

No. 24A407

IN THE

Supreme Court of the United States

**SUSAN BEALS, VIRGINIA COMMISSIONER OF
ELECTIONS, *In Her Official Capacity, Et Al.,*
*Applicants***

v.

**VIRGINIA COALITION FOR IMMIGRANT RIGHTS,
Et Al., *Respondents***

On Emergency Application for Stay Pending Appeal from
the U.S. Court of Appeals for the Fourth Circuit

***AMICUS CURIAE BRIEF SUPPORTING SUSAN
BEALS BY FORMERFEDS GROUP FREEDOM
FOUNDATION, VIRGINIA VOTERS, et. al,***

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INTEREST OF AMICUS CURIAE

The FormerFedsGroup Freedom Foundation (FFFF) is an IRS Code Section 501(c)(3) organization.¹

Petitioners come before this Court united as legal U.S. citizen Electors.² Many members of the FFFF are also residents of the Commonwealth of Virginia eligible to vote in Virginia who faithfully vote in Virginia elections, including (i) Melvina Majzoub, (ii) Nancy Hyde (“Lea”) Moseley, (iii) Robert Dick, (iv) Teresia Whisnant, and (v) Merrie Turner.

The FFFF represents victims who experienced direct harm through the revocation of informed consent in healthcare contexts, where individuals and their families were subjected to treatment without adequate disclosure or voluntary agreement, leading to significant injury and even death. These experiences, where personal agency and consent were stripped away, reveal to Petitioners the vital importance of maintaining procedural safeguards—both in healthcare and

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

² The Petitioner and supporters have sought donations this project has not received any funding nor coordination from any candidate, political campaign, political party, or government body or official. The Petitioner and its voter members have no commercial relationship with any party or entity affected.

within democratic processes—to protect individual rights and public trust.

Petitioners contend that their fundamental right to participate in a fair electoral process is similarly endangered by the risk of vote dilution due to “illegal ballots cast and counted,” election administration irregularities, “unverified voters and voter rolls,” and further, well-documented “cyber-intrusion vulnerabilities” in electronic voting systems alongside inconsistent voter verification standards. This situation, they argue, parallels the denial of informed consent by compromising citizens' fundamental rights through unconsented influences on their electoral voice. Such conditions, where unauthorized votes diminish the weight of lawful votes, constitute a direct violation of the Fourteenth Amendment’s guarantee of “equal protection,” as well as “due process of law” safeguarded by the First Amendment, which includes “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Foundation website is at: www.FormerFedsGroup.org and there are approximate 1,400 recorded victim eyewitness interviews at www.FormerFedsGroup.org/cases. There are 25 commonalities of the injury over thousands of documented experiences at www.Chbmp.org/commonalities.³

³ Thousands of members and more than 1,500 recorded eyewitness statements of victims and next of kin of covid-19 hospital treatment protocols can be found at formerfeds.org and chbmp.org. The Foundation previously has filed an amicus curiae brief in *United States v. Joseph Fischer*, 603

INTRODUCTION

Posture of this Application for Stay

In 2006, the Virginia General Assembly amended Virginia law at Va. Code Ann. § 24.2-410.1 to, among other things, require that the Virginia Department of Motor Vehicles and the Virginia Board of Elections check whether an applicant seeking to register to vote is a U.S. citizen or not or otherwise ineligible to vote.

On August 7, 2024, the Governor of Virginia issued an Executive Order labeled his 35th.
<https://www.governor.virginia.gov/media/governor-virginiagov/governor-of-virginia/pdf/eo/EO-35-Comprehensive-Election-Security-Ensuring-Legal-Voters-and-Accurate-Counting---vF---8.7.24.pdf>

The Courts below incorrectly fixated on the happenstance that Youngkin’s Executive Order was issued in the same 90 day length of time before election day as the activists claim to be a “quiet period” under the National Voter Registration Act of 1993 (NVRA).

In fact, Youngkin’s Executive Order 35 does

U.S. ____ (June 28, 2024) (Record No. 23-5572). That brief focused on interpretation of the meaning of “corruptly” in 18 USC Section 1512 as unconstitutionally void for vagueness, which was argued in the trial court but not otherwise briefed in this Court. The Petitioner also contested the constitutionality of the “influence” prong of 1512 as violating the First Amendment and as void for vagueness, as they intend to influence official proceedings concerning the death of their family members.

not establish any new action or program regarding Virginia's voter rolls. That happened in 2006. Youngkin's E.O. 35 recites that the maintenance of the voter registration rolls has been happening over the last two years prior to August 7, 2024.

Instead, Youngkin's order demands that all relevant officials report to him and the public on the status of their efforts to ensure election integrity.

In response to the "Motor Voter" law – widely criticized as unwise and dangerous when it was passed under the formal name of the "National Voter Registration Act of 1993 – its obvious and predicted defects and damage has unfolded as expected.

The National Voter Registration Act commandeers the machinery of State governments and mandates the conduct of driver licensing procedures and the management of each State's voter registration laws. The NVRA is unconstitutional. Or the NVRA must be interpreted to avoid the constitutional difficulty, if that can be done.

In Virginia, in excess of 1,600 non-citizen applicants for driver's licenses who had engaged in DMV transactions between July 1, 2023, and June 30, 2024, were invited to register to vote when obtaining a Virginia driver's license.

It might be recalled that some of the airplane hijackers who committed the 9/11 terrorist attack upon the Pentagon in Arlington, Virginia, and the

World Trade Center obtained the documentation needed to board those airplanes as Virginia driver's licenses. The Virginia General Assembly responded by tightening up the requirements for obtaining a Virginia driver's license, which advocates for fundamentally transforming America have ignored. **"Sept. 11, 2001, attacks forced changes at Virginia's DMV,"** Daily Press, August 2, 2019 ("Virginia discovered it had an identity crisis after the terrorist attacks that struck the United States on Sept. 11, 2001.) Thus, Virginia – where the Pentagon is situated – has a powerful governmental interest in its own management of Virginia driver's licenses and identity papers in general.

These 1,600 non-citizens either admitted on the "motor voter" forms that they are not citizens (thus not eligible to vote) or failed to properly fill out the form, leaving Virginia election officials to separately determine that they are not citizens. See Va. Code § 24.2-410.1. They were given 21 days' notice to respond before being removed from the voter registration rolls.

This controversy is the latest skirmish in a long-running assault upon the United States of America as a functioning constitutional Republic.

As such, this controversy arises from the nation's 12th most populous State, Virginia, and is happening also in Alabama. But the controversy will not remain confined to Virginia and Alabama. Any opportunity to radically change the U.S.A. is just too tempting for the usual suspects to pass up.

Many are smitten with adoration for whatever is the latest technology of the week. “Because it is new” erases all thought of “is it smart?” Unfortunately there seems to be no really bad idea that does not tempt enthusiasts more interested in what can be done than what should be done.

“The advice from cybersecurity experts is clear: Widespread internet voting at this point is a bad idea. Two years ago a group of computer security professors and professionals began meeting at the University of California Berkeley with the goal of at least setting a baseline list of standards for how ballots could, down the road, be safely returned online.”

“Voting online is very risky. But hundreds of thousands of people are already doing it ,”
NPR, September 8, 2023.

The U.S. Government’s own Cyber Security & Infrastructure Agency aggressively trains election officials on how to reduce the risk of internet hacking. “CISA is committed to working collaboratively with those on the front lines of elections—state and local governments, election officials, federal partners, and private sector partners—to manage risks to the Nation’s election infrastructure. The Agency provides resources on election security for both the public and election officials at all levels and will remain transparent and agile in its vigorous efforts to protect America’s election infrastructure against new and evolving threats.”

<https://www.cisa.gov/topics/election-security>

Most of the FFFF's members are widows or widowers who lost their spouses to deadly medical malpractice of COVID-19. Medical professionals ignored the actual medical condition of individual patients to provide treatments that were popular and in fashion – not the right treatment for each patient.

FFFF members and *Amici* Virginia voters included see the same stampede of “the madness of crowds” of what is popular instead of what is smart in dramatic rewrites of U.S. elections.

One wonders if the over-reaction and misguided failed reactions of Government officials to a virus dubbed COVID-19 was the cause of an overthrow of election laws in the various States. Or was the itch to fundamentally transform U.S. elections the reason why sloppy, ill-thought-out, poorly-researched, failed, misguided, doomed-to-fail, and ultimately deadly over-reactions to a virus was advantageous to some.

Then we see that the epidemic is gone, but the radical transformation of election laws remains. Doubts of opportunism fade.

SUMMARY OF THE ARGUMENT OF THIS BRIEF

The injunction issued by the U.S. District Court for the Eastern District of Virginia in Case 24-cv-01778 mandates the restoration of

noncitizens to Virginia's voter rolls, undermining fundamental principles of lawful participation. Just as informed consent in healthcare upholds the right to make protected, informed choices, election integrity safeguards ensure that voters' choices are respected and protected from dilution by unlawful influences.

By requiring Virginia to include noncitizens in its voter rolls, the injunction compromises election integrity, dilutes lawful votes, and creates mistrust in the democratic process. FFFF urges the Court to stay the injunction, preserving Virginia's right to enforce its lawful voter eligibility standards.

Here, the Application for Stay Brief of the election officials of the Commonwealth of Virginia and the supporting *Amicus Curiae* briefs filed thus far are informative but adopt too readily the presuppositions and assumptions of the Respondents / Petitioners below.

In analyzing the application of a statute, including in the predictive process of the four steps for considering an injunction, a court should first consider jurisdiction including constitutionality.

That is, regardless of the questions that *Amici* might consider most important on policy grounds, a court will first consider its jurisdiction as well as Congress' jurisdiction or power to have enacted the law in question before delving into other fine points that parties might have preferred to focus on.

Congress lacks jurisdiction over the governmental voting machinery of Virginia's government. Voter registration is not commerce so as to activate twisting of the regulation of interstate commerce such as *Wickard v. Filburn*, 313 U.S. 111 (1942) in which the Commerce Clause became a parody of itself. Driver licenses are also not commerce, but a governmental act of the sovereign States.

States are separate governments which set up their own systems for governance. Other than the Article IV, Section IV guarantee of a "Republican form of Government" which has never been seriously pursued by this Court, the Constitution does not tell States how to organize themselves politically. All States today run by popular elections, but the Constitution does not require it.

Elections for President and Vice President of the United States are textually committed by delegation of Federal power to the State legislatures under Article II, Section 1, Clause 2. Because the selection of a President and Vice President for the next term of office is exclusively a Federal function, delegated to the legislatures, only the State legislature participates.

However, Article II, Section 1, Clause 2.2 of the U.S. Constitution leaves it to the State legislatures to decide how each State will decide its Electoral College members. Originally, the Electoral College was perceived to be a body of wise statesmen chosen for their knowledge, experience, and wisdom.

Where a popular election is held, it must comply with constitutional requirements of equal treatment, non-discrimination, clear standards established in advance, consistent standards, etc. The harm remedied by *Bush v. Gore*, 531 U.S. 98 (2000) was that different Counties in Florida were (effectively if recognized as such or not) applying inconsistent standards so as to dilute the vote of some Floridians compared to others.

Here, the inclusion of non-citizens in voting dilutes the vote of citizens eligible to vote, and does so in random and inconsistent ways from one area of a State to another and from one State to another. Thus, where a jurisdiction has chosen to hold a popular election, the failure to exclude non-citizens is a constitutional violation.

The petition filed in the District Court by activist organizations claims that the Commonwealth of Virginia is prohibited under the National Voter Registration Act from de-listing any purported voter from Virginia's voter registration roll within 90 days of an election.

This is simply not what the NVRA says. The Attorney General of Virginia disputes NVRA's applications on different grounds, exploring what is a vote if cast by someone not eligible to cast a vote. These arguments are equally valid, but *Amici* seek to further assist this Court.

These opponents of secure elections dub this a "quiet period" of 90 days. In fact, however, there is no such "quiet period." Such a reading violates

the plain reading of the statute, all rules of statutory construction, common sense, and avoidance of absurd or unconstitutional results.

The NVRA purports to require establishment of a program to regularly maintain accurate voter registration rolls both as to including all eligible voters who apply and excluding persons who are not eligible for a variety of reasons.

Tom Miller, "**Pacific Grove Man Registers Dog to Vote**," KSBW News, August 27, 2013. ("he used his golden retriever, named Cooper, to expose flaws in Monterey County's election system.")
<https://www.ksbw.com/article/pacific-grove-man-registers-dog-to-vote/1052397>

Said program must comply with many details including that it must be completed no later than 90 days before an election. But the import of this passage of the NVRA is clearly about the requirement to set up a program for systematically reviewing the voter registration rolls.

A program established under the NVRA should actually be implemented and implemented prior to 90 days before the election. But this does not say that a State is prohibited from removing ineligible voters at other times. One must see what is not there to find a "quiet period."

Note, however, that Virginia law demands notice allowing a chance to cure. Here, it appears

undisputed that 21 days advance notice was in fact given.

Perhaps lack of notice could be a constitutional violation of equal protection. On the contrary, Virginia law allows for the casting of provisional ballots such that whether a person's ballot should be counted may be decided even after election day. See Va. Code § 24.2-653.01. If a voter were surprised by a problem, the problem not only can but must be investigated and cured if possible, and the vote counted.

ARGUMENT

I. GOVERNING STANDARD FOR DISTRICT COURT'S INJUNCTION AND THE STAY REQUESTED OF THIS COURT

The legal test governing the District Court's injunction at issue as well as for a Stay of that injunction requested of this Court requires:

- A. A significant prejudice or burden to the party or parties requesting the injunction if it is not granted.
- B. A comparatively lesser prejudice or burden upon the party or parties affected by the requested injunction if it is granted.
- C. The balance of the equities argues in favor of issuing the injunction. This in some contexts includes projecting the likelihood of success.

D. The injunction is in the public interest.

See, e.g., Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008).

J. DEFINITION OF “IDENTITY THEFT” ELECTION FRAUD

Initially, defining terms and concepts is always a valuable place to start. The harm to be avoided by election regulation is election fraud and voter fraud. This is “identity theft” commonplace in commercial transactions simply applied to voting instead. Identity thieves may steal thousands of dollars by pretending to be someone else. Voter identity thieves may steal billions of dollars for special interests. But the illegal aliens are as often the victims of such identity theft.

Padding the voter rolls with people unlikely to vote hands the actual identity thieves hundreds of thousands of names to use fraudulently. Those whose identities are stolen may never know that votes were cast in their name. Indeed, a lack of election integrity may serve to disenfranchise the most vulnerable and otherwise under-represented groups by substituting their interests for those of the identity thieves abusing their names.

K. ANY QUIET PERIOD PROVISION OF THE NVRA DOES NOT APPLY TO NONCITIZENS.

Just as informed consent is essential for protecting patients

from unwanted or uninformed treatment, voter eligibility standards are necessary to ensure that only eligible citizens participate in democratic processes. The NVRA is structured to protect the integrity of citizen participation, preventing unauthorized individuals from impacting government decisions. Allowing noncitizens to remain on voter rolls undermines this structure, disrupting the lawful election process much as disregarding informed consent disrupts ethical medical treatment.

In Virginia's filings, it is argued that the lack of consistent voter verification undermines the state's ability to ensure lawful participation, increasing the risk of election-related harm. In both democratic and healthcare contexts, institutional integrity relies on verifying lawful participants. Without such verification, noncitizen participation in elections—like involuntary medical treatment—undermines public trust, violates lawful participants' rights, and erodes the foundational principles of both democracy and healthcare ethics.

L. ALLOWING NONCITIZENS ON VOTER ROLLS DILUTES LAWFUL

VOTES, CREATING AN EQUAL PROTECTION VIOLATION THAT HARMS DEMOCRATIC AND SOCIAL STABILITY

1. Parallel to Healthcare Rights, Citizens' Right to an Undiluted Vote Is Foundational and Requires Judicial Protection

Both the democratic and healthcare systems rely on fair, transparent processes to ensure lawful participation and public trust. The Fourteenth Amendment's equal protection guarantees that lawful votes are counted equally, as established in *Reynolds v. Sims*. This is similar to the protections provided by informed consent in healthcare, ensuring that patient choices are respected. Allowing noncitizen voting violates this principle by diminishing lawful voters' influence, undermining democratic integrity, and disrupting stable representation.

Virginia's filings emphasize that "unauthorized participation" through noncitizen voting introduces risks that threaten democratic stability. The right to vote is foundational, akin to informed consent in healthcare,

and undermining either right creates a systemic failure. Noncitizen participation in elections, like unauthorized medical treatment mandated though proclamation, whether by the Secretary of Health and Human Services (HHS) under Section 319 of the Public Health Service Act or by the World Health Organization under some future authorization. All these exercises should be deemed invalid to the extent they disregard clear Constitutional protections against suspensions of the autonomy and rights of lawful participants, further harming the democratic process.

... we have long held that, in construing a statute, we are not bound to follow the literal language of the statute -- "however clear the words may appear on superficial examination" -- when doing so leads to "absurd," or even "unreasonable," results. *United States v. American Trucking Assns., Inc.*, 310 U. S. 534, 310 U. S. 543-544 (1940) (citation omitted); see also *Offshore Logistics, Inc. v. Tallentire*, 477 U. S. 207 (1986); *O'Connor v. United States*, 479 U. S. 27 (1986); *California Federal Savings & Loan Assn. v. Guerra*, 479 U. S. 272, 479 U. S.

284 (1987); *United States v. Wells Fargo Bank*, 485 U. S. 351 (1988).

United States v. Providence Journal Co., 485 U.S. 693, 708, 710 (1988) (Stevens, J., dissenting).

2. Electoral Integrity Is a Safeguard for Constitutional Rights, Similar to Informed Consent Safeguarding Health Rights

Electoral integrity, like informed consent, is a fundamental safeguard that ensures only lawful participants influence institutional decisions. Virginia's filings argue that the failure to uphold voter eligibility standards threatens to dilute lawful votes, analogous to how unconsented medical procedures breach patient rights. Both democratic and healthcare rights rely on ensuring that participants are lawful and informed, protecting the integrity of each process and fostering public trust.

M. THE PURCELL DOCTRINE SUPPORTS GRANTING THE STAY, EMPHASIZING THE NECESSITY OF JUDICIAL RESTRAINT TO PREVENT SYSTEMIC HARM TO PUBLIC TRUST

1. Public Trust in Democratic Institutions is as Vital as Trust in Healthcare, and Sudden Changes Near Election Dates Breach This Trust

The doctrine of *Purcell v. Gonzalez*, 549 U.S. 1 (2006) cautions against last-minute election changes that can confuse voters and disrupt public trust. Virginia's filings illustrate that allowing noncitizens to remain on voter rolls close to an election invites instability, creating a risk of electoral outcomes that fail to reflect the will of lawful citizens. Such disruptions parallel healthcare crises where informed consent is ignored, leading to patient mistrust and systemic harm.

In both healthcare and electoral contexts, sudden changes that allow unauthorized participants compromise the integrity of the institution and create long-lasting public harm. Granting a stay would support the *Purcell* principle by ensuring stability, protecting citizens' rights to an election process free from unauthorized participation, and maintaining public trust in the democratic system.

N. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH HEAVILY IN FAVOR OF A STAY TO PROTECT THE RIGHTS AND TRUST OF LEGAL VOTERS

History reveals that neglecting procedural safeguards in both democratic and healthcare systems results in enduring harm and eroded public trust. Just as *Bush v. Gore* exposed the risks of vote dilution, informed consent cases in healthcare underscore the necessity of protecting individual rights. Virginia's filings note that a lack of secure voting procedures risks "disenfranchising lawful voters," similar to how ignoring consent standards disenfranchises patients' autonomy.

Public trust in democracy, like trust in healthcare, depends on consistent application of procedural safeguards to uphold citizens' rights. Courts must protect these foundational principles by enforcing eligibility standards, ensuring that the integrity of the democratic process is not compromised by unauthorized participation.

**O. THE “MOTOR VOTER NATIONAL
VOTER REGISTRATION ACT DOES
NOT ACTUALLY ESTABLISH ANY
“QUIET PERIOD” AS HYPOTHESIZED
BY THE ACTIVIST PETITIONERS
BELOW**

The NVRA provides guidelines for maintaining accurate and current voter registration lists, but it does not establish an absolute, restrictive "quiet period" as suggested by Petitioners. This interpretation distorts the intent and function of the NVRA, and case law further clarifies that states maintain the authority to remove ineligible voters under certain conditions, even close to an election.

The National Voter Registration Act includes – among many other topics -- Section 8 which states as follows. It can be read without a pay wall

<https://www.govinfo.gov/content/pkg/COMPS-14252/pdf/COMPS-14252.pdf>

**SEC. 8. [52 U.S.C. 20507]
REQUIREMENTS WITH RESPECT TO
ADMINISTRATION OF VOTER
REGISTRATION.**

- (a) **IN GENERAL.**—In the administration of voter registration for elections for Federal office, each State shall—
- (1) ensure that any eligible applicant is registered to vote in an election—

[Omitting important details not directly pertinent to the issue before the Court, but possibly interesting for context]

[However, most pertinent to the task at hand (but without putting blinders on the Court either), Section 8 includes:]

(c) VOTER REMOVAL PROGRAMS.—(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

- (A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and
- (B) if it appears from information provided by the Postal Service that—
 - (i) * * * or
 - (ii) * * * .

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude— (i) the removal of names from official lists of voters on a basis described in paragraph (3) (A) or (B) or (4)(A) of subsection (a); or (ii) correction of

registration records pursuant to this Act.

* * *

However, nothing in Section (c)(2)(A) prohibits the removal of ineligible voters. In plain language, it simply does not say that. Section 8 establishes a voter registration program that must be completed 90 days before an election. The law does not say that no changes can be made within 90 days of an election. Neither the plain language of the statute nor any other rule of statutory construction produces the asserted “quiet period.”

In *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1848 (2018), the Supreme Court clarified that list maintenance practices, including those close to an election, do not violate the NVRA if they are done to preserve accurate rolls and maintain eligibility standards. The Court upheld Ohio’s process of removing inactive voters from the rolls, stressing that the NVRA explicitly allows the removal of ineligible registrants as a part of maintaining electoral integrity. This decision highlights that there is no strict “quiet period” barring states from acting close to an election, provided removals are carried out within the NVRA’s framework.

As affirmed in *Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014), the 90-day restriction does not apply to case-by-case removals, particularly those involving noncitizen eligibility checks. Thus, the NVRA does not prohibit all list maintenance activities within 90

days but only systematic programs targeting ineligible voters broadly.

Statutory construction requires reading the entire statute as a whole and harmonizing individual provisions with the intent of the statute as a whole.

"Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."

United Savings Ass'n v. Timbers of Inwood Forest Associates, 484 U.S. 365, 371 (1988) (citations omitted).

In 1850 Chief Justice Taney described the process:

"In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."

United States v. Boisdoré's Heirs, 49 U.S. (8 How.) 113, 122 (1850). *Accord*, *United States v. Wilson*, 112 S. Ct. 1351, 1354 (1992); *Holmes v.*

Securities Investor Protection Corp., 112 S. Ct. 1311, 1316- 17 (1992); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510-11 (1989).

In sum, the NVRA does not impose an inflexible “quiet period” prohibiting voter roll updates near an election. Section 8 and the NVRA overall read “holistically” concerns the creation of a voter registration program, and that program must not be procrastinated but must be timely implemented. The provision of (c)(2)(A) of not later than 90 days before election day concerns faithfully initiating a voter registration program. It does not prohibit removal of ineligible voters. This Court should reject the claim and uphold the state’s lawful authority to protect voter eligibility standards.

P. THE CONGRESS MAY NOT USURP CONTROL OF THE MACHINERY OF STATE GOVERNMENTS IN FURTHERANCE OF ITS POLICY PREFERENCES

The fundamental principle of federalism embedded in the U.S. Constitution dictates that Congress may not commandeer the legislative or administrative machinery of state governments to implement its policy preferences. This concept, enshrined in cases such as *New York v. United States*, 505 U.S. 144 (1992), protects states' rights to administer their internal functions without undue federal interference.

The Supreme Court clearly established that Congress cannot direct states to enact or enforce

federal regulatory programs. This principle was further reinforced in *Printz v. United States*, 521 U.S. 898 (1997).

Although we had no occasion to pass upon the subject in *Brown*, later opinions of ours have made clear that the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs. In *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264 (1981), and *FERC v. Mississippi*, 456 U. S. 742 (1982), we sustained statutes against constitutional challenge only after assuring ourselves that they did not require the States to enforce federal law. In *Hodel* we cited the lower court cases in *EPA v. Brown, supra*, but concluded that the Surface Mining Control and Reclamation Act of 1977 did not present the problem they raised because it merely made compliance with federal standards a precondition to continued state regulation in an otherwise pre-empted field, *Hodel, supra*, at 288. In *FERC*, we construed the most troubling provisions of the Public Utility Regulatory Policies Act of 1978 to contain only the "command" that state agencies "consider" federal standards, and again only as a precondition to continued state regulation of an otherwise pre-empted field. 456 U. S., at 764-765. We warned

that "this Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations," *id.*, at 761-762.

Printz v. United States, 521 U.S. 898 (1997).

In the case of the NVRA, if it were to impose mandatory control over how Virginia maintains its voter rolls, it would be overstepping these constitutional boundaries.

Moreover, while the Constitution mandates that voting rights be upheld and equal protection be guaranteed in elections, it does not authorize Congress to take over or dictate the precise administrative functions of a state's election system. The Supreme Court can intervene if a state's practices are unconstitutional, but this is categorically different from the Federal Government directly managing state administrative functions to achieve federal aims.

In sum, unless the NVRA is advisory, its imposition of requirements on Virginia's voter roll procedures would violate the Tenth Amendment by infringing on state sovereignty. Federal authority must stop short of taking direct control over state election processes. See, *Anderson v. Celebrezze*, 460 U.S. 780 (1983), *New York v. United States*, 505 U.S. 144 (1992).

Here, the Commonwealth of Virginia is a sovereign government. It has made its own decisions about who may be a voter.

Va. Code § 24.2-427 includes the provisions

A voter's registration may be cancelled at any time during the year in which the general registrar discovers that the person is no longer entitled to be registered.

And (*emphasis added*):

B. The general registrar shall ***PROMPTLY*** cancel the registration of (i) all persons known by him to be deceased; (ii) all persons known by him to be disqualified to vote by reason of a felony conviction or adjudication of incapacity; (iii) all persons known by him not to be United States citizens by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1 or from the Department of Elections based on information received from the Systematic Alien Verification for Entitlements Program (SAVE Program) pursuant to subsection E of § 24.2-404 and in accordance with the requirements of subsection C; * * * .”

The Constitution of the Commonwealth of Virginia requires in Article II (*emphasis added*):

Section 1. Qualifications of voters.

In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. * * * *

The residence requirements shall be that each voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode. The General Assembly may provide for persons who are employed overseas, and their spouses and dependents residing with them

Furthermore, the Constitution of the Commonwealth of Virginia requires that (*emphasis added*):

Section 6. Free elections; consent of governed.

That all elections ought to be free; and that all men, having sufficient evidence of **permanent common interest with, and attachment to, the community**, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected,

or bound by any law to which they have not, in like manner, assented for the public good.

Furthermore, Virginia has determined that the right to vote in Virginia elections requires a strong showing of an “abode” in Virginia – not merely an address.

Although Sachs presented evidence that he owns a house in Springfield, the evidence is unrefuted that he has leased the property to others ***and does not dwell there***. The fact that Sachs lists the Springfield address on his motor vehicle operator's license, pays personal property tax on his automobile to Fairfax County, and is seeking employment in the Washington, D.C. metropolitan area, ***does not alter the conclusion that he is not a domiciliary of Fairfax County, because he does not live in that locality with the intent to remain there for an unlimited time.*** * * * *

Sachs v. Horan, 475 S.E.2d 276, 252 Va. 247, 250-251 (Va., 1996) (*emphasis added*) (Note: Sachs was not *capable of* staying at the house, since every bedroom and bed had been rented to others.)

In Kegley v. Johnson, 207 Va. 54, 147 S.E. 2d. 735 (1966), the Supreme Court of Virginia concluded that Virginia courts must decide eligibility to vote by “ascertaining his residence from the evidence of his intent.” It is not at all

immediately apparent that an illegal alien though present in Virginia has established *domicile* in Virginia as the Commonwealth requires for voting. Indeed, legal migrant farm workers often return to their home country during portions of every year.

Thus, a non-citizen filling out a driver's license application has not necessarily established the *domicile* Virginia requires. *See, generally, Williams v. Commonwealth Ex. Rel. Smith et al.*, 116 Va. 272, 81 S.E. 61 (1914).

Therefore, Virginia has made its own governmental decisions about who may vote in Virginia. The Virginia Constitution requires not mere presence but an *abode* to establish domicile, as well as the intent to remain in Virginia for the *foreseeable* future.⁴

Application of the NVRA in this way as asserted on these facts would directly conflict with the Constitution of the Commonwealth of Virginia.

By the way this also applies to announced plans of inviting unverified voters purporting to be overseas ex-patriates. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

⁴ This does not foreclose provisions for homeless persons, but those provisions must be actually complied with. Virginia has determined, for example, that a post office box is not an "abode" because one cannot sleep in a post office box. However, a team member who was a long-term Virginia voter observes that Virginia is typically renting out inexpensive motels in bulk for homeless persons, which would afford an adequate presence, abode, and address for voting. One can use the address of a homeless shelter.

is intended to assist U.S. citizens living abroad vote in U.S. elections. By no means is this limited to military personnel, who should have the most rigidly reliable and precise lines of communication to enable them to vote. The newest idea is to allow overseas voters to declare that they are residents of States where they have never lived, so that the fabricators of ballots can target swing states and determine the outcomes of elections. (They also print an unofficial ballot on ordinary computer printer on just any computer.)

Virginia, however, has determined that only persons who have physical presence, domicile, residence in, and an abode in Virginia and domiciliary intent are qualified to vote in Virginia. This violates Virginia's governance of its own elections pursuant to the Virginia Constitution.

CONCLUSION

The Supreme Court must protect the integrity of Virginia's election and safeguard citizens' rights by staying the district court's injunction. Just as the disregard for informed consent in healthcare has led to tragic outcomes, permitting noncitizens on voter rolls compromises public trust, dilutes lawful votes, and undermines democracy's foundational principles. FFFF respectfully requests that this Court grant the stay, reinforcing the rights of lawful voters and preserving a fair, free, and transparent election system.

Respectfully submitted, *BY COUNSEL*
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