

No. 26-98

In the Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

SCOTT T. NAGO, in his official capacity as Hawaii's
Chief State Election Officer,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

**BRIEF OF *AMICUS CURIAE* JUDICIAL
WATCH, INC. IN SUPPORT OF PETITIONER**

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INTERESTS OF *AMICUS CURIAE*¹

Judicial Watch, Inc. (“Judicial Watch”) is a not-for-profit educational foundation dedicated to fostering accountability, transparency, integrity in government, and fidelity to the rule of law. In pursuit of its public interest objectives, Judicial Watch routinely requests access to public records from federal, state, and local agencies, which it subsequently disseminates to its members and the public at large.

Since its founding in 1994, Judicial Watch has submitted thousands of public records requests under the nation’s public-disclosure laws, and sues to enforce those law when requests are denied. Judicial Watch litigates and enforces public records requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507(i) – the statute at issue here. The records obtained through Judicial Watch’s efforts are vital to enhancing public understanding of government operations.

As part of its NVRA enforcement, Judicial Watch frequently requests state election records under § 20507(i), including the voter registration list. When state law imposes an obstacle to disclosure of the voter registration list under the NVRA, Judicial

¹ *Amicus* state that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than *Amicus* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. Pursuant to Rule 37.2, counsel of record for each party received timely notice prior to filing this *amicus* brief.

Watch, on its own or on behalf of others, sues to compel disclosure. *Judicial Watch v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019); *Illinois Conservative Union v. Illinois*, 2021 U.S. Dist. LEXIS 102543 (N.D. Ill. June 1, 2021).

Judicial Watch’s public records requests under Section 20507(i) are critical in evaluating NVRA compliance. As a result of its use of the state’s voter registration list and other election-related information and records published by the Election Assistance Commission, Judicial Watch’s efforts have led to the identification and removal of over six million outdated and ineligible names from voter rolls across nearly a dozen states.² See, e.g., *Judicial Watch v. Grimes*, No. 17-94 (E.D. Ky. 2017) (ECF No. 39) (consent decree entered with the Commonwealth of Kentucky to settle NVRA claims); *Judicial Watch v. Logan*, No. 17-8948 (C.D. Cal. 2017) (NVRA settlement agreement with Los Angeles County and the State of California); *Judicial Watch v. Griswold*, No. 20-2992 (D. Colo. 2020) (NVRA settlement agreement with the State of Colorado); *Judicial Watch v. Pennsylvania Sec. of State*, No. 20-708 (M.D. Pa. 2020) (NVRA settlement agreement the Commonwealth of Pennsylvania); *Judicial Watch v. Read*, No. 24-1783 (D. Or. 2024).

Amicus Judicial Watch has a strong interest in the issues presented in this petition and the proper

² Judicial Watch, *Judicial Watch: 372,000 Inactive Voters Removed from Colorado Voter Rolls after Lawsuit and Settlement*, (Apr. 8, 2026), <https://www.judicialwatch.org/inactive-voters-removed-colorado-voter-rolls/>.

scope of Section 8(i) of the NVRA. Section 8(i) is an important public-disclosure law that allows the public to evaluate the accuracy and currency of a state's voter list maintenance and registration practices. Judicial Watch respectfully submits this brief in support of Petitioner. The Court should grant certiorari on the question of whether the statewide voter registration list falls within the scope of the NVRA's disclosure provision. As shown below, the Ninth Circuit's decision is not only wrong, but it creates an irreconcilable circuit split and poses issues for individuals and organizations seeking to enforce the list maintenance provisions of the NVRA.

SUMMARY OF ARGUMENT

The NVRA “requires States to provide simplified systems for registering to vote in *federal* elections,” *Young v. Fordice*, 520 U.S. 273, 275 (1997), and to increase “the participation of eligible citizens,” while also “protect[ing] the integrity of the electoral process” by “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(2)-(4). For the latter goal, the NVRA mandates “states to ‘conduct a general program that makes a reasonable effort to remove the names’ of voters who are ineligible ‘by reason of’ death or change of address.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (citing 52 U.S.C. § 20507(a)(4)).

Consistent with these purposes, the NVRA grants the public insight into the state's list maintenance practices. Subject to a few limited exceptions,

it requires states to “maintain” and “make available” to the public “*all* records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i) (emphasis added). This provision evinced “Congress’s intent to support the transparency and circulation of voter data among the public to help detect and correct errors.” *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1081 (10th Cir. 2025) (citing *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024)); *Project Vote v. Long*, 682 F.3d 331, 339 (4th Cir. 2012) (“State officials labor under a duty of accountability to the public in ensuring that voter lists include eligible voters and exclude ineligible ones in the most accurate manner possible.”).

The plain meaning and ordinary terms of Section 8(i) clearly encompass the official list of eligible voters. It is the primary and ultimate end product that concerns the implementation of *all* state programs and activities to ensure an accurate voter registration list. As this Court has held, terms similar to “all” and “concern” encompass great breadth. When Congress employs such terms, the Court’s role is to interpret and apply them in accordance with their ordinary meaning.

The Ninth Circuit departed from this framework, holding that the voter registration list is not a record that concerns the implementations of programs and activities to ensure an accurate voter list. This ruling is not only wrong, but it also threatens electoral

transparency nationwide and undermines the purposes for which Congress passed the NVRA.

It also limits the ability of organizations such as Judicial Watch to enforce the list maintenance provisions of the NVRA. Judicial Watch often uses the statewide voter registration list to determine if jurisdictions are complying with the list maintenance requirements of the NVRA. The voter registration list is key to determining whether jurisdictions are properly inactivating and then cancelling registrants who have changed address. The voter registration list will show a voter's status and whether a voter has been changed from active to inactive after receipt of a forwardable address confirmation notice. It can also find violations whenever a jurisdiction fails to cancel a registrant as required by the NVRA after notice and the passage of two general federal elections. The Ninth Circuit's decision would allow states to withhold such critical records and to hide a failure to implement programs and activities necessary ensure an accurate list.

This Court should grant certiorari to reaffirm that the voter registration list is a record covered under the NVRA; resolve the entrenched split; and prevent the Ninth Circuit's error from further obstructing the transparency Congress mandated under the NVRA.

ARGUMENT

I. The Voter Registration List Concerns the Implementation of Programs and Activities Conducted to Ensure an Accurate List.

As in all statutory interpretation cases, the starting point “is the language of the statute itself,” which must “ordinarily be regarded as conclusive,” absent a “clearly expressed legislative intention to the contrary.” *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990) (quoting *Consumer Product Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). In reviewing the statutory language, “words generally should be ‘interpreted as taking their ordinary ... meaning ... at the time Congress enacted the statute.’” *New Prime, Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citations omitted).

Section 8(i)(1) of the NVRA provides each “state shall maintain” and “make available for public inspection ... all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). The ordinary, plain meaning of the language suggests Congress intended the NVRA’s disclosure provision to have substantial reach. Congress’ “use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.” *Project Vote*, 682 F.3d at 336 (citation and internal quotations omitted); *see also Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 541 (2002); *cf. Patel v. Garland*,

596 U.S. 328, 338 (2022) (“As this Court has ‘repeatedly explained,’ ‘the word “any” has an expansive meaning.’” (quoting *Babb v. Wilkie*, 589 U.S. 399, 405 n.2 (2020))).

The record must also “concern” the implementation of programs and activities to ensure an accurate list. Like “all,” “concerning” is a similarly broad term. See Merriam Webster’s Collegiate Dictionary (11th ed. 2008) (“Concern” includes “relate to,” “be about,” “bear on,” “have an influence on,” “INVOLVE”). This Court has repeatedly held the phrase “relating to,” which is one of the meanings of “concerning,” to have expansive and broad reach. See *Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87, 95-96 (2017) (Congress’ use of the term “relate to” is “expansive” and “employs the phrase to reach any subject that has ‘a connection with, or reference to,’ the topics the statute enumerates” (citations omitted)); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-390 (1992).

When viewed in this light, the voter registration list clearly is a record that concerns programs and activities to ensure that the voter registration list is more accurate and current. The statewide registration list has a “connection with” and “reference to” all the programs and activities mandated by the NVRA to ensure an accurate voter registration list. *Coventry Health*, 581 U.S. at 95-96. Indeed, the “process of creating, updating, and auditing registrations ‘is a “program” ... because it is carried out in the service of a specified end—maintenance of voter rolls—and it is an ‘activity’ because it is a particular task . . . of

[Maryland] election employees.” *Judicial Watch*, 399 F. Supp. 3d at 439 (citations omitted). Simply put, the voter registration list is an aggregate dataset reflecting the outcome of all the programs and activities conducted by the state or county to ensure that the records are accurate and up to date.³

That is why a unanimous panel of the First Circuit had no problem finding that Maine’s statewide voter registration list was a record mandated to be disclosed by the NVRA. The Maine voter registration list “plainly relates to” the implementation of programs and activities for an accurate list since it “reflects the additions and changes made by Maine election officials ... as part of Maine’s voter list registration and maintenance activities.” *Bellows*, 92 F.4th at 47. In essence, it is “the output and end result of such activities.” *Id.*

The Ninth Circuit, however, found otherwise. In departing from the plain text and ordinary meaning of the NVRA—and contrary to the First Circuit’s holding in *Bellows*—the Ninth Circuit in *Nago* re-

³ The Help America Vote Act of 2002 (“HAVA”) only reinforces the argument that the statewide voter registration list is a “record” that “concerns” the implementation of programs and activities to ensure an accurate list. Prior to HAVA, many jurisdictions kept their list solely in a paper format. But the passage of HAVA mandated all states establish a “uniform” “computerized statewide voter registration list,” with “the name and registration information of every legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A). That “computerized list” must be updated on a “regular basis” in accordance with the removal provisions of Section 8 of the NVRA. *Id.* § 21083(a)(2).

markably held that Hawaii’s statewide voter registration list is not a record that concerns implementation of programs and activities to ensure an accurate list. The Ninth Circuit impermissibly slighted the broadening language of “all records” and “concerning” by focusing predominantly on the terms “implementation” and “programs and activities” to narrowly “cabin[] the disclosure requirement.” *Public Interest Legal Found. v. Nago*, 174 F.4th 664, 679-80 (9th Cir. 2026). According to the court of appeals, the term “concerning” is solely the object of the term “implementation” of “relevant programs,” which in turn, limits the records that “relate to active processes or the plan for carrying them out, not the outcome of those processes.” *Id.* at 680.

But the records that embody the final “outcome” of list maintenance “processes” concern or relate to the implementation of those programs just as much as the program itself. Any other reading of the NVRA would diminish the word “concerning.” Courts must “give effect, if possible, to every clause and word of a statute,” *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (citation omitted), and restricting the breadth of the term “concerning” to only those direct records of list maintenance programs and activities would do the exact opposite. If Congress wanted to limit the disclosure mandate to “all records on the implementation of programs and activities that ensure an accurate and current list,” it could easily have done so. But it did not. Congress intentionally chose the broad language of “concerning” to expand the disclosure’s reach, not only to direct evidence of list maintenance programs and activities, but also

the final product itself (i.e., the statewide voter registration list). *See Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 719 (2018) (declining to limit the reach of “respecting” to include only a certain subset of financial records when “Congress did not use such narrow language.” (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001))).

Nago’s textual departure from the NVRA and the subsequent conflict with the First Circuit warrants this Court’s review and resolution.

II. Disclosure of the Voter Registration List Advances the Statutory Purposes of the NVRA.

The NVRA is a “complex superstructure of federal regulation atop state voter-registration systems.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013). It has two main objectives: first, “increase the number of eligible citizens who register to vote” and “enhance[]” their “participation ... as voters in elections for Federal office”; and second, “to protect the integrity of the electoral process” and “ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b). Disclosure of the voter registration list under the NVRA serves all objectives by enhancing voter participation and protecting the integrity of the electoral process.

A. Transparency Improves Citizen Confidence of and Participation in the Democratic Process.

Public disclosure of election documents improves citizen confidence in the integrity of the process. As many empirical studies have found, transparency in the electoral process bolsters citizens' confidence in the integrity of the election results. *See* Jacob Jaffe, et al., "Trust in the Count: Improving Voter Confidence with Post-election Audits," *Public Opinion Quarterly* (2024) Vol 88 Special Issue, 585–607, available at <https://academic.oup.com/poq/article/88/SI/585/7712445>; Sippel, Evan, "Restoring Confidence in Our Elections: An Analysis of Post-Election Audits in South Dakota" (2025). Honors Thesis 351, available at <https://red.library.usd.edu/honors-thesis/351>.

In finding that completed voter registration applications were "records" that "concerned the implementation of programs and activities" for an accurate voter list, the Fourth Circuit noted that "disclosure promotes transparency in the voting process, and courts should be loath to reject a legislative effort so germane to the integrity of federal elections." *Project Vote*, 682 F.3d at 339-340. "Without such transparency, public confidence in the essential workings of democracy will suffer." *Id.* at 339. *See also* *Torrez*, 160 F.4th at 1082 ("prohibiting certain uses of New Mexico's voter data, the Use Restrictions obstruct the NVRA's primary goal of providing broad transparency and circulation of such voter data.").

Disclosure of voter data increases public confidence in the integrity of the electoral process, which serves both of the main objectives of the NVRA, to enhance voter participation and to ensure accurate and current voter registration lists. “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008). That is because “fraud drives honest citizens out of the democratic process and breeds distrust of our government.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). “Voters who fear their legitimate voters will be outweighed by fraudulent ones will feel disenfranchised.” *Id.* Disclosure of the voter registration list allows the public to audit the statewide list for fraud and errors and enhances the public’s confidence in the integrity of the electoral process.

B. The Voter Registration List is a Record that Reveals Compliance with the List Maintenance Provisions of the NVRA.

The document disclosure provision of the NVRA was designed to allow the public to scrutinize list maintenance practices and determine the accuracy of the voter registration lists. “[D]isclosure” under the NVRA “will assist the identification of both error and fraud in the preparation and maintenance of voter rolls.” *Project Vote*, 682 F.3d at 339. “State officials labor under a duty of accountability to the public in ensuring that voter lists include eligible voters and exclude ineligible ones in the most accurate manner

possible.” *Id.* at 339. And disclosure of the voter registration file “is necessary if members of the public, or organizations ... are ever to identify, address, and fix irregularities in states’ voter rolls by exercising their private right of action under the NVRA.” *Bel lows*, 92 F.4th at 54 (citation omitted).

The NVRA provides that the registrations of those who have moved out of a jurisdiction may only be cancelled in two ways. First, those who confirm a change of address in writing are removed from the rolls. 52 U.S.C. § 20507(d)(1)(A). Second, registrants, who have been sent a “postage prepaid and pre-addressed return card” by forwardable mail asking them to confirm their address and who fail to respond to that notice and then fail to “vote[] or appear[] to vote” for two general federal elections are removed from the voter registration list. *Id.* § 20507(d)(1)(B), (d)(2). A registrant who fails to respond to a notice is designated “inactive” for the duration of that statutory waiting period of two to four years. 11 C.F.R. § 9428.2(d). Such a registrant is still a registered voter and may still vote during that period, which stops the NVRA removal process and returns the voter to “active” status. 52 U.S.C. § 20507(e). But unless that happens, states must remove that registration after the second general federal election of inactivity. *See Husted*, 584 U.S. at 767 (outlining the NVRA’s address confirmation notice and removal process under 52 U.S.C. § 20507(d)).

Judicial Watch’s NVRA enforcement efforts focus predominantly on the change-of-address procedure under Section 8(d). Oftentimes, jurisdictions will fail

to timely mark a registrant inactive who received a confirmation notice, or will fail to remove the inactive registrant after the second general federal election of inactivity, leaving registrants who have long moved out of state on their rolls for years or sometimes decades. State voter registration lists then become filled with ineligible registrants and people registered in multiple states. As a result, “24 million voter registrations in the United States—about one in eight—are either invalid or significantly inaccurate.” *Husted*, 584 U.S. at 760 (citing Pew Center on the States, Election Initiatives Issue Brief (Feb. 2012)).

One of the best and most reliable ways to obtain evidence of a jurisdiction’s failure to timely remove an inactive registrant for change of address is through the statewide registration list. Any given state’s voter registration list will contain fields such as the voter’s name, residential address, voter’s status, including active or inactive, and voter history for a period of time. The voter registration list will show whether an inactive registrant has been so for more than two general federal elections without any further voting history. If this happens regularly it suggests that a jurisdiction is failing to remove old, inactive registrations as required by NVRA Section 8(d)(1)(B).

Many of allegations in Judicial Watch’s suits allege there are large numbers of inactive registrants who have no voting history for two or more general federal elections. *See e.g., Judicial Watch v. Read*, No. 24-1783 (D. Or. 2024) ECF 12, ¶ 55 (“Oregon’s

voter rolls contain over 640,000 inactive registrations that show no voter activity for three or more consecutive general federal elections”); *Judicial Watch v. North Carolina*, No. 20-cv-211 (W.D.N.C. 2020) ECF No. 1, ¶ 55 (voter registration data in North Carolina “indicates that many of the inactive registrations in Mecklenburg and Guilford Counties have shown no voting activity for longer than the prescribed statutory waiting period of two general federal elections.”). Courts have relied on these types of allegations as plausible evidence of a Section 8 violation of the NVRA. *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021) (reliance on public records such as Colorado having “too high a number of inactive voters on the rolls” plausibly alleged “Colorado’s list maintenance program does not comply with the NVRA”).

Clearly, the voter registration list is a record that “concern[s] the implementation of programs and activities conducted for the purpose of ensuring” an accurate voter registration list. At a minimum, it concerns the specific change-of-address program mandated by Section 8(d), since the list is the aggregate of data concerning registrants who should have been removed. The Ninth Circuit below erred in finding otherwise.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

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