

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

MAR 17 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

SCOT MUSSI; STEVEN GAYNOR,

Plaintiffs - Appellants,

v.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State,

Defendant - Appellee.

No. 25-1427

D.C. No.

2:24-cv-01310-DWL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Dominic Lanza, District Judge, Presiding

Argued and Submitted March 2, 2026  
Phoenix, Arizona

Before: CLIFTON, BYBEE, and MILLER, Circuit Judges.

Plaintiffs Scot Mussi and Steven Gaynor are registered voters in the State of Arizona. Plaintiffs bring claims against the Arizona Secretary of State under the National Voter Registration Act, 52 U.S.C. § 20510(b). They allege that the Secretary of State has failed to conduct the voter roll maintenance required by that

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

statute, *id.* § 20507, and they seek injunctive relief compelling him to “develop and implement additional . . . registration list-maintenance programs” to “ensure that ineligible registrants are not on the voter rolls.” The district court dismissed the complaint for lack of Article III standing. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review *de novo* the district court’s order dismissing the complaint. *Tohono O’odham Nation v. Department of the Interior*, 138 F.4th 1189, 1199 (9th Cir. 2025). “All well-pleaded allegations of material fact in the complaint are accepted as true and are construed in the light most favorable to the non-moving party.” *Id.* (citation omitted).

1. Plaintiffs do not adequately allege Article III standing based on a risk of vote dilution. At the pleading stage, a plaintiff must allege facts demonstrating “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations and internal quotation marks omitted). A threatened injury “must be certainly impending to constitute injury in fact.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (emphasis omitted) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

Plaintiffs allege that inadequate voter roll maintenance offers ineligible voters “an opportunity to vote in Arizona elections, risking the dilution of

Plaintiffs' legitimate votes." As the district court observed, however, plaintiffs' feared injury would occur only after (1) "an ineligible voter requests an early ballot or presents at a polling place," (2) that person "casts a ballot," and (3) "that ineligible ballot is tabulated." If voting in person, the voter would also have to present proof of identity that "reasonably appear[s] to be the same as the name and address in the precinct register." Ariz. Rev. Stat. Ann. § 16-579(A)(1) (2026).

Although plaintiffs allege that "known cases of voter fraud" have occurred in Arizona, they do not allege that any of those cases were the result of inadequate list maintenance or that they affected the plaintiffs. Instead, they argue that they have alleged a "substantial risk" of harm because ineligible voters listed on the rolls might vote in the future. *See Department of Commerce v. New York*, 588 U.S. 752, 767 (2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). But plaintiffs cannot establish a "substantial risk" based on an "attenuated chain of inferences." *Clapper*, 568 U.S. at 414 n.5. Their injury is entirely hypothetical: Plaintiffs claim that including ineligible voters on the rolls "heightens the risk" of ineligible ballots being cast and counted by offering ineligible voters "an opportunity" to vote, "risking the dilution" of plaintiffs' ballots. Such "conjectural allegations of potential injuries" and "chain[s] of hypothetical contingencies" are insufficient to plead an actual or imminent injury. *Lake v.*

*Fontes*, 83 F.4th 1199, 1204 (9th Cir. 2023) (per curiam) (quoting *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1028, 1032 (D. Ariz. 2022)).

2. Plaintiffs do not adequately allege an injury based on their loss of confidence in the integrity of Arizona elections. Plaintiffs may not “manufacture standing merely . . . based on their fears of hypothetical future harm that is not certainly impending.” *Clapper*, 568 U.S. at 416. As explained above, the harm plaintiffs fear is speculative and therefore insufficient to establish an injury in fact. *See Lake*, 83 F.4th at 1201.

3. Plaintiffs do not adequately allege an injury based on a diversion of resources. A plaintiff who “has not suffered a concrete injury caused by a defendant’s action cannot spend [his] way into standing simply by expending money to gather information and advocate against the defendant’s action.” *FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 394 (2024); *see also Clapper*, 568 U.S. at 416 (rejecting standing where plaintiffs “inflict[ed] harm on themselves” by “incurr[ing] certain costs” in response to defendant’s actions). Plaintiffs allege that the Secretary’s inadequate list maintenance has caused them to spend “more time and resources monitoring Arizona’s elections for fraud and abuse,” which “would otherwise be spent on other projects and activities that would advance their goals.” But they do not explain what those other projects and activities might be or how their resources have been diverted. Absent such allegations, plaintiffs allege only a

setback to their “abstract social interests,” which is insufficient to confer standing.

*Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

**AFFIRMED.**

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

#### Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

#### (1) Purpose

##### A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

##### B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

## **(2) Deadlines for Filing:**

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

## **(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

## **(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-8000.

### **Petition for a Writ of Certiorari**

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov).

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, [maria.b.evangelista@tr.com](mailto:maria.b.evangelista@tr.com));
  - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 10. Bill of Costs**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>*

**9th Cir. Case Number(s)**

**Case Name**

Name of party/parties requesting costs to be taxed:

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