NOT FOR PUBLICATION

FILED

OCT 27 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID H. JOHNSON, ET AL, Plaintiffs-Appellants, v. MICHAEL J. DUNLEAVY, ET AL, Defendants-Appellees.	No. 23-35598 D.C. No. 3:23-CV-00006-SLG MEMORANDUM[*]

Appeal from the United States District Court
for the District of Alaska
Sharon L. Gleason, District Judge, Presiding

Submitted October 21, 2026**
San Francisco, California

Before: CALLAHAN and LEE, Circuit Judges, and EZRA, District Judge.[***]

Appellants, David H. Johnson, Pamela L. Bickford, and Loy A. Thurman, all citizens of Alaska proceeding *pro se*, appeal the district court's order granting

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Appellees' motions to dismiss as to their claims arising from denial of their administrative complaint filed with the State's Division of Elections. The district court dismissed all Appellants' claims without leave to amend, including their claims under the Help America Vote Act of 2002 ("HAVA"), the Elections Clause of the United States Constitution, the federal Administrative Procedure Act ("APA"), and a freestanding claim for judicial review of an opinion of Alaska's Attorney General. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, and may affirm on any ground supported by the record. *Miranda v. City of Cornelius*, 429 F.3d 858, 860 n.1 (9th Cir. 2005). We affirm.

1. The district court properly granted Appellees' motions to dismiss for the reasons outlined below. Appellants' HAVA claims cannot meet the requirements of Rule 12(b)(6) because HAVA does not create a private right of action. *See, e.g.*, *Crowley v. Nev. ex rel. Nev. Sec'y of State*, 678 F.3d 730, 736 n.4 (9th Cir. 2012) (doubting that Congress intended to create a private right of action under HAVA (first citing *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008) (per curiam); and then citing *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004))); *see also* 52 U.S.C. § 21111, 21112. Additionally, Appellants lack standing to bring their Elections Clause claims because Appellants are not candidates. *See Lance v. Coffman*, 549 U.S. 437, 442 (2007); *cf. Cook v. Gralike*, 531 U.S. 510, 523 (2001) (addressing merits of Elections Clause claim brought by

prospective congressional candidate challenging term limits disclosure requirement).

2. Appellants' request that the district court set aside the Alaska Attorney General's opinion on the Alaska's Better Elections Initiative application is not a cognizable claim because the district court lacked authority to grant relief. The opinion itself was only a recommendation to the Lieutenant Governor, and a request to set aside that opinion would be moot based on subsequent action by the Alaska Supreme Court. *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 498 (Alaska 2020).

3. Lastly, Appellants' administrative appeal of the Division of Elections's rejection of their administrative complaint is not cognizable. It cannot survive Rule 12(b)(6) because the federal APA does not apply to state agencies' or state actors' decisions. *See Shell Gulf of Mex. Inc. v. Ctr. for Biological Diversity, Inc.*, 771 F.3d 632, 636 (9th Cir. 2014) ("Actions under the APA may be brought only against federal agencies." (citation omitted)).

AFFIRMED.