,”
 (November 8, 2020), [https://www.ocvote.com/press-releases/orange-county-ca-
 elections-to-conduct-risk-limiting-audit-of-presidential-general-election-results](https://www.ocvote.com/press-releases/orange-county-ca-elections-to-conduct-risk-limiting-audit-of-presidential-general-election-results) (last
 accessed February 8, 2021).

1 including confidential voter data that may only be viewed in narrow circumstances
2 under California law. *See* Cal. Elec. Code § 2194; *see also* Cal. Gov’t Code § 6254.
3 Further, despite the fact that the Secretary of State performs extensive certification
4 testing on the counties’ elections technology, Cal. Elec. Code § 19100 *et seq.*, the
5 audit Plaintiffs seek would allow private individuals to investigate proprietary
6 technology belonging to third party vendors¹⁵ significantly beyond the access election
7 observers are ever permitted to have. Moreover, such an “extraordinary remedy”
8 “only would be useful if an avenue remained open for [Plaintiffs] to challenge the
9 election results”—but no such avenue exists. *King*, 2020 WL 7134198, at *5. Thus,
10 Plaintiffs’ request for an audit is not only unnecessary and ill-advised, but it is
11 unavailable.

12 **V. CONCLUSION**

13 This action must be dismissed. The Court lacks subject matter jurisdiction over
14 the claims asserted because Plaintiffs allege only a generalized and speculative injury
15 that cannot be redressed by the relief requested. Plaintiffs sat on their claims and only
16 filed this action long after their claims became moot. For similar reasons, their claims
17 are barred by the doctrine of laches and principles of equity. Even if the Court were to
18 reach the substantive claims, Plaintiffs fail to plead a legally cognizable claim with

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26 ¹⁵ The list of voting technologies certified by the Secretary of State, including the
27 entity that developed the technology, is available at
28 <https://votingsystems.cdn.sos.ca.gov/cert-and-approval/vote-sys-appr-in-ca-12-15-20.pdf> (last accessed February 8, 2021). As shown in that list, Los Angeles County developed its own voting technology.

1 respect to any of the County Defendants under any of the causes of action asserted.
2 And the relief they seek extends far beyond their non-existent injury. Because
3 Plaintiffs can make no amendments to their complaint that would cure these fatal
4 deficiencies, the Court should dismiss this case without leave to amend.

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6 Dated: February 12, 2021

Respectfully submitted,

7
8 JAMES R. WILLIAMS
COUNTY COUNSEL

9
10 By: /s/ Julia B. Spiegel

JULIA B. SPIEGEL

Deputy County Counsel

Douglas M. Press, Assistant County Counsel

Mary E. Hanna-Weir, Deputy County Counsel

Kim H. Hara, Deputy County Counsel

14 Attorneys for Defendant

15 Shannon Bushey, Registrar of Voters for the

16 County of Santa Clara

17 Dated: February 12, 2021

DONNA ZIEGLER

County Counsel

19 By: /s/ Raymond Lara

RAYMOND LARA

Senior Deputy County Counsel

22 Attorneys for Defendant

23 Tim Dupuis, Registrar of Voters for

the County of Alameda

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: February 12, 2021

SHARON L. ANDERSON
County Counsel

2

3

By: /s/ Rebecca Hooley

4

REBECCA HOOLEY
Deputy County Counsel

5

6

Attorneys for Defendant
Deborah Cooper, Contra Costa
County Registrar of Voters

7

8

Dated: February 12, 2021

DANIEL C. CEDERBORG
County Counsel

9

10

By: /s/ Kyle R. Roberson

11

KYLE R. ROBERSON
Deputy County Counsel

12

13

Attorneys for Defendant
Brandi L. Orth, County Clerk/Register of
Voters for the County of Fresno

14

15

16 Dated: February 12, 2021

RODRIGO CASTRO-SILVA
County Counsel

17

18

By: /s/ Eva W. Chu

19

EVA W. CHU
Deputy County Counsel

20

21

Attorneys for Defendant
Dean C. Logan, Los Angeles County Registrar-
Recorder/County Clerk

22

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: February 12, 2021

LEON J. PAGE
County Counsel

2

3 By: /s/ Rebecca S. Leeds

REBECCA S. LEEDS
Senior Deputy
Mark D. Servino, Supervising Deputy
Suzanne E. Shoai, Senior Deputy

4

5

6

7

Attorneys for Defendant
Neal Kelley, Registrar of Voters for
the County of Orange

8

9

10 Dated: February 12, 2021

GREGORY P. PRIAMOS
County Counsel

11

12 By: /s/ Ronak N. Patel

RONAK N. PATEL
Deputy County Counsel
Attorneys for Defendant

Rebecca Spencer, Riverside County
Registrar of Voters

13

14

15

16

17 Dated: February 12, 2021

LISA A. TRAVIS
County Counsel

18

19 By: /s/ Krista C. Whitman

KRISTA C. WHITMAN
Assistant County Counsel

Attorneys for Defendant
Courtney Bailey-Kanelos, Sacramento County
Registrar of Voters

20

21

22

23

24 ///

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26 ///

27 ///

28 ///

1 Dated: February 12, 2021

BARBARA THOMPSON
County Counsel

2

3 By: /s/ Joseph Wells Ellinwood

JOSEPH WELLS ELLINWOOD
Assistant County Counsel

4

5

Attorneys for Defendant
Joe Paul Gonzalez, San Benito County Clerk-
Auditor-Recorder-Registrar of Voters

6

7

8

Dated: February 12, 2021

MICHELLE D. BLAKEMORE
County Counsel

9

10

By: /s/ Laura L. Crane

LAURA L. CRANE
Supervising Deputy County Counsel

11

12

13

Attorneys for Defendant
Bob Page, San Bernardino County
Registrar of Voters

14

15

16 Dated: February 12, 2021

JASON M. HEATH
County Counsel

17

By: /s/ Melissa C. Shaw

MELISSA C. SHAW
Assistant County Counsel

18

19

20

Ruby Marquez, Chief Assistant County Counsel

21

Attorneys for Defendant
Gail Pellerin, Santa Cruz County
Registrar of Voters

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Dated: February 12, 2021

MICHAEL G. WALKER
County Counsel

By: /s/ Matthew A. Smith
MATTHEW A. SMITH
Assistant County Counsel

Attorneys for Defendant
Mark A. Lunn, Ventura County
Registrar of Voters

2355967