Testimony Before the United States House of Representatives
Committee on House Administration

Hearing on "Make Elections Great Again:
How to Restore Trust and Integrity in Federal Elections."
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Good morning, Chairman and Ranking Member.

I appreciate the opportunity to provide testimony regarding the essential need to restore trust and integrity in federal elections.

My name is Russell Nobile. I am a Senior Attorney at Judicial Watch Inc. and part of its election integrity group. Currently, I am leading a team of Judicial Watch attorneys in several challenges to state laws permitting the counting of ballots received days—sometimes weeks—after Election Day. The U.S. Supreme Court granted certiorari in two of these cases during its October 2025 term. We represent the Libertarian Party of Mississippi in a consolidated action, challenging Mississippi's law allowing ballots to be counted if received five business days after Election Day.[1] The Court will hear arguments in this case on March 23, 2026. If successful, this case will greatly improve public trust in federal elections.

In addition to our work in Mississippi, Judicial Watch recently achieved a significant victory in Illinois.[2] By a vote of 7-2, the Court reversed a string of lower court rulings that had wrongly dismissed a challenge to Illinois' receipt deadline brought by our client, Congressman Mike Bost.

[1] *Watson v. RNC, et al.*, No. 24-1260.
[2] *Bost et al. v. Ill. State Bd. of Elect.*, No. 24-568.

Along with my Judicial Watch colleagues, I enforce the list maintenance provisions of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507.[3] As discussed below, we have active list maintenance lawsuits pending against Oregon, California, and Illinois.

I have been practicing as a litigator for 22 years. I have specialized knowledge and expertise in voting and election integrity. My work frequently involves the development and presentation of investigative findings concerning violations of state and federal law. My practice today primarily focuses on election integrity, civil rights, constitutional law, public access to government records, and matters involving official misconduct. I have litigated election and civil rights matters in federal courts across multiple circuits and have testified before the U.S. House and Senate Judiciary Committees, as well as other congressional committees.

Previously, I served as a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice, where my responsibilities included enforcing all provisions of the Voting Rights Act of 1965 ("VRA"), NVRA, and the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), codified at 52 U.S.C. §§ 20301 to 20311, as amended by the Military and Overseas Voter Empowerment Act of 2009 ("MOVE Act"), Pub. L. No. 111-84, Subtitle H, §§ 575–589, 123 Stat. 2190, 2318–2335.

During my tenure at the Department, I represented the United States in numerous voting rights investigations, litigation, and settlements across dozens of jurisdictions. I was, at times, the primary attorney assigned to monitor Section 5 compliance in some covered jurisdictions. I received commendations and awards from both Republican and Democratic administrations during my service at the Department.

[3] In particular, my colleagues Robert Popper and Eric Lee work on all of Judicial Watch's election integrity projects.

Some of my work at the Department included a 2008 case against Waller County, Texas, which addressed the county handling of voter registration applications from students at Prairie View A & M University, a historically Black university.[4] In 2011, I was part of the trial team representing the United States in the Section 5 litigation initiated by Texas concerning its 2010 redistricting.[5] In 2012, I was a member of the Department of Justice team that brought the first UOCAVA enforcement action after the 2009 MOVE Act amendments.[6]

I formerly served as a member of the U.S. Election Assistance Commission's Board of Advisors. I am licensed to practice law in both Mississippi and Louisiana.

Judicial Watch, Inc.

Judicial Watch is the nation's largest conservative public interest law organization. Its mission is to promote transparency and restore accountability in government, politics, and the rule of law. Since 1994, Judicial Watch has become the largest, most successful Freedom of Information Act litigation shop, exposing corruption through public records disclosures. Consistent with our primary mission, we pursue litigation that ensures honesty and integrity in our elections.

Judicial Watch has devoted substantial resources to protecting the integrity of America's electoral processes through the enforcement of federal and state election laws, with particular emphasis on the NVRA. The NVRA requires states to maintain accurate and current voter registration lists and to remove registrations of individuals who are no longer eligible to vote, including those who have died or changed residence. When Judicial Watch identifies jurisdictions that fail to comply with these statutory obligations, it conducts independent analyses of voter registration data, submits formal inquiries and legal notices, and, where necessary, initiates litigation to compel

[4] *U.S. v. Waller County, et al.*, 4:08-cv-03022 (S.D. Tex. Oct. 17, 2008).
[5] *Texas v. U.S.,* 887 F. Supp. 2d 133 (D.D.C. 2012), *vacated,* 570 U.S. 928 (2013).
[6] *U.S. v. Alabama*, No. 2:12-cv-00179 (M.D. Ala. 2012).

compliance. These efforts are aimed at ensuring that voter rolls accurately reflect eligible voters and that election officials carry out their federal list maintenance duties—functions that are essential to transparent and trustworthy elections.

No public or private organization has done more to force states to clean up inaccurate voter registration lists than Judicial Watch.

I. There Is Broad Public Support for Election Integrity.

A recent national survey found that 76% of respondents support requiring that all ballots must be received by election officials on or before Election Day.[7] Election-Day ballot receipt is one of the most popular election integrity requirements, second only to voter ID, which enjoys 80-plus percent public support.[8] Similarly, in national polling a majority of Americans express support for requiring proof of citizenship, reflecting widespread concern about election integrity.[9] The American people believe there are serious risk to our electoral system. For example, one study from last year showed that 64% of likely voters are concerned that electronic voting systems may allow votes to be changed remotely through internet connections.[10]

II. State Laws Extending Ballot Receipt Deadlines Violate Federal Law.

Over the past two decades, a growing number of states have enacted laws extending ballot receipt deadlines for federal elections, permitting absentee and mail-in ballots to be received and counted days or even weeks after the federally designated Election Day. The cumulative effect of

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[7] Scott Rasmussen, *80% Favor Requiring Photo ID Before Casting a Ballot*, ScottRasmussen.com (Jan. 17, 2022), https://bit.ly/4bCnMO7. This 2022 poll showed a 6% increase from a previous poll. *See* Scott Rasmussen, *70% Want All Mail-In Ballots Received By Election Day*, ScottRasmussen.com (July 13, 2021), https://bit.ly/4rzhEuB.

[8] *Id*.

[9] Megan Brenan, *Americans Endorse Both Early Voting and Voter Verification*, Gallup (Oct. 24, 2024), https://bit.ly/4bBwjAS.

[10] Rasmussen Reports, *Election Integrity: Many Don't Trust Electronic Voting Machines* (Sept. 10, 2025), https://bit.ly/4a32mse.

these policies has been profoundly detrimental to public trust in the electoral process, undermining confidence in the integrity and finality of federal elections.

Yesterday, Judicial Watch filed a merits brief in *Watson v. Republican National Committee*, No. 24-1260, articulating the legal basis for why these state laws conflict with federal statutes. A copy of this brief is attached as Exhibit 1. In this case, Judicial Watch, together with former Solicitor General Paul Clement and his team at Clement & Murphy, PLLC, represent the Libertarian Party of Mississippi in a case consolidated with *Watson*. *Watson* raises an important national issue: do federal laws that set a single Election Day for federal offices override state laws permitting ballots to arrive after Election Day? The Supreme Court's decision in this case will have far-reaching implications for the administration of mail-in voting, the finality of election results, and public confidence in the timing and integrity of federal elections.

At bottom, the case turns on the original public meaning of "the election" as that term appears in 2 U.S.C. §§ 1 and 7 and 3 U.S.C. § 1, and whether state laws extending ballot receipt beyond Election Day are "inconsistent" with those federal enactments. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013). Since 1845, federal law fixes a single national day on which votes for federal office must be final, and state laws authorizing post-Election-Day receipt impermissibly conflict with that requirement. Congress has the absolute say on timing of federal elections, and states have no authority to extend that timing past the date set by Congress.

This legal issue has emerged as a result of recent efforts by activists and interest groups to encourage state legislatures to revise or repeal long-standing election-integrity measures. Historically, absentee voting was minimal in scope, governed by stringent regulations. In recent years, however, the significant expansion of vote-by-mail systems—particularly those permitting ballots to be received and counted after Election Day—has led to a substantial increase in absentee and

mail-in voting, along with heightened public attention regarding election integrity and finality.[11] This practice has at times created uncertainty, as election officials may not have a complete tally of votes for several days or even weeks following Election Day, which can contribute to public skepticism about electoral outcomes. Such delays pose challenges to public confidence in elections, especially in cases where candidates win by narrow margins.

Advocates of post-Election-Day ballot receipt often assert that the practice has longstanding roots in American election law; however, this assertion is not supported by historical evidence. While a few states briefly permitted late-arriving ballots following the establishment of a national Election Day in 1845, these provisions were short-lived and had negligible impact due to the historically limited use of mail-in voting.[12] In fact, the concept of post-Election-Day ballot receipt is a recent practice, originating after federal legislation enacted in response to the contested 2000 presidential election. [13] Section 302 of the Help America Vote Act of 2002 ("HAVA"), codified at 52 U.S.C. § 21082, mandated states to establish provisional voting procedures for federal elections.

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[11] Vote-by-mail ballots constituted 46% of total ballots cast in 2020, by far the primary means by which votes were cast in the United States. From 1920-30, absentee ballots were estimated to account for less than .5% of total votes. Joseph P. Harris, *Election Administration in the United States* 283-99 (Brookings Inst. 1934) available at https://bit.ly/3cdio7z. In 2000, 10% of voters nationwide voted by mail. *See* Charles Stewart III, HOW WE VOTED IN 2020: A FIRST LOOK AT THE SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, MIT Election Data + Science Lab, (Dec. 15, 2020), available at https://bit.ly/39WCp0H. That number doubled to 21% by 2016 before doubling yet again to 46% in 2020. *Id.* Voting by mail is now the predominant voting method over early voting and Election Day voting with 31.9% of federal ballots in 2022 were cast by mail. Election Assistance Comm'n, *Election Administration and Voting Survey 2022 Comprehensive Report* 9, 33-34 (June 2023), https://bit.ly/4aB6Rui.

[12] Harris, *supra* note 11, at 298–99 (noting that, given the "small number" of absentee votes, they did "not occasion serious frauds").

[13] Following the 2000 election, two competing election visions of electoral reform arose. Fortier & Norman J. Ornstein, Symposium, *Election Reform: The Absentee Ballot and the Secret Ballot: Challenges For Election Reform*, 36 U. Mich. J.L. Reform 483, 484 (2003). One vision sought to improve poll sites, while the other sought to discourage the use of poll sites and promote voting by mail.

HAVA prioritized Election Day receipt by specifying that provisional ballots are both cast and "received" at polling locations on Election Day, subject to subsequent verification of voter eligibility. After states rolled out their provisional ballot procedures, some advocates began utilizing the eligibility-verification period for provisional ballots as a reason to extend ballot receipt deadlines beyond Election Day—a effort that notably intensified during the COVID-19 pandemic, when public health concerns were used to justify sweeping departures from traditional integrity protections.[14]

Disparate state deadlines for completing voting, however, is precisely the type of mischief Congress sought to eliminate when it enacted uniform Election-Day statutes in 1845, 1872, and 1914. *See* 3 U.S.C. § 1; 2 U.S.C. §§ 1, 7. The whole point of the Election-Day statutes is to set a single uniform day for the election. Allowing ballots to trickle in days or weeks after Election Day is antithetical to that basic goal. Indeed, a patchwork of state ballot-receipt deadlines replicates the problems Congress was trying to remedy with a single national Election Day. It is entirely implausible to conclude that Congress—when thrice exercising its preemptive power under the Elections and Electors Clauses—left the door open for states to vitiate those statutes by postponing electoral outcomes with post-election ballot-receipt deadlines. Congress certainly did not leave states the power to undo this important federal time regulation by simply declaring all mailboxes

[14] Indeed, it appears that most state post-election receipt laws were enacted after HAVA's enactment. *See, e.g.*, Cal. Elec. Code. § 3020 (2014); D.C. Code § 1-10001.05(a)(10A) (2019); 10 ILCS 5/19-8 (2005); Kan. Stat. Ann. § 25-1132 (2017); Md. Code Regs. 33.11.03.08 (2004); Mass. Gen. Laws ch. 54, § 93 (2021); Miss. Code. Ann. § 23-15-637 (2020); Nev. Rev. Stat. § 293.269921 (2021); N.J. Stat. Ann. § 19:63- 22 (2018); N.Y. Elec. Law § 8-412 (1994); Or. Rev. Stat. § 253.070(3) (2021); Tex. Elec. Code Ann. § 86.007 (1997); Utah Code Ann. § 20A-3a-204 (2020); Va. Code Ann. § 24.2-709(B) (2010); W. Va. Code §§ 3-3-5(g)(2), 3-5-17(1993); Ala. Code § 17-11-18(b) (2014); Ark. Code. Ann. § 7-5411(a)(1)(A) (2001); Ind. Code § 3-12-1-17(b) (2006); Fla. Stat. § 101.6952(5) (2013); Ga. Code Ann. § 21-2-386(a)(1)(G) (2005); Mich. Comp. Laws § 168.759a (2012); Mo. Rev. Stat. § 115.920(1) (2013); 25 Pa. Cons. Stat. § 3511(a) (2012); R.I. Gen Laws § 17-20-16 (2019); and S.C. Code Ann. §§ 7-15-700(a), 7-17-10 (2015).

to be ballot boxes. Allowing ballots to be received by election officials well after the polls closed on Election Day would have struck the Congresses that passed those statutes and the public that first read them as unthinkable.

As members of Congress explained at the time, the absence of a uniform Election Day invited fraud—and, just as importantly, the appearance of fraud. *See* Br. of Amici Curiae Prof. Michael T. Morley et al. in Support of Neither Party at 9–17, *Watson v. Republican Nat'l Comm.*, No. 24-1260 (U.S. filed Jan. 9, 2026) (collecting historical sources). Congress established and reinforced a single national Election Day "to combat election fraud by preventing double voting, reduce burdens on voters, and prevent results from states with early elections from influencing voters in other jurisdictions." Michael T. Morley, *Postponing Federal Elections Due to Election Emergencies*, 77 Wash. & Lee L. Rev. Online 179, 215 (2020).

The legislative history shows that Congress's objective extended beyond preventing actual fraud to preserving public confidence in election outcomes. S*ee, e.g.*, Cong. Globe, 28th Cong., 1st Sess. 728 (June 14, 1844) (statement of Sen. Atherton). Congress acted "to remedy more than one evil arising from the election of members of Congress occurring at different times in the different States." *Foster v. Love*, 522 U.S. 67, 73 (1997) (quoting *Ex parte Yarbrough*, 110 U.S. 651, 661 (1884)). The question now before the Court is whether states may undo those protections by extending ballot receipt beyond Election Day itself.

III. Overblown Fears About Ballot Access Do Not Justify Subordinating Election Integrity.

Under the guise of ballot access, long-established safeguards essential to accurate and lawful elections—including voter-eligibility verification, systematic voter-list maintenance, and basic security and confirmation procedures—have been diluted, suspended, or actively discouraged. Measures that for generations commanded bipartisan support and formed the backbone of election

administration have been recast as suspect or illegitimate, despite their clear historical and statutory grounding as well as proven role in preventing fraud and administrative error. In some instances, even the most basic integrity protections have been dismissed as relics of voter suppression—derided as "Jim Crow 2.0"—rather than recognized for what they are: neutral, lawful mechanisms designed to ensure that elections are conducted fairly, consistently, and in accordance with the law. Public confidence in elections will continue to erode in those states that subordinate election integrity to specious concerns about ballot access.

The emphasis on ballot access is not inherently problematic. However, when the emphasis predominates all other considerations, especially election integrity, it inflicts serious and measurable damage to public confidence in federal elections. The systematic dismantling of longstanding election-integrity safeguards has undermined trust in both state and federal elections. What began as isolated state-level policy choices has now become a national problem.

The absence of traditional election integrity safeguards in these jurisdictions fuels a growing view that federal elections there are not conducted on a level playing field, thereby undermining public confidence in the fairness and integrity of the electoral process. Elections conducted in the Jim Crow South were widely viewed as illegitimate due to the systematic disenfranchisement of eligible Black voters. Today, insecure election in places that refuse to enact or enforce election integrity safeguards (e.g., Oregon, California, and Illinois) are similarly perceived has lacking legitimacy.

Recent experience illustrates the point. In the 2024 election cycle, two GOP congressional incumbents lost reelection after initially leading on election night, only to be overtaken days later

by late-arriving vote-by-mail ballots. [15] Outcomes such as these exacerbate public doubt about the fairness, uniformity, and finality of federal elections.

This evolution has altered not only how elections are conducted, but how they are perceived. When historical election integrity safeguards that once commanded bipartisan acceptance are removed for select elections, the predictable result is growing skepticism about whether national elections are being administered lawfully, consistently, and in good faith. The erosion of confidence now evident across the electorate is not the product of ballot access itself, but of a policy environment that treats election-integrity protections as optional rather than essential.

In the decades following the civil rights era, election policies were focused on ending racial discrimination and making sure everyone had equal access to the ballot. Thanks to constitutional amendments, federal laws, and years of enforcement, those issues have been directly addressed. Today, continuing to describe modern election integrity measures as forms of voter suppression misses the reality of current challenges. But these safeguards do not block voter access – they prevent fraud and limit mistakes. Mislabeling safeguards as "suppressive" repeats the mistakes of the past and threatens to weaken public trust in our elections.

Registration and Turnout Data Show That Minority Voters Have Equal Access.[16]

Virtually all election policy discussion over the last seventy-five years has focused on minority ballot access and equal opportunity. To objectively assess whether racial minorities have an equal opportunity to participate in the electoral process, it is essential to examine racial registration

[15] Hanna Kang, *Election 2024 Results: Derek Tran now 613 votes ahead of Rep. Michelle Steel,* OC REGISTER (Nov. 27, 2024), https://bit.ly/42KaNFG; and Jamie Joseph*, RNC rails against California's late mail-in ballot counting amid national litigation: It is absurd*, FOX NEWS (Nov. 27, 2024), https://fxn.ws/435dKAz .

[16] All registration and turnout data regarding the 2020 election is from an April 2021 report from the Census Bureau. *See* Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2020)(Table 4b) https://bit.ly/4aBsPx8.

and turnout data. Before the passage of the Voting Rights Act of 1965, registration data showed just how much the system was failing minorities. At that time, only 19.4 percent of black citizens of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *See Shelby County v. Holder*, 570 U.S. 529, 545-46 (2013). These figures reflected a roughly 50 percent or greater disparity between the registration rates of black and white voters. *Id.*

Recent figures demonstrate that racial disparities in voting have been significantly reduced and, in many instances, eliminated. Compared to the period when Congress enacted the Voting Rights Act of 1965, opportunities for participation are now exponentially greater.

Registration. Current data demonstrates that Black voter registration has not only fully recovered but, in some cases, now surpasses White registration rates. Specifically, the data indicates that registration disparities in Texas, Florida, North Carolina, Louisiana, and Mississippi—all states previously subject (in whole or in part) to Section 5 of the Voting Rights Act—are now below the national average. Notably, Black registration in Mississippi is 4.3% *higher* than White registration. Furthermore, registration disparities in these former Section 5 states are lower than those observed in California, New York, Connecticut, the District of Columbia, Delaware, and Virginia. In fact, the four largest registration disparities, *i.e.*, where White registration most exceeds Black registration, are found in Massachusetts, Wisconsin, Oregon, and Colorado—all states carried by President Biden in 2020.

Turnout. The 2020 election saw increased voter turnout across all racial groups.[17] Notably, voter turnout disparities in Mississippi, North Carolina, Georgia, Florida, and Texas were all

[17] *Despite Pandemic Challenges, 2020 Election Had Largest Increase in Voting Between Presidential Elections on Record*, Dept. of Commerce, Census Bureau (Apr. 29, 2021) https://bit.ly/4kjdeWg.

below the national average. In contrast, the turnout disparities observed in Massachusetts, Wisconsin, Oregon, Colorado, New Jersey, and New York exceeded those in these former Section 5 states. Furthermore, turnout among Black voters in Mississippi surpassed that of White voters.

There exists a substantial disconnect between empirical data and prevailing media narratives. Regardless of one's perspective regarding claims of "rampant voter suppression," the facts are incontrovertible: voter registration rates and turnout in 2020 far surpassed those recorded in 1965. When Black citizens now register and participate at higher rates in states such as Mississippi, it is not credible to assert that Jim Crow–style voter suppression persists today. [18]

The fact is that minority participation during the 2020 election was exponentially higher nationwide than it was during actual Jim Crow in 1965. For example, in Tennessee, Black registration and turnout in 2020 exceeded that for Whites. Hardly Jim Crow. The same is true just downriver in Mississippi. Previously, Jim Crow Mississippi saw an astonishingly low 6.4% registration rate for blacks.

Over the past fifteen years, ballot access has markedly expanded, even as persistent claims of voter suppression have circulated. Minority voter registration and turnout have risen, and racial disparities in participation have narrowed considerably. The data makes it clear: current allegations of widespread voter suppression do not align with the actual trends in ballot access. Notably, these positive advancements have taken place *even as* many states enacted Voter ID laws that critics labeled as suppressive. In reality, like many other overblown fears about ballot access, concerns over the impact of Voter ID requirements have proven unfounded, as evidenced by the

[18] Editorial, *'Jim Eagle' and Georgia's Voting Law: Biden Compares State Voting Bills to Jim Crow, Never Mind the Facts*, WALL STREET JOURNAL (March 26, 2021), https://bit.ly/4tGbif5.

overwhelming public support for these policies—recent polling shows that approximately 80% of Americans now favor Voter ID measures.

IV. Inaccurate Voter Rolls Compound Public Distrust Elections

As early as 1800, Massachusetts implemented voter registration requirements specifically to prevent fraud and ineligible voting, reflecting a widely shared understanding that accurate voter rolls are essential to election integrity.[19] Historical evidence, as detailed below, makes it abundantly clear that the risks of election fraud and systemic irregularities are heightened when voter eligibility is not verified, registration lists are outdated or inaccurate, and election officials fail to implement and enforce clear legal safeguards. Congress enacted the NVRA, in part, to prevent a return to such conditions, imposing affirmative duties on states to maintain accurate voter rolls through ongoing and effective list maintenance. However, despite these federal mandates, many states today are falling short of compliance, allowing millions of obsolete and ineligible registrations to persist year after year. By neglecting their list-maintenance obligations, states are not merely committing technical violations of federal law—they are recreating vulnerabilities that have historically enabled fraud, distorted electoral outcomes, and diminished public trust in our democratic process. This persistent pattern of noncompliance highlights the urgent need for robust and consistently enforced list-maintenance standards to protect the integrity and credibility of our modern elections. Ultimately, inadequate list-maintenance practices fuel public perceptions that our nation's electoral system is not operating as it should.

These current shortcomings are not unprecedented. The responsibility to maintain accurate voter lists has deep roots in American election law and has long been recognized as a vital safeguard against illegal voting and election fraud. The historical record—further explored in the

[19] Harris, *supra* note 11, at 18.

following section—demonstrates that prioritizing election integrity is essential and that neglecting or manipulating registration systems exposes elections to fraud, coercion, and widespread public distrust. The ongoing failure of many states to comply with the NVRA thus echoes longstanding historical challenges that election law has repeatedly sought to address and remedy.

5.8 Million Removals—and Counting

In April 2025, Judicial Watch's President Tom Fitton announced that Judicial Watch's NVRA enforcement efforts over the years had resulted in the removal of more than five million ineligible registrations from voter rolls in nearly a dozen states and local jurisdictions.[20] These removals occurred as a result of court orders, settlement agreements, and corrective actions taken by election officials following Judicial Watch litigation or formal legal demands. The affected registrations included individuals who were deceased, had relocated, or were otherwise ineligible under the NVRA. While surpassing the five-million-removal mark represents a significant milestone in restoring compliance with federal election law, it also underscores a broader reality: millions of outdated and ineligible registrations remain on voter rolls nationwide. Judicial Watch continues to pursue active litigation to enforce NVRA list-maintenance requirements in multiple states, including Oregon, California, and Illinois.

Recent developments illustrate both the scope of the problem and the need for enforcement. In January 2026, Oregon election officials announced plans to address approximately 800,000 inactive voter registrations—nearly one-fifth of the State's entire voter roll—after acknowledging that these registrations had accumulated over many years without being properly processed.[21] This

[20] *New Numbers Show Over Five Million Names Cleaned from Voter Rolls Nationwide*, Judicial Watch (April. 3, 2025), https://bit.ly/3Mk9KpV (discussing removals in PA, CA, NC, OH, KY, and NY).

[21] *Oregon Election System Faces Scrutiny As State Moves to Address 800,000 Inactive Voters: 'Astounding',* Judicial Watch (Jan. 14, 2026), https://bit.ly/4qq2Dub.

announcement followed Judicial Watch's, challenging Oregon's longstanding failure to conduct mandatory list maintenance. The magnitude of Oregon's inactive voter backlog reflects the consequences of prolonged delay and inadequate enforcement of federal election law.[22] Although state officials have characterized the initiative as a corrective step intended to improve accuracy and restore public confidence, the need to remove hundreds of thousands of long-inactive registrations at once highlights precisely the type of systemic noncompliance that Judicial Watch's election-integrity work seeks to identify and remedy. Oregon's announcement highlights the severity of the issue and the value of enforcing current laws, especially where states will not comply on their own.

The NVRA's Modest List-Maintenance Requirements

As the NVRA itself makes clear in its "Findings and Purposes," the statute was enacted to achieve two distinct objectives. First, it sought to "increase the number of eligible citizens who register to vote," thereby enhancing participation in elections for federal office. Second, it aimed to "protect the integrity of the electoral process" by ensuring that accurate and current voter registration rolls are maintained.[23]

The first objective—increasing the number of eligible registrants—was intended to be achieved primarily by expanding the number of state offices at which citizens are offered the opportunity to register to vote. The most significant provision advancing this goal requires that every application for a state driver's license also serve as a voter registration application, a feature that has given the NVRA its familiar designation as the "Motor Voter" law.[24] There is substantial evidence that this first objective has largely been realized. For example, during the twenty-year period

[22] *Id*.
[23] 52 U.S.C. § 20501(b).
[24] 52 U.S.C. § 20504(a).

from 1992—the year before the NVRA's enactment—through 2012, the national voter registration rate increased by more than 11 percent. [25]

The second objective—protecting electoral integrity by ensuring accurate and current voter rolls—was to be accomplished through the NVRA's requirement that states "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from the rolls when they have died or moved.[26] That objective has not been met. Several years ago, a widely cited study brought this failure forcefully to national attention, concluding that "24 million—one of every eight—voter registrations in the United States are no longer valid or are significantly inaccurate," that "1.8 million deceased individuals are listed as voters," and that "2.75 million people have registrations in more than one state."[27] Based on Judicial Watch's more recent research, there is every reason to believe that these problems have worsened.

The U.S. Election Assistance Commission ("EAC") has publicly released the responses provided by states in its most recent election administration survey. By law, the Commission must submit a report to Congress every two years assessing the impact of the NVRA on the administration of federal elections during the preceding two-year period, and states are required to provide the requested information.[28] That data, giving rise to the lawsuits discussed in the following section, confirms that many states are failing to carry out minimal list maintenance.

States Chronically Fail to Maintain Accurate Registration Lists

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[25] Royce Crocker, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, Appendix A, Cong. Res. Serv. (Sept. 18, 2013), https://bit.ly/4r5MefK.

[26] 52 U.S.C. § 20507(a)(4).

[27] *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, Pew Res. Ctr. On The States (Feb. 14, 2012), https://bit.ly/3OuRJ92.

[28] 52 U.S.C. § 20508(a)(3) and 11 C.F.R. § 9428.7.

Judicial Watch's analysis consistently demonstrates a pervasive failure by states to fulfill the voter list-maintenance obligations imposed by the NVRA. Despite the NVRA's clear and longstanding requirements, states across the country continue to neglect their statutory duty to maintain accurate and current voter registration lists. Section 8 of the NVRA requires states to conduct a "general program" that makes a reasonable effort to remove ineligible voters—particularly those who have moved or died—and to maintain records demonstrating compliance. Yet recent litigation brought by Judicial Watch in Oregon, California, and Illinois shows that these failures are not isolated or technical in nature. Instead, they reflect systemic breakdowns in list-maintenance practices, inadequate oversight by chief state election officials, and persistent refusals to provide legally required public records.

Judicial Watch's lawsuit against Oregon alleges a statewide failure to conduct a legally required voter list-maintenance program under Section 8 of the NVRA.[29] Data Oregon itself reported to the EAC shows that 19 Oregon counties removed zero voter registrations for failure to respond to address-confirmation notices and failure to vote in two consecutive federal elections during the most recent reporting period.[30] (¶ 26). Ten additional counties removed 11 or fewer registrations during that same period, despite collectively maintaining more than 2.4 million registered voters. (¶ 27). These removal numbers are irreconcilable with Census Bureau data showing significant residential mobility within and out of Oregon. (¶¶ 30-32). Oregon's voter rolls also reflect extraordinarily high overall registration rates, with 35 of Oregon's 36 counties exceeding 100% registration when compared to citizen voting-age population estimates. (¶¶ 39–41). Inactive

[29] *Judicial Watch Sues Oregon to Force Clean Up of Voter Rolls—Lawsuit Alleges Oregon Has One of Worst Voting Lists in the Nation*, Judicial Watch, Inc. (Oct. 23, 2024), https://bit.ly/4r8LmHc.

[30] *See* Exhibit 2 - Complaint, *Judicial Watch, et al. v. Oregon, et al.*, No. 6:24-cv-01783 (D. Or. Oct. 23, 2024).

registrations comprise roughly 20% of Oregon's statewide voter rolls—the highest known inactive rate of any state in the nation. (¶¶ 47–51). Hundreds of thousands of Oregon registrations have remained inactive for three or more federal election cycles without being removed, in direct violation of mandatory NVRA procedures. (¶¶ 54–60). Taken together, these facts demonstrate a statewide breakdown in list maintenance and a failure by Oregon's chief election official to coordinate compliance with federal law. (¶¶ 35–36, 61–62).

The California lawsuit alleges similarly systemic NVRA violations, supported by the State's own admissions and reported data.[31] California reported to the EAC that 27 counties removed five or fewer voter registrations under the NVRA's mandatory address-change removal process over a two-year period.[32] (¶¶ 27–31). An additional 19 counties reported that removal data was simply "not available," a failure that itself violates federal reporting requirements. (¶¶ 27–31). Census Bureau data shows substantial population movement within and out of California, making these removal figures implausible on their face. (¶¶ 25–26). Judicial Watch formally inquired about these discrepancies and requested NVRA-mandated records, including lists of voters who were sent confirmation notices. (¶¶ 40–46). California's Secretary of State response revealed a wholesale failure to maintain records expressly required by Section 8(i) of the NVRA and to conduct a general list-maintenance program at all. (¶¶ 47–77). Judicial Watch has confirmed that at least 21 counties collectively removed only 11 voters statewide under the NVRA's mandatory removal provisions, despite maintaining nearly six million registrations. (¶¶ 50–54, 57). These

[31] *Judicial Watch Sues California to Force Clean-Up of Voting Rolls*, Judicial Watch, Inc. (May 7, 2024), https://bit.ly/4aE4neA.

[32] *See* Exhibit 3 - Complaint in *Judicial Watch Inc. and the Libertarian Party of CA v. Shirley Weber, et al.*, No. 2:24-cv-03750 (C.D. Ca. May 6, 2024).

facts establish both a failure to maintain accurate voter rolls and a failure to provide public access to records that federal law requires states to preserve and disclose.

Judicial Watch's Illinois litigation presents one of the clearest examples of statewide NVRA noncompliance documented to date.[33] Illinois reported to the EAC that 11 counties removed zero voters and 12 additional counties removed 15 or fewer voters under the NVRA's mandatory address-change procedures during the relevant reporting period.[34] (¶¶ 28–29). Those 23 counties collectively maintained nearly one million registered voters but removed only 100 registrations over two years. (¶¶ 30–31). Illinois further admitted that 34 jurisdictions failed to report any removal data at all, and many also failed to report death removals, confirmation notices, or inactive-voter statistics. (¶¶ 38–47). In total, 60% of Illinois jurisdictions either reported negligible removals or failed to report required data altogether, affecting approximately two-thirds of all registered voters in the State. (¶¶ 49–50). When Judicial Watch requested NVRA-mandated records, Illinois election officials admitted that the State lacked access to local list-maintenance data and did not possess records that federal law requires the State itself to maintain. (¶¶ 56–59). These admissions establish that Illinois cannot—and does not—coordinate statewide compliance with the NVRA, as federal law requires. (¶¶ 60–61). The Illinois case thus illustrates not merely poor execution, but a structural abdication of federal list-maintenance responsibilities by the State's chief election authority.

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[33] *Judicial Watch Sues Illinois to Force Clean-Up of Voting Rolls*, Judicial Watch, Inc., (March 6, 2024), https://bit.ly/4kyZzur.

[34] *See* Exhibit 4 - Complaint, *Judicial Watch Inc. et al. v. Illinois State Board of Elections et al.*, No. 1:24-cv-01867 (N. D. Ill. March 5, 2024).

III. History Shows That Election Integrity Is Critical For Public Confidence In Its Government.

"*Nothing will undermine the morale of the voting public so quickly as a suspicion that the elections are not honestly conducted.*" [35]

Long before today's debates on election integrity, leading experts systematically documented the consequences of inadequate or poorly enforced election integrity laws. National surveys and research illustrated the struggle between advocates for robust election safeguards and those who exploited weak or lax enforcement. Many of the election integrity measures challenged today were enacted in direct response to serious, recurring failures identified in these early studies. Election integrity is not only essential for maintaining public confidence in election outcomes, but also for ensuring that the laws enacted by subsequent governments that form following elections are viewed as legitimate.

Two foundational works addressing election integrity are *Election Administration in the United States* and the nineteenth-century treatise *A Treatise on the American Law of Elections*. Although different in method, both relied heavily on primary sources—including official election records, contested-election proceedings, judicial decisions, and direct observation of election administration across numerous jurisdictions. Together, they documented persistent breakdowns in election administration and demonstrated that elections lose legitimacy when eligibility rules are weakly enforced, voter rolls are inaccurate, and statutory safeguards are treated as optional rather than mandatory. The integrity protections that later became embedded in American election law were adopted precisely to correct the failures recorded in these books and to ensure elections were conducted in an orderly, verifiable, and publicly credible manner. Any proposal to weaken or

[35] Harris, *supra* note 11, at 261.

discard those safeguards—without first grappling with the historical reasons for their adoption and the continued necessity of their enforcement—ignores hard-earned lessons about how election systems maintain legitimacy and public trust.

Election Administration in the United States was a comprehensive, empirical study commissioned and published by the Brookings Institution during the Progressive Era, when widespread concerns about election corruption and administrative failures prompted calls for reform. Joseph P. Harris was the principal author, drawing on nationwide field investigations and official records to document how elections were actually conducted and to inform the development of durable election-integrity safeguards. Harris's research showed that election fraud emerged, among other places, where voter lists were inaccurate, election procedures were poorly enforced, and administrative oversight was lax. Several of his chapters provide the essential context for understanding why modern election systems rely on layered integrity safeguards.[36] Harris's work demonstrated that many of the procedures now taken for granted, including accurate voter registration lists, voter ID, ballot security, and transparent administration, were adopted in direct response to recurring abuses observed when elections were loosely regulated or poorly enforced. Read together, these chapters make clear that election-integrity laws did not arise from abstract theory or partisan preference, but from hard experience with fraud, coercion, and administrative failure—and from the recognition that public confidence in elections depends on rigorous, enforceable rules.

Discussing election frauds, Harris outlined numerous election safeguards and practices that were adopted in the United States's elections that promoted election integrity and public confidence in elections. His work identified the principal types of fraud and concrete historical

[36] *Id.* at 150-199 (Chapter V – Ballots); 200-46 (Chapter VI - Conduct of Elections); 247-82 (Chapter VII – Voting Machines); 283-315 (Chapter VIII – Absentee Voting; Mail Voting; The Canvass; Recounts); and 315-82 (Chapter IX- Election Frauds)

examples observed in American elections.[37] Harris's account is significant not because it describes a bygone era, but because it documents a persistent reality: election fraud historically flourished where administrative safeguards were weak, voter registration lists were inaccurate or obsolete, and election officials failed to enforce the law. His analysis underscores that confidence in elections depends not on assurances or rhetoric, but on rigorous compliance with statutory protections—including accurate voter registration lists, secure ballot procedures, and transparent election administration.

Harris's research illustrates the increasing significance of voter identification at polling locations, particularly after urban areas adopted voting machines, resulting in larger polling sites. As these sites expanded, poll workers and voters could no longer depend on personal familiarity, since participants often originated from various neighborhoods.[38] Today, consolidated poll sites are substantially larger than those from Harris's era, underscoring the rationale for implementing measures such as Voter ID. Modern poll workers are unable to rely solely on neighborhood recognition or signature verification; thus, instituting Voter ID requirements serves to maintain an appropriate balance between electoral integrity and ballot access—an equilibrium that has historically been essential for sustaining public trust.

Harris identified registration fraud as a foundational vulnerability in election systems, describing practices such as the registration of fictitious voters, the retention of deceased or relocated individuals on voter rolls, and the registration of non-residents. He emphasized that inaccurate registration lists served as the gateway through which many other forms of fraud became possible.[39] Closely related was the practice known as "repeating," in which the same individual voted

[37] *Id.* at 315-82.
[38] *Id.* at 221.
[39] *Id.* at 370-72.

multiple times in a single election by exploiting disorganized poll books or lax identification procedures—particularly in large urban jurisdictions dominated by political machines.[40]

Harris further documented ballot-box stuffing, in which fraudulent ballots were inserted either before polls opened or during the counting process, often with the cooperation or acquiescence of partisan election officials.[41] He also described the use of "chain ballots," a systematic scheme in which pre-marked ballots were circulated among voters throughout Election Day, undermining ballot secrecy and allowing fraud to be repeated on a large scale.[42]

Additional abuses identified by Harris included fraudulent assistance to voters, particularly illiterate or vulnerable voters, where election workers effectively directed or altered voter choices under the guise of lawful assistance.[43] He also documented intimidation and violence, including threats and coercive tactics designed to suppress turnout or influence voting behavior in opposition strongholds.[44]

Finally, Harris detailed post-voting frauds, including the alteration or substitution of ballots, false tabulation, and false election returns. He cited recounts in major cities such as Chicago and Philadelphia that revealed discrepancies numbering in the thousands of votes—evidence of deliberate manipulation rather than mere clerical error.[45] Harris concluded that these practices were enabled by weak controls during the counting and canvassing stages of elections and by the absence of meaningful accountability mechanisms.[46]

Harris's findings remain instructive today. They demonstrate that public confidence in elections depends on the consistent enforcement of laws designed to prevent fraud before it

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[40] *Id.*
[41] *Id.* at 372-373.
[42] *Id.* at 373.
[43] *Id.* at 373.
[44] *Id.* at 373-74.
[45] *Id.* at 373-75.
[46] *Id.* at 375-82.

occurs—particularly those governing voter registration accuracy, ballot security, and transparent election administration. Where those safeguards are neglected, history shows that fraud, error, and public distrust predictably follow.[47]

A Treatise on the American Law of Elections, first published in 1875 by George Washington McCrary—a former Member of Congress, Chairman of the House Committee on Elections, and subsequently a federal judge—was widely regarded as the preeminent nineteenth-century legal treatise on U.S. election law.[48] McCrary relied on hundreds of contested-election cases, legislative histories, judicial decisions, and official election records to compile the work, anchoring his analysis within the practical procedures and disputes that defined electoral practices during the post-Civil War and Reconstruction eras. The treatise underwent several editions, underscoring its widespread acceptance among courts, legislators, and legal practitioners as an authoritative resource on election law, particularly regarding statutory and case-law precedents relevant to contested elections and electoral integrity.

McCrary's work, together with Harris's, demonstrate the near-constant need for enhanced election integrity.[49] Election misconduct, and the perception of the same, is a real and recurring threat to democratic governance. Their work underscores a central lesson that remains relevant today: when laws governing voter eligibility, registration accuracy, and election administration are not rigorously enforced, fraud, abuse, and public distrust predictably follow.

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[47] *Id.*

[48] George W. McCrary, *A Treatise on the American Law of Elections* (4th ed. 1897).

[49] Further historical instances of election administration issues are documented in Richard Franklin Bensel's *The American Ballot Box in the Mid-Nineteenth Century* (2004).

Long-Recognized Dangers Posed By Mail Voting Still Apply Today

Prior to the adoption of the Australian ballot, American elections were routinely marked by bribery, intimidation, violence, and overt corruption, largely because voting was public and party-controlled ballots allowed third parties to observe and verify how individuals voted.[50] Money was openly used to "carry elections," that voters frequently demanded payment for their ballots, and that systematic vote-buying had become a recognized feature of election machinery in both urban and rural areas. Elections were further characterized by intimidation and coercion, including employers monitoring workers at polling places, threatening job loss for disfavored votes, and physically escorting or "marching" voters to the polls under supervision.[51] Assaults, ballot snatching, substitution of ballots, and violent disruption of polling places were common, with voters sometimes having ballots forcibly replaced or being deterred from voting altogether through fear and disorder.[52]

The adoption of the Australian ballot—by providing a secret, government-supplied ballot marked in private—was intended specifically to eliminate these abuses by preventing verification of purchased or coerced votes.[53] Reformers argued, and experience confirmed, that bribery declined sharply because a purchaser could no longer know whether a bought vote had actually been delivered, making vote-buying economically irrational.[54] One consequence of this innovation was a decline in voter turnout, as voters who had previously participated only because they were bribed, coerced, or economically dependent ceased voting once those inducements were removed.[55] Although critics cited this reduced turnout as evidence of voter suppression, reformers viewed it

[50] Eldon Cobb Evans, *A History of the Australian Ballot System in the United States* at 24–25 (1917) available at https://bit.ly/3MvT0My https://bit.ly/3MvT0My.

[51] *Id.* at 26-27.

[52] *Id.* at 31-32.

[53] *Id.* at 45-46.

[54] *Id.* at 45-47.

[55] *Id.* at 25-27.

instead as proof that the ballot had transformed voting from a commercial transaction into a civic act, eliminating corrupt participation while preserving genuine electoral choice.[56]

Harris's later survey offered confirmation for advocates of the Australian ballot. In his 1934 report, he described improvements to electoral integrity that resulted from the adoption of the Australian ballot commencing in 1888:

> Since 1900 the general tone of election administration has greatly improved throughout the country, and frauds, formerly so widespread, have tended to disappear in all but a few communities. This improvement has been brought about by stricter registration laws, more stringent election laws, the requirement of the signature at the polls, the Australian ballot, which has practically put a stop to bribery, and, in recent years, by the enfranchisement of women and the passing of the open saloon. Not many years ago it was taken for granted that there would be a great deal of drunkenness, disorder, violence, bribery, and other malpractices at the polls. Today the polling place is quiet and orderly. One of the leading arguments used against woman suffrage was that no woman of refinement or culture would care to venture near the polls on the day of election, for "it was not a fit place for women." Happily this has practically passed. Election frauds have not entirely disappeared, and intimidation and violence are sometimes present at the polls, but these conditions obtain only in a few politically backward communities.

Harris, *supra* note 11, at 19-20.

This history is increasingly relevant today, as the expansion of large-scale vote-by-mail systems and ballot-harvesting practices has shifted voting back into unsupervised environments. In these settings, ballots are completed outside the privacy and oversight provided by polling places and poll watchers, often in the presence of third parties. Under such circumstances, the risks of coercion, intimidation, and undue influence—by political operatives, caregivers, activists, or ballot collectors who may observe, pressure, or control how a ballot is marked and returned—have grown substantially. This reintroduces many of the vulnerabilities that the Australian ballot system was specifically designed to eliminate.

[56] *Id.* at 48.

Vote-by-mail is neither a new nor inherently beneficial idea. Progressives have advocated for it at various times over the past one hundred years. Its recent adoption by several states is concerning because any improvement in voter turnout appears marginal, while the damage to public confidence in electoral results are significant. Whatever modest gains in turnout may occur are clearly outweighed by the extent to which widespread vote-by-mail undermines public trust and confidence in the electoral process as a whole.

Again, Harris thoroughly described in 1934 the risks from mail voting:

> **Mail Voting**. Related somewhat to absent voting is the proposal to permit all voters to cast their ballots at home and to mail them to the election authorities. This is usually called "mail" or "home voting." It has been proposed to the Wisconsin legislature for several years, receiving considerable support, including that of two members of the Milwaukee board of elections. The proposal in more detail is that the election office should mail to every voter an official ballot and an envelope in which to return it; that the voter should mark the ballot at his home and return it to the election office through the mail, signing a statement on a perforated stub of the envelope to the effect that the ballot had been marked secretly, and without coercion, intimidation, or corrupt influence. The election office would file these ballots as they are received, sorting them by precincts or other divisions. On the day of the election the envelopes would be examined and the signatures compared with those on the registration record. If the results of this examination were satisfactory, the signature stub would be removed and filed as a poll list, and the ballot deposited in the ballot box, thus losing its identity. After all the ballots had been passed upon in this way, the count would be conducted in the usual manner, but by the counting clerks employed by the election office.
>
> The arguments for home voting are that it would greatly increase the vote cast, make possible a more careful consideration of the ballot by the voter, perhaps in consultation with other members of his family, reduce the cost, avoid the loss of time on the part of the voters, and avoid the necessity for making election day a legal holiday. The principal argument against mail voting is that bribery and intimidation would be practiced upon a large scale, especially in cities, that the secrecy of the ballot would be destroyed, and that the history of elections in this country and elsewhere shows clearly the need for a secret ballot, marked and cast at a public polling place.
>
> Mail voting resembles the method of voting used in this country prior to the adoption of the Australian ballot. Although the voter was required to come to the polls to deposit his ballot, he brought it with him already marked. Under that system bribery, intimidation, corruption, and party machine domination were rampant. If

the safeguards of secrecy were removed at this time, there is nothing to indicate that we might not have a return to such a system. While it is probably true that home voting would work out quite satisfactorily in some communities, there would be grave danger of a return to the former vicious practices in the poorer districts of our large cities particularly the machine controlled wards. Bribery is feasible only when the briber is sure of getting the votes for which he has paid. It would be entirely reasonable to expect a return of bribery if a scheme of mail voting were adopted. The amount of intimidation now exercised by the precinct captain in many sections of large cities is very great; with mail voting it would be enormously increased. The overbearing and dominant precinct captain would insist upon seeing how each voter under obligation to him had marked his ballot, and the voter would, have no protection against such tactics.

An event occurred several years ago in the election of state;s attorney in Chicago, which illustrates convincingly the need of a secret ballot. Robert T. Crowe was a candidate for re-election. A secret poll of the bar association indicated a heavy majority for his opponent, John A. Swanson. Just before the election, Crowe published a list of attorneys who had signed a statement endorsing his candidacy. The list contained the names of over two thousand Chicago attorneys, many of whom were known to their friends to be opposed to Crowe. The explanation is obvious. These attorneys did not dare refuse to sign the endorsement when they were asked to do so by Crowe workers for fear of reprisals. If attorneys can be intimidated in this way, it is readily apparent that the voters in machine controlled districts of large cities would be easily controlled without the protection of a secret ballot. Nor would the intimidation and corrupt influence be confined to such districts.

The evidence is quite strong that even in the most respectable districts there is considerable danger of corrupt influence in hotly contested elections, when the conflicting forces are determined to win at all costs. One could well imagine the pressure which under a system of home voting would be brought to bear upon voters in a hotly contested election, say, when different religious groups were battling with one another, or when some question like public ownership or prohibition was at stake. Home voting would lay open the election process so widely to intimidation and corrupt influence that such practices would be inevitable, and having once been started, they would become a tradition.

It is argued by the proponents of this form of voting that the severe penalty against election frauds would protect the voter against bribery and intimidation. This is utterly unconvincing. Bribery, corruption, and other election frauds have not been stopped or seriously deterred in this country by penal provisions. These election frauds are usually carried out by a political machine which can offer security against the criminal provisions of the law. Conviction for election frauds is so rare that the criminal provisions in the statutes do not insure honest elections.

It is contended also that the natural pride of the great majority of voters will prevent them from being corruptly influenced. Custom and traditions are more powerful factors than pride and conscience in such matters. The wholesale corruption of voters, both in this country and in England in the past, under an election system which made it possible, indicates that when once such practices are established they are looked upon as a matter of course, and do not incur social disapprobation. We cannot look to the pride and good conscience of the mass of voters to protect us against such practices.

The proponents of home voting assert also that this method of voting will greatly increase the total vote cast, and even though there is a small amount of dishonest voting, corrupt influence, and bribery, it will be offset by the larger vote cast which will be honest. This argument hinges, to be sure, upon the assumption that a larger vote will actually be polled under the use of home voting. There is no proof that such will be the case. The extremely limited use of absent voting would tend to disprove this. A large percentage of the absent ballots mailed out are never returned. The experience which private organizations have had with mail voting does not warrant any optimistic prophecies that mail voting will greatly increase the vote cast.

The argument has been advanced that even though it be granted that home voting is unsuitable for some of the large cities with strong party machines, this should not prevent experimentation with it in other communities and its adoption in case it proves to be satisfactory. It would, indeed, be foolish to shape our election laws and practice to meet the requirements of a few of the largest cities. It is possible that home voting might work quite satisfactorily in some communities where the dangers of bribery and intimidation were slight. This form of voting would seem to be particularly suited to sparsely settled rural districts, where the holding of elections at official polling places is both expensive and troublesome to the voters. On the whole, however, it must be said that the danger of bribery and corrupt influence of voters is not confined to a few large cities, and consequently the adoption of mail voting would appear to be dangerous in almost any community.

To summarize, mail voting does not offer any great promise of improvement in election administration; it is by no means certain that it would increase the vote cast, and it might have just the opposite effect; it would be contrary to the election experience of this and other countries in that it would nullify many of the protective features of the Australian ballot and would incur the danger of a repetition of the bribery, coercion, and corrupt influence which once existed widely. It is undoubtedly true that home voting would be a convenience to many voters, and would afford the members of the family an opportunity to discuss their votes together and to mark the ballot with greater deliberation and care, but this advantage could be secured by mailing to each voter a sample ballot, preferably reduced in size, which the voter could study and mark, taking it with him to the polls.

Harris, *supra* note 11, at 301-05.

Conclusion

In closing, I respectfully urge this Committee to consider the evidence as a call to strengthen and modernize the election-integrity framework that undergirds public confidence in our federal election. The best available registration and turnout data do not indicate widespread problems with ballot access; eligible citizens (who desire to do so) are registering and participating at high rates. The current data reflects, as history documents, that the weakening of long-established procedural safeguards create unnecessary uncertainty and erode public trust in elected leaders. Thoughtful, targeted legislative action to reinforce election integrity will enhance confidence in elections while protecting access for eligible voters.

I appreciate the Committee's attention to this important issue, and I thank you for the opportunity to appear today and share these views.

T. Russell Nobile
Senior Attorney
Judicial Watch, Inc.

Russell Nobile is a Senior Attorney at Judicial Watch. His work frequently involves the development and presentation of investigative findings concerning violations of state and federal law. His practice primarily focuses on election integrity, civil rights, constitutional law, and matters involving official misconduct. He has litigated election and civil rights matters in federal courts across multiple circuits and has testified before the U.S. House and Senate Judiciary Committees, as well as other congressional committees.

Currently, Mr. Nobile leads a team of Judicial Watch attorneys in several challenges to state laws permitting the counting of ballots received days—sometimes weeks—after Election Day. The U.S. Supreme Court granted certiorari in two of these cases this term. In *Watson v. RNC, et al*., No. 24-1260, Mr. Nobile represents the Libertarian Party of Mississippi in its challenge to Mississippi's law allowing ballots to be counted if received five business days after Election Day. The Supreme Court is scheduled to hear argument in *Watson* on March 23, 2026. The Court recently ruled in his favor in *Bost et al. v. Illinois State Board of Elections*, No. 24-568. By a vote of 7-2, the Court reversed a string of lower court rulings wrongly dismissing a challenge to Illinois' receipt deadline brought by Mr. Nobile's client, Congressman Mike Bost.

In addition to the Election Day cases, Mr. Nobile and his Judicial Watch colleagues are engaged in ongoing litigation against California, Illinois, and Oregon for those states' failures to conduct adequate voter list maintenance as required by the National Voter Registration Act of 1993, 52 U.S.C. § 20507(a)(4).

Prior to joining Judicial Watch, Mr. Nobile served as a Trial Attorney in the Civil Rights Division of the U.S. Department of Justice, litigating federal enforcement actions under the Voting Rights Act and related statutes, and as a member of the U.S. Election Assistance Commission's Board of Advisors. He later practiced law on the Mississippi Gulf Coast. Mr. Nobile is admitted to practice in Mississippi and Louisiana.

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: House Administration

Subcommittee:

Hearing Date: 02/10/2026

Hearing Title :

Make Elections Great Again: How to Restore Trust and Integrity in Federal Elections

Witness Name: T. Russell Nobile

Position/Title: Senior Attorney

Witness Type: ○ Governmental ● Non-governmental

Are you representing yourself or an organization? ○ Self ● Organization

If you are representing an organization, please list what entity or entities you are representing:

Judicial Watch, Inc.

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

No

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

None

Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.

None

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

☑ I have attached a written statement of proposed testimony.

☑ I have attached my curriculum vitae or biography.

*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include—(i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(ii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.

False Statements Certification

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.

Russ Nobile

Witness signature

2/10/26

Date

Exhibit 1

No. 24-1260

In the
Supreme Court of the United States

MICHAEL WATSON, Mississippi Secretary of State,

Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, et al.,

Respondents.

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

BRIEF FOR RESPONDENT LIBERTARIAN PARTY OF MISSISSIPPI

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February 9, 2026

QUESTION PRESENTED

Federal law sets Tuesday after the first Monday in November as "the day for the election" of federal officers. 2 U.S.C. §§1, 7; 3 U.S.C. §1 ("federal election-day statutes"). Mississippi continues to count mail-in absentee ballots received up to five business days after Election Day.

The question presented is:

Whether the federal election-day statutes preempt a state law that allows ballots that are cast by federal Election Day to be received by election officials after that day.

CORPORATE DISCLOSURE STATEMENT

The Libertarian Party of Mississippi has no parent corporation, and no corporation owns 10% or more of its stock. No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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INTRODUCTION

This case is about whether federal elections end on the statutorily designated Election Day, or whether the receipt of ballots can continue for days or weeks later. When Congress enacted the Election-Day statutes, it did so to set a uniform day of national elections and to prevent real or perceived fraud occasioned by states setting Election Day at disparate times. The Fifth Circuit, drawing on ordinary meaning, historical practice, and this Court's decision in *Foster v. Love*, 522 U.S. 67 (1997), correctly held that the "day for the election" of federal officeholders in 2 U.S.C. §§1, 7 and 3 U.S.C. §1 encompasses both the submission and receipt of ballots, such that both must conclude on Election Day. Because Mississippi extends ballot receipt beyond the federally fixed Election Day, its law conflicts with—and is thus preempted by—the Election-Day statutes. The Fifth Circuit's commonsense judgment should be affirmed.

The conclusion that an election includes both ballot submission and receipt—and not just the former—finds support from all the usual sources of ordinary meaning. Dictionaries and treatises from around the time of enactment defined an "election" to include ballot receipt. State courts did too. Contemporaneous state election codes viewed an "election" as encompassing both the elector's offer to vote (through presentment of a marked ballot) and the official's acceptance of that vote (through receiving the marked ballot into official custody). The Nation's first foray into absentee voting during the Civil War confirms as much, as virtually every state required ballots to be received by the election officials on or

before Election Day. There is thus overwhelming evidence that the ordinary public meaning of "election" at the time the Election-Day statutes were enacted encompassed ballot receipt. That view likewise corresponds with the dominant theme and purpose of the statutes, namely, that there be a single uniform day by which all the ballots are in and the counting can begin.

Arguing to the contrary, Petitioner and Respondents Vet Voice Foundation and Mississippi Alliance for Retired Americans ("VVF") (hereinafter "Petitioners")[1] advance an entirely implausible understanding of an "election." They define an election to *include* marking and submitting a ballot, but to *exclude* official receipt of that ballot. That counterintuitive distinction would have struck the 19th-century public as bizarre. At the time, virtually all ballots were marked, submitted, received, and deposited at polling stations in a matter of moments. Nobody from the relevant era would have thought that an election was over before the ballots were received by election officials. After all, receipt into official custody was the very act that transformed an elector's ballot from an ordinary piece of paper into a legally operative vote. To them, the election would not have been over until the ballot box was closed and no further ballots could be received.

Petitioners attempt to overcome textual and historical shortcomings with policy arguments. Such arguments are no match for text and history, but they

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[1] Although VVF is a Respondent supporting Petitioner, this brief will reference Petitioner and VVF collectively as "Petitioners."

are unpersuasive in all events. The Fifth Circuit's rule does not require ballots to be tallied and certified on Election Day. Historically, states distinguished between the "election" and the "canvass" of the votes, with the latter referring to the counting of votes, which could occur after Election Day. That said, by requiring ballots to be received by Election Day, the decision below does give jurisdictions a fighting chance to ascertain the winner on election night. Nor does defining an election to include ballot receipt pose any danger to absentee voting or erase ballot-receipt deadlines set by other federal statutes.

The whole point of the federal Election-Day statutes is to set a single uniform day for the election. Allowing ballots to trickle in days or weeks after Election Day is antithetical to that basic goal. Indeed, a patchwork of state ballot-receipt deadlines replicates the problems Congress was trying to remedy with a single national Election Day. It is entirely implausible to conclude that Congress—when thrice exercising its preemptive power under the Elections and Electors Clauses—left the door open for states to vitiate those statutes by postponing electoral outcomes with post-election ballot-receipt deadlines. Congress certainly did not leave states the power to undo this important federal time regulation by simply declaring all mailboxes to be ballot boxes. Allowing ballots to be received by election officials well after the polls closed on Election Day would have struck the Congresses that passed those statutes and the public that first read them as unthinkable. In short, text, history and common sense all converge on a single result: the election ends on Election Day, not days or weeks later when the last ballots are received.

STATEMENT OF THE CASE

A. Legal Background

1. The Constitution vests states with the initial "responsibility" to set "the mechanics" of elections to federal offices. *Foster*, 522 U.S. at 69. But that initial responsibility ceases when Congress steps in. The Constitution "grants" Congress the ultimate authority over federal elections, including the "power to override" most state election regulations and provide uniform rules for federal elections. *Id.*

The Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, §4, cl. 1. The Electors Clause provides: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to vote for President and Vice President. U.S. Const. art. II, §1, cl. 2; *see id.* art. II, §1, cl. 1; *id.* amend. XII. But "[t]he Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." U.S. Const. art. II, §1, cl. 4.

For the first decades after the Founding, Congress largely "left the actual conduct of federal elections to the diversity of state arrangements." *Voting Integrity Project v. Keisling*, 259 F.3d 1169, 1171 (9th Cir. 2001). Congress initially set the deadline by which states must choose their electors "within thirty-four days preceding the first Wednesday in December in

every fourth year succeeding the last election." Act of Mar. 1, 1792, ch. 8, §1, 1 Stat. 239, 239. While most states "held their presidential elections during the first 10 days of November," others held their elections at different times throughout the nearly month-long interval allowed by federal law. J. Stonecash, *Congressional Intrusion to Specify State Voting Dates for National Offices*, 38 Publius 137, 141 (2008). The absence of a uniform Election Day soon led to mischief, as "political parties recruit[ed] voters to move from site to site to engage in repeat voting." *Id.* States likewise set "varying times" for "congressional elections," which "provid[ed] some States with an 'undue advantage' of 'indicating to the country the first sentiment on great political questions." Pet.App.4a.

Concerns about fraud, delay, and other "evils" forced Congress to set some "uniform" national "rules" for federal elections. *Foster*, 522 U.S. at 69-70. In 1845, Congress fixed a "uniform time" for appointing presidential electors. Act of January 23, 1845, ch. 1, 5 Stat. 721. Congress instructed that "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in the month of November." 3 U.S.C. §1 (1948). After the Civil War, Congress extended the rule to the House of Representatives. Act of Feb. 2, 1872, ch. 11, §3, 17 Stat. 28. And after ratification of the Seventeenth Amendment, Congress required elections for Senators to occur on the uniform Election Day too. *See* Act of June 4, 1914, ch. 103, §1, 38 Stat. 384.

The Election-Day statutes remain in place today. Together, they set Tuesday after the first Monday in

November as "the day for the election" of federal officers. 2 U.S.C. §7.

2. Ordinarily, conflicts between state and federal law implicate the reserved sovereignty of the states and the Supremacy Clause. Preemption analysis in that context "starts with the assumption that the historic police powers of the States [are] not to be superseded by … Federal Act unless that [is] the clear and manifest purpose of Congress." *Cipollone v. Liggett Grp.*, 505 U.S. 504, 516 (1992). But that starting assumption is fundamentally misplaced when it comes to the Elections and Electors Clauses. When states exercise authority over federal elections via the Elections Clause, they are not exercising any residual powers that pre-existed the Founding. Instead, when states set rules for federal elections, they wield federal power conferred by the Constitution. For that reason, when Congress exercises its own supervisory and superior powers under the Elections and Electors Clauses, "it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 14 (2013) ("*ITCA*"). Hence, federal laws enacted under the Elections Clause "supersede those of the State which are inconsistent therewith." *Id.* at 9. When looking for such an inconsistency, courts "do not finely parse the federal statute for gaps or silences into which state regulation might fit." *Fish v. Kobach*, 840 F.3d 710, 729 (10th Cir. 2016). They should instead "straightforwardly and naturally read the federal and state provisions" to identify any conflicts. *Id.*

B. Factual and Procedural Background

1. This case involves claims arising from the relationship between the federal Election-Day statutes and Mississippi's election code. Before the pandemic, Mississippi required absentee ballots to be received by 5pm the day before the election to be counted. *See* Miss. Code Ann. §23-15-637 (2012). Today, Mississippi allows qualified electors to vote in federal elections through mail-in absentee ballots. For those ballots to be counted, they "must be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election." Miss. Code Ann. §23-15-637(1)(a).

2. The Libertarian Party of Mississippi filed suit against the Mississippi Secretary of State and several county officials charged with election administration. Pet.App.5a. The complaint alleged, *inter alia*, that the Election-Day statutes preempt Mississippi's law. *Id.* The challenged law's effects are "especially burdensome for minor political parties, such as Plaintiff, which have minimal resources compared to the major political parties," because they must divert those scarce resources "to monitor canvassing" that extends longer into November because of the state's post-election "ballot receipt deadline." 24-00037.Dist.Ct.Dkt.1.¶47. Major party entities also filed suit, and the district court consolidated the cases and allowed VVF to intervene as defendants. Pet.App.5a & n.2. The parties cross-moved for summary judgment, and the district court granted judgment for defendants on the preemption claim. Pet.App.78a-82a.

3. The Fifth Circuit unanimously reversed. Pet.App.3a, 25a-26a. It interpreted the Election-Day statutes' reference to the "day for the election" as "the day by which ballots must be both *cast* by voters and *received* by state officials." Pet.App.3a. It reached that conclusion based on "[t]ext, precedent, and historical practice." Pet.App.2a-3a.

The court began with the text and this Court's decision in *Foster*, which interpreted the "day for the election" in the Election-Day statutes. The court used *Foster* to "guide[] [its] understanding of the statutory text," and took from *Foster* "three definitional elements" of an "election": "(1) official action, (2) finality, and (3) consummation." Pet.App.8a-9a.

The court drew the "official action" definitional element from *Foster*'s analysis that "[w]hen the federal statutes speak of 'the election' of a Senator or Representative, they plainly refer to the *combined actions of voters and officials* meant to make a final selection of an officeholder." Pet.App.9a. That reasoning was problematic for Mississippi, the court explained, because Mississippi's definition separated the voter's role in the election from the "official action" of state election officials. *See* Pet.App.9a-10a.

As to "finality," the court drew on earlier precedent from this Court interpreting the word "election" in the Constitution to mean the "final choice of an officer by the duly qualified electors," Pet.App.10a (quoting *Newberry v. United States*, 256 U.S. 232, 250 (1921)). The court thus held that "[a]n election involves more than government action; it also involves the polity's *final* choice of an officeholder." *Id.* That definitional element posed difficulties for the

state because Mississippi's own regulations explain that an "absentee ballot" qualifies as "the final vote of a voter when, during absentee ballot processing by the Resolution Board, *the ballot is marked accepted*." Pet.App.11a. For mail-in absentee ballots, that happens "after receipt"—which can occur five business days after the election—when the election official accepts and deposits the ballot into a secure box. *Id.* The court pointed out that "mail-in ballots are less final" than the state claimed because the "postal service permits senders to recall [domestic] mail," which "indicates that at least domestic ballots are not cast when mailed, and voters can change their votes after Election Day," thus undermining "the State's claim that ballots are 'final' when mailed." Pet.App.12a.

The court emphasized the distinction between the "election" and the canvass—i.e., the "count[ing]" of the ballots. Pet.App.10a-11a. "Even if the ballots have not been counted" on Election Day, the election has nevertheless ended because "the result is fixed when all of the ballots are received and the proverbial ballot box is closed." *Id.* "By contrast, while election officials are still receiving ballots, the election is ongoing: The result is not yet fixed, because live ballots are still being received." *Id.*

As to "consummation," the court returned to *Foster*'s instruction that an election "may not be *consummated* prior to federal election day." Pet.App.12a. It then drew on precedent from circuits across the country to conclude that an "election is consummated when the last ballot is received and the ballot box is closed." Pet.App.12a-13a.

The court next turned to historical practice to "confirm[] that 'election' includes both ballot casting and ballot receipt." Pet.App.14a. A survey of early American history underscored that "at the time Congress established a uniform Election Day in 1845 and 1872, voting and ballot receipt necessarily occurred at the same time." *Id.* The history of absentee balloting, which first rose to prominence during the Civil War, buttressed treating ballot receipt as part of the election. *See* Pet.App.15a. "Early postwar iterations of absentee voting" during the 19th century likewise supported defining an election to encompass receipt because states "universally required" those absentee ballots to be received "by Election Day." Pet.App.16a.

Thus, the court concluded that the Election-Day statutes require ballots in federal elections to be received by Election Day, and held that Mississippi's law was preempted because it deviated from that federal rule by allowing post-election ballot receipt.

4. The Fifth Circuit denied rehearing en banc 10-5 with two dissenting and two concurring opinions. Pet.App.29a-58a.

SUMMARY OF ARGUMENT

Through the federal Election-Day statutes, Congress exercised its constitutional authority to set a uniform time for federal elections to occur. Text, historical practice, precedent, and common sense all demonstrate that those statutes set the deadline by which ballots must be submitted *and* received. Simply put, the ballot box closes on Election Day, and ballots that are not received until days or weeks after the date

specified by Congress arrive after Election Day and should not be counted.

The Election-Day statutes set the Tuesday after the first Monday in November as "the day for the election." 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. Under the original public meaning of the term "election," those statutes set a uniform day for ballots to be cast and received. At the time, everyone would have understood an election to include ballot submission and receipt—as evident from dictionaries, treatises, courts, and state election codes, all of which described an election to include the receipt of marked ballots into official custody. The notion that the ballot box could remain open for continued receipt of ballots days or weeks after Election Day, and that states could pick their own disparate deadlines for ballot receipt, would have struck the Congress that enacted those statutes and the citizens that first read them as absurd.

Historical practice bolsters that position. At all relevant times, *i.e.*, in 1845, 1872, and 1914, states overwhelmingly required ballots to be submitted into the custody of election officials by Election Day. Although some states during the Civil War allowed soldiers to send their ballots through the mail to proxy voters, each one required those ballots to be received by election officials by Election Day to be valid. That states did not permit post-election receipt by officials in that era provides strong evidence that an "election" included ballot submission and receipt.

This Court's precedent points the same direction. In *Foster*, this Court construed the phrase "the election" in the Election-Day statutes to mean "the combined actions of voters and officials meant to make

a final selection of an officeholder." 522 U.S. at 71. That interpretation fits squarely within the Fifth Circuit's rule. It covers the voter's act of marking and presenting a ballot and the official's act of receiving that ballot; those "combined actions" are what consummate the election. *Id.*

Petitioners' contrary arguments are light on the text and heavy on policy, legislative history, and post-enactment congressional action. Their ordinary-meaning arguments rest on little more than *ipse dixit*. They invoke various dictionaries that defined "election" as the voter's "choice," but they lose sight of *how* voters make that choice count. The voter's choice has electoral consequences only through the combined action of the elector presenting the ballot and the official receiving it. Absent receipt, a ballot is just an ordinary piece of paper that is neither binding nor effectual. Until a ballot is received by the official, the voter's choice is not operative and final. The mail ballot could be recalled by the voter, lost in transit, destroyed, or stolen. None of those scenarios remains possible when the ballot is received by the official, as it is at that point final and the proverbial ballot box is closed. Petitioners' treatment of historical practice is similarly unpersuasive. They identify virtually no state laws from before 1914—when the last of the Election-Day statutes became law—that allowed ballots to be received after the day set for the election. And the subsequent laws they identify cannot change the meaning of the federal Election-Day statutes. At most, those statutes confirm the baseline rule that ballots must be received by Election Day, and that Congress can create narrow exceptions to that rule.

Finally, Petitioners' various policy arguments cannot override the congressional choice to set a uniform day for federal elections. At most, the decision below would require voters in certain states to mail their ballots a handful of days earlier. It casts no doubt on the validity of absentee voting, early voting, or the common practice of counting and certifying electoral outcomes after the day set for the election. That said, the decision below does give jurisdictions a fighting chance to ascertain election outcomes on election night, and it eliminates the patchwork of state ballot-receipt deadlines and replaces it with a commonsense rule that the ballot box closes on Election Day, not days or weeks later.

ARGUMENT

I. The Federal Election-Day Statutes Preempt Mississippi's Mail-In Ballot Receipt Law.

The federal Election-Day statutes set "Tuesday next after the 1st Monday in November" in "every even numbered year" as "the day for the election." 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. The "straightforward textual question here is whether" Mississippi's post-election deadline for receiving mail-in ballots is "inconsistent with" that mandate. *ITCA*, 570 U.S. at 9, 15. It is. Text, historical practice, and precedent confirm that the "day for the election" is the day by which ballots must be cast by voters and received by election officials. The election ends when the ballot box closes on Election Day, not days or weeks later based on disparate state deadlines. Because Mississippi allows absentee ballots to be received up to five business days after Election Day, it is "inconsistent with" the Election-Day statutes.

A. The Text of the Election-Day Statutes Confirms that Ballot Receipt Is Part of the Election.

The Election-Day statutes set a uniform national Election Day. 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. The statutes do not define "election," so that term carries its "ordinary meaning" at the time of enactment. *Wisc. Cent. v. United States*, 585 U.S. 274, 277 (2018). Then, as now, "the election" referred to the "combined actions" of the voters casting their ballots and election officials receiving them into their custody. *Foster*, 522 U.S. at 71. Hence, an "election" is the "[v]oting and *taking the votes* of citizens for members to represent them." W. Anderson, *A Dictionary of Law* 394 (1889) (emphasis added).

1. That much is clear from the historical backdrop against which Congress enacted the Election-Day statutes. State election codes at the time uniformly treated an election as an event to be "held" or "conducted." 1852 Ind. Acts ch.31, §§1-4.[2] That event

[2] *E.g.*, Ill. Rev. Stat. ch.37, §§1, 10 (1845); Va. Code tit.5, ch.10, §§117, 120 (1887); Ala. Code §§174, 176, 194, 259 (1852); Cal. Pol. Code §1041 (1876), *reprinted in* 1 Codes & Statutes of California 184 (T.H. Hittell ed., 1876) [hereinafter Cal. Pol. Code]; Md. Pub. Gen. Laws art.5, §§6, 68 (1878); 1887 Minn. Laws ch.4, 7, 35, §§1, 79; Wisc. Rev. Stat. §15 (1878); Mich. Comp. Laws ch.6, ¶32 (1872); 1863 W. Va. Acts ch.100, §§2-3; Iowa Code §303 (1851); Ark. Rev. Stat. ch.54, §§1-2 (1837); Neb. Gen. Stat. ch.20, §1 (1873); Tenn. Code §825 (1858); Or. Laws ch.14, §1 (1874); Del. Rev. Stat. ch.16, §§15-16 (1874); Fla. Stat. tit.3, ch.3, §1 (1847), *reprinted in* L.A. Thompson, *Digest of the Statute Law of Florida* 70 (1847) [hereinafter Fla. Stat.]; Conn. Gen. Stat. tit.17, §106 (1866); Ga. Code §§1312, 1315 (1868); Kan. Gen. Laws ch.87, §1 (1862); Ky. Rev. Stat. ch.32, art. I §1 (1867); La. Rev. Stat., Elec. Code §1 (1856); Miss. Rev. Code ch.4, art. 1 (1857); Mo. Stat.

had two essential components: The elector's act of "offering to vote," Ala. Code §§208, 212 (1852),[3] and the official's act of "receiving" the ballot and (where appropriate) "deposit[ing]" it in the ballot box, *id.* §§205, 210.[4] Everything else that occurred on Election

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ch.51, §1 (1872); Nev. Gen. Stat. ch.12, §1524 (1885); N.J. Stat., Elec. Code §1 (1877); N.Y. Stat. pt.1, ch.6, tit.2, §1 (1867); N.C. Code ch.16, §2668 (1883); Ohio Stat. ch.211, §1 (1854); F. Jordan, *Digest of Pa. Elec. Laws*, ch.4, §111 (1872); S.C. Rev. Stat. ch.8, §1 (1873); Tex. Rev. Civ. Stat. art. 1659 (1879).

[3] *E.g.*, Cal. Pol. Code §1225 (1876); 1887 Minn. Laws ch.4, 14, §16; Wisc. Rev. Stat. §§34-36 (1878); Mich. Comp. Laws ch.6 ¶134 (1872); 1863 W. Va. Acts ch.100, §§23-24; Iowa Code §§257-58 (1851); Ark. Rev. Stat. ch.54, §20 (1837); Neb. Gen. Stat. ch.20, §9 (1873); Tenn. Code §852 (1858); Del. Rev. Stat. ch.18, §19 (1874); 1852 Ind. Acts ch.31, §20; Va. Code tit.5, ch.10, §122 (1887); Fla. Stat. tit.3, ch.3, §5(2); Ga. Code §1307 (1867); Ill. Rev. Stat. ch.37, §§18-19 (1845); Kan. Gen. Laws ch.86, §§7, 9 (1862); Ky. Rev. Stat. ch.32, art. III §7 (1867); La. Rev. Stat., Elec. Code §13 (1856); Me. Rev. Stat. tit.1, ch.4, §27 (1884); Md. Pub. Gen. Laws art.5, §15 (1878); Mass. Pub. Stat. ch.6, §2 (1882); Miss. Rev. Code ch.4, art. 9 (1857); Mo. Stat. ch.51, §15 (1872); Nev. Gen. Stat. ch.12, §1515 (1885); N.H. Gen. Stat. ch.27, §3 (1867); N.J. Stat., Elec. Code §§24, 35 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §13 (1867); N.C. Code ch.16, §2680 (1883); Ohio Stat. ch.211, §2 (1854); T. Patterson, *Election Laws of Oregon*, ch.2, §15 (1870) [hereinafter Or. Elec. Laws]; S.C. Rev. Stat. ch.8, §5 (1873); Tex. Rev. Civ. Stat. art. 1692 (1879).

[4] *See, e.g.*, Va. Code tit.5, ch.10, §125 (1887); Gantt's Digest of the Statutes of Ark. §2328 (1874); Cal. Pol. Code §§1226-27 (1876); Fla. Stat. tit.3, ch.3, §5(7); Conn. Gen. Stat. tit.17, §§768, 74-76, 108 (1866); Ga. Code §1315 (1867); Ill. Rev. Stat. ch.37, §§15, 24 (1845); 1852 Ind. Acts ch.31, §18; Iowa Code §257 (1851); Kan. Gen. Laws ch.86, §8 (1862); Ky. Rev. Stat. ch.32, art. III §5 (1867); La. Rev. Stat., Elec. Code §13 (1856); Me. Rev. Stat. tit.1, ch.4, §§25, 29 (1884); Md. Pub. Gen. Laws art.5, §15 (1878); Mass. Pub. Stat. ch.7, §§11-12 (1882); Mich. Comp. Laws ch.6, ¶59 (1872); 1889 Minn. Laws ch.1, §15; Miss. Rev. Code ch.4, art. 12

Day facilitated the lawful and orderly casting and receipt of ballots. Thus, although qualified electors would "vote *at* an[] election," 1863 W. Va. Acts ch.100, §23 (emphasis added),[5] the vote itself was not the election.

That is apparent from how the process of casting and receiving ballots functioned in practice. What modern-day Americans now describe as "marking and submitting" a ballot, Pet.Br.1, was in 19th-century parlance called "offering to vote," *supra*, pp.14-15 &

(1857); Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §9 (1873); Nev. Gen. Stat. ch.12, §1537 (1885); N.H. Gen. Stat. ch.28, §9 (1867); N.J. Stat., Elec. Code §36 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §28 (1867); N.C. Code ch.16, §§2678, 2684 (1883); Ohio Stat. ch.211, §§17, 21 (1854); Or. Elec. Laws ch.2, §19; Jordan Pa. Digest, *supra*, ch. 4, §§37-38; R.I. Rev. Stat. ch.26, §§1, 13 (1857); S.C. Rev. Stat. ch.8, §§9, 11 (1873); Tenn. Code §850 (1858); Tex. Rev. Civ. Stat. art. 1694 (1879); 1870 W. Va. Code ch.3, §18; Wisc. Rev. Stat. §32 (1878).

[5] *See, e.g.*, Va. Code tit.5, ch.8, §63 (1887); Me. Rev. Stat. tit.1, ch.4, §3 (1884); Ala. Code §§171, 267 (1852); Gantt's Ark. Digest, *supra*, §2327; Cal. Pol. Code §1360 (1876); 1889 Minn. Laws ch.1, §47; Miss. Rev. Code ch.4, art. 16 (1857); Mo. Stat. ch.51, §§14, 22 (1872); Neb. Gen. Stat. ch. 20, §10 (1873); Nev. Gen. Stat. ch.12, §1503 (1885); N.H. Gen. Stat. ch.28, §5 (1867); N.J. Stat., Elec. Code §11 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §13 (1867); N.C. Code ch.16, §2709 (1883); Ohio Stat. ch.211, §§3, 6, 15 (1854); Or. Elec. Laws ch.1, §1; Jordan Pa. Digest, *supra*, ch.4, §40; R.I. Rev. Stat. ch.22, §1 (1857); S.C. Rev. Stat. ch.8, §5 (1873); Tenn. Code §834 (1858); Tex. Rev. Civ. Stat. art. 1696 (1879); Conn. Gen. Stat. tit.17, §109 (1866); Del. Rev. Stat. ch.18, §9 (1874); Fla. Stat. tit.3, ch.1, §2(2); Ga. Code §1320 (1867); Ill. Rev. Stat. ch.37, §§19-20 (1845); 1852 Ind. Acts ch.31, §23; Iowa Code §259 (1851); Kan. Gen. Laws ch.86, §8 (1862); Ky. Rev. Stat. ch.32, art. XII §8 (1867); Mass. Pub. Stat. ch.6, §1 (1882); Md. Pub. Gen. Laws art.5, §19 (1878); Wisc. Rev. Stat. §34 (1878).

n.3. That offer occurred when an elector filled out a ballot or a ticket and presented it to the election official for review. *See, e.g.*, Ala. Code §§207-08 (1852); *see supra* n.3. Although Petitioners identify *that* as the moment the election ends, Pet.Br.24-26, in reality that was just one of the "combined actions" that constitute the election, *Foster*, 522 U.S. at 71. Upon "receiving" the ballot, the official would typically announce the elector's name and give the public or other officials an opportunity to object to the elector's qualifications. 1852 Ind. Acts ch.31, §18; *see* J. Harris, *Election Administration in the United States* 200-46 (1934).[6] If anyone objected—or if the official had independent reason to doubt the elector's eligibility—the official could do anything from require the elector to swear to his qualifications, to examine the elector, or even receive evidence on the issue. *See* 1852 Ind. Acts ch.31, §§21-22.[7] Only once the official was

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[6] Ala. Code §§208, 212 (1852); Cal. Pol. Code §§1226-27 1230 (1876); Del. Rev. Stat. ch.18, §18 (1874); Ill. Rev. Stat. ch.37, §§15, 18 (1845); Kan. Gen. Laws ch.86, §8 (1862); 1889 Minn. Laws ch.1, §§15, 68; Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §9 (1873); Nev. Gen. Stat. ch.12, §§1537, 1547 (1885); Or. Elec. Laws ch.2, §§11, 15; Jordan Pa. Digest, *supra*, ch.4, §37; R.I. Rev. Stat. ch.26, §12 (1857); Tenn. Code §§852, 859 (1858); Va. Code tit.5, ch.10, §125; 1870 W. Va. Code ch.3, §18.

[7] Ill. Rev. Stat. ch.37, §§18-19 (1845); Ala. Code §§212-18 (1852); Cal. Pol. Code §§1227, 1230-43 (1876); Fla. Stat. tit.3, ch.3, §5(9); Del. Rev. Stat. ch.18, §19 (1874); Ga. Code §§1306-07, 1315 (1867); Iowa Code §§258-259 (1851); Kan. Gen. Laws ch.86, §§10-13 (1862); Ky. Rev. Stat. ch.32, art. III §§7-9 (1867); La. Rev. Stat., Elec. Code §§14, 18 (1856); 1889 Minn. Laws ch.1, §§68-72; Me. Rev. Stat. tit.1, ch.4, §99 (1884); Md. Pub. Gen. Laws art.5, §21 (1878); Mass. Pub. Stat. ch.7, §§10, 22-23 (1882); Mich. Comp. Laws ch.6, ¶56 (1872); Neb. Gen. Stat. ch.20, §§39-40, 43 (1873); Nev. Gen. Stat. ch.12, §§1537, 1547 (1885); N.J. Stat., Elec. Code

satisfied that the elector was entitled to vote would he deposit the ballot into the ballot box, *see* Ala. Code §§208-10 (1852),[8] at which point the "offer to vote" ripened into a "vote." Put differently, "the offer must be made to some one authorized to accept it," and only "when accepted, the vote is complete." *People ex rel. Twitchell v. Blodgett*, 13 Mich. 127, 143-44 (1865); *see also Chase v. Miller*, 41 Pa. 403, 419 (1862).

The time for casting and receiving ballots was clearly defined—it occurred on the day of the election, and no later. "[N]o ballots" could "be received" "[after] the polls [were] closed." Cal. Pol. Code §1164 (1876); 1852 Ind. Acts 260, 263, §25. Officials in some states could postpone the closing of the polls if necessary to give electors the opportunity to vote, *see, e.g.*, Ill. Rev. Stat. ch.37, §14 (1845), but in no circumstances could

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§§37-39 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§13-23 (1867); N.C. Code ch.16, §§2683-2684 (1883); Ohio Stat. ch.211, §13 (1854); Or. Elec. Laws ch.2, §§15, 19; Jordan Pa. Digest, *supra*, ch.4, §§40-43; Tenn. Code §§852-858 (1858); Tex. Rev. Civ. Stat. art. 1692 (1879); Va. Code tit.5, ch.8, §§126-27 (1887); Wisc. Rev. Stat. §§35-38 (1878).

[8] Cal. Pol. Code §§1227, 1242 (1876); Ill. Rev. Stat. ch.37, §19 (1845); 1852 Ind. Acts ch.31, §§18, 22; Iowa Code §§257-60 (1851); Kan. Gen. Laws ch.86, §§8, 14 (1862); Ky. Rev. Stat. ch.32, art. III §§5, 7 (1867); La. Rev. Stat., Elec. Code §15 (1856); Mass. Pub. Stat. ch.7, §§10-11, 22-23 (1882); Mich. Comp. Laws ch.6, ¶¶56, 59 (1872); 1889 Minn. Laws ch.1, §§15, 68-72; Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §§9, 42 (1873); Nev. Gen. Stat. ch.12, §§1537, 1544 (1885); N.J. Stat., Elec. Code §§40-41 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§17-19, 31 (1867); N.C. Code ch.16, §2684 (1883); Or. Elec. Laws ch.2, §§13, 19; Tenn. Code §§850, 854 (1858); Tex. Rev. Civ. Stat. art. 1692 (1879); Va. Code tit.5, ch.10, §§125, 127 (1887); 1870 W. Va. Code ch.3, §18; Wisc. Rev. Stat. §§34, 38-39 (1878).

polls remain open after the day set for the election, *see id*. It was therefore "illegal" to receive ballots after Election Day. Or. Laws ch.14, §8 (1872).

Just as clearly, states distinguished the "election" from the "canvass of the votes." Iowa Code §§261-62, 274 (1851).[9] The "election" referred to what occurred while the polls were open—the offers to vote (ballot submission) and the acceptances of the votes (ballot receipt). The canvass, by contrast, referred to the process of reviewing and counting the votes "taken at such election," 1887 Minn. Laws ch.4, §30, and it began only after the polls closed and "the election [was] finished," Tenn. Code §§860-61 (1858); *supra*, n.9. States sometimes gave election officials discretion to complete the canvassing process after the day of election, 1852 Ind. Acts 260, 264, §29,[10] thus

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[9] Ala. Code §219 (1852); Cal. Pol. Code §1252 (1876); Fla. Stat. tit.3, ch.3, §§5(10), 11(7) (1866); Del. Rev. Stat. ch.18, §§22-24 (1874); Ill. Rev. Stat. ch.37, §2 (1845); 1852 Ind. Acts ch.31, §§29, 31-32; Kan. Gen. Laws ch.86, §16 (1862); Ky. Rev. Stat. ch.32, art. V §§1-2 (1867); La. Rev. Stat., Elec. Code §§7, 13, 25 (1856); Me. Rev. Stat. tit.1, ch.4, §32 (1884); Mich. Comp. Laws ch.6, ¶66 (1872); 1889 Minn. Laws ch.1, §16; Miss. Rev. Code ch.4, art. 12 (1857); Neb. Gen. Stat. ch.20, §§10, 12 (1873); Nev. Gen. Stat. ch.12, §1548 (1885); N.J. Stat., Elec. Code §§42-46 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§35, 42 (1867); N.C. Code ch.16, §§2689-2693 (1883); R.I. Rev. Stat. ch.26, §§14, 19 (1857); S.C. Rev. Stat. ch.8, §§13-16 (1873); Tenn. Code §861 (1858); Tex. Rev. Civ. Stat. art. 1696 (1879); Va. Code tit.5, ch.10, §128 (1887); Wisc. Rev. Stat. §42 (1878).

[10] Iowa Code §261 (1851); Del. Rev. Stat. ch.18, §24 (1874); Ill. Rev. Stat. ch.37, §§2, 30 (1845); Ky. Rev. Stat. ch.32, art. V §2 (1867); Me. Rev. Stat. tit.1, ch.4, §34 (1884); Or. Elec. Laws ch.4, §29; S.C. Rev. Stat. ch.8, §§13, 15 (1873); 1870 W. Va. Code ch.3, §§59, 61.

corroborating that the canvass was a post-election administrative step, and not part of the "election" itself.

Those consistent practices underscore what everyone would have known at the time: The elector's act of marking and submitting a ballot—that is, "offering to vote"—did not an "election" make. It was merely a proposal that the election official could accept or reject. Until the proffered ballot was taken "into the hands of an election judge" and deposited into the ballot box, it was just a "meaningless scrap[] of paper." R. Bensel, *The American Ballot Box in the Mid-Nineteenth Century* 16 (2004). The placement of the ballot into the box imbued that piece of paper with electoral significance and marked the "moment" that the official's power to question the elector's qualifications ceased. G. McCrary, *A Treatise on the American Law of Elections* §§199, 244 (1887) ("officers of election have no control over ballots once deposited"). After the ballot box closed, the election was over and the canvassing process could commence.

2. Given the historical backdrop at the time, it is unsurprising that contemporaneous dictionaries and treatises often described an "election" as the process by which ballots are cast by voters and received by election officials. One prominent 19th-century legal dictionary described an "election" as "[v]oting and taking the votes of citizens for members to represent them." Anderson, *Dictionary of Law*, *supra*, at 394. Another (citing state law) explained that the term "election" "means the act of casting and receiving the ballots." B. Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 418

(1879). Leading treatises at the time likewise defined "election" in "common parlance" to include "casting and receiving" ballots. W.H. Michael, Elections, *in* 15 *Cyclopedia of Law and Procedure* 279 (W. Mack ed., 1905).

Contemporary judicial interpretations of "election" are in accord. Several state courts of last resort, drawing on "the meaning of the word 'election' in ordinary usage," *Norman v. Thompson*, 72 S.W. 62, 63-64 (Tex. 1903), interpreted "election" to include "the act of casting and receiving the ballots," *State v. Tucker*, 54 Ala. 205, 210 (1875); *Norman*, 72 S.W. at 63-64 (similar), or "the voting and the taking of the votes of the citizens for members to represent them," *Commonwealth v. Kirk*, 43 Ky. (4 B.Mon.) 1, 2 (1843); *cf. In re Op. of Judges*, 30 Conn. 591, 597-98 (1862) (explaining that "the votes of the electors shall be offered and received" "at" or "in" the "electors' meeting"); *Petty v. Myers*, 49 Ind. 1, 3 (1874) (stating that the county board "ordered an election, 'for the purpose of taking the votes of the legal voters of the said township'" regarding an appropriation of funds for railroad construction).

Other dictionaries and cases defined an election more generally as the "act of choosing a 'person to fill an office,'" and the "day of a public choice of officers." N. Webster, *An American Dictionary of the English Language* 383 (1860); *see also* H. Black, *A Dictionary of Law* 412 (1891) (similar); *cf. Bourland v. Hildreth*, 26 Cal. 161, 194, 216 (1864). This Court similarly interpreted "election" as used in the Constitution to mean the "final choice of an officer by the duly qualified electors." *Newberry*, 256 U.S. at 250. Those

sources further support the Fifth Circuit. No one doubts that marking and submitting a ballot—or, in 19th-century terms, "offering to vote"—is integral to an election. *See supra*, pp.14-18, 20. But the "election" does not end with the "offer" to vote because that by itself has no electoral consequence. Pet.App.10a. Only once the "scrap[] of paper" is received into official custody does the preference reflected on the ballot turn into a completed vote. *Supra*, p.20; *see* McCrary, *supra*, §§199, 244; *cf. People v. Gagliardi*, 111 N.Y.S. 395, 396 (N.Y. Sup. Ct. 1908) (distinguishing between a vote and an offer to vote); *Twitchell*, 13 Mich. at 143-44 (same). Divorcing the concept of ballot receipt from "the election" conflates the individual's expressed preference (as reflected on the marked ballot) with an actual vote (which occurs only once the marked ballot is deposited into official custody). Pet.App.10a. It thus defies ordinary meaning, common sense, and historical practice to say that an election can finish before the votes are received.

B. Contemporaneous Historical Practice Reinforces That an "Election" Includes Ballot Receipt.

1. Consistent with the ordinary meaning of "election" at the time of enactment, the overwhelming contemporaneous practice among the states was to require ballots to be received by Election Day.

During the colonial era, votes were cast through various methods—sometimes by voice, by show of hands, or by casting beans or corn in a bowl. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992) (plurality). An "election" using those methods necessarily encompassed ballot submission and

receipt. Although some jurisdictions allowed proxy voting, those votes had to be delivered to officials by Election Day. *See* C. Bishop, *History of Elections in the American Colonies* 143, 131-32 (1893).

In the 18th and early part of the 19th century, states began adopting paper ballots—which quickly became the preferred practice. *See Burson*, 504 U.S. at 200. These "ballots" were rudimentary at first; "[i]ndividual voters made their own handwritten ballots, marked them in the privacy of their homes, and then brought them to the polls for counting." *Id.* That ballot was considered cast once the voter marked and "deposit[ed] such a vote in the box … kept by the proper officers" of the election. T. Cooley, *A Treatise on the Constitutional Limitations* 604 (1868).

Absentee voting was not commonly available until the Civil War, when that practice became necessary to "secure the franchise of soldiers in the field." Pet.App.15a. But even then, the practice among the states was to require ballots to be submitted and received by Election Day.

"States authorized absentee voting for soldiers using two methods." Pet.App.15a. The first involved "voting in the field." *Id.* "Election officials brought ballot boxes to the battlefield, where soldiers cast their ballots" directly "into official custody with no carrier or intermediary." *Id.* Over a dozen states in the union used this method, which involved setting up election sites "at every place" where the state's soldiers "may be found or stationed." 1862 Iowa Acts (Extra Sess.) 28, 29, ch. 29, §8; *see* D. Collins, *Absentee Soldier*

Voting in Civil War Law and Politics 27 (2014).[11] These elections would often "be held on the same day" as the Election Day for civilians. *E.g.*, 1862 Iowa Acts at 28, §4. States "tried to recreate the full choreography of elections back home, complete with election judges, poll books, [and] procedures for challenging qualifications." *Collins*, *supra*, at 27. Hence, the soldier "voter's 'connection with his vote ended when he put it in the box, precisely as it would have ended if he had put it into the box … at home." Pet.App.15a.

States that allowed voting in the field went to great lengths to ensure that ballots would be received into the custody of election officials on Election Day. Of the fourteen states that allowed field voting, twelve formally deputized servicemen to act as civil election officials.[12] Those election officials "swore oaths, as their counterparts did back home," Collins, *supra*, at 363, to uphold the law and to "studiously endeavor to prevent fraud, deceit and abuse in conducting" the election, 1862 Iowa Acts at 30, §11; *see, e.g.*, 1864 Pa. Laws 990, 990-91, §§4-5. The other two states required military officers to "certify" the legitimacy of

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[11] The Commonwealth of Pennsylvania allowed both field and proxy voting. 1864 Pa. Laws 990, 990-91, 997, §§2, 4-5, 33-34.

[12] 1862 Iowa Acts (Extra Sess.) 28, 29-30, ch. 29, §§9-12; 1864 Pa. Laws 990, 990-91, §§2, 4-5; 1863 Vt. Acts & Resolves 7, 7-9, §§1-2, 4-6; 1864 N.H. Laws 3061, 3061-62, §§2-3; 1864 Ky. Acts 122, 122-23, §§1-5; 1864 Mich. Pub. Acts (Extra Sess.) 40, 40-42, §§1-2, 7-11; 1864 Kan. Sess. Laws 101, 101-03, §§1, 4-6; 1864 Me. Laws 209, 209-10, §§1-2, 4; 1864 Cal. Stat. 279, 280-81, §§4-6; 1863 Ohio Laws 80, §§1-2, 4-5; Md. Const. of 1864, art. XII, §11; *see* Ord. Passed at Mo. State Convention, at 15, §§2-4 (June 12, 1862).

the votes to the Secretary of the State.[13] As a result, the ballots of soldiers in the union states were received into official custody the moment they were cast on Election Day. *See* Pet.App.15a-16a.

Other states allowed proxy voting, which permitted "soldiers to prepare ballots in the field and send them to a proxy for deposit in the ballot box of the soldier's home precinct." Pet.App.15a. This method closely resembles "the form of absentee voting seen today," D. Inbody, *The Soldier Vote* 43 (2016), in part because the soldier's completed ballot could be "transmitted by mail" to the proxy voter, 1863 W. Va. Acts ch.100, §26; 1864 N.Y. Laws 549, 550, §4; 1864 Pa. Laws 990, 990, 997, §§1, 33; 1862 Minn. Laws (Extra Sess.) 13, 14-16, §§2, 4; 1865 Ill. Laws 59, 59-61, §§1, 4. Critically, every single state that used proxy voting required that ballots be received into official custody "[o]n the day of [the] election" to be counted. 1864 N.Y. Laws 549, 550, §5.[14]

2. Absentee voting largely disappeared after the Civil War and did not regain popularity until the early 20th century. Pet.App.16a. By 1914, when the last of the three Election-Day statutes became law, very few states allowed absentee voting. By the end of World

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[13] 1866 Nev. Stat. 210, 215, ch.107, §§25-27; 1864 R.I. Acts & Resolves, ch.529, §1, art. IV.

[14] 1864 Pa. Laws 990, 990, 997-98, §§1, 33-34 ("The elector, to whom the ballot shall be sent, shall, on the day of election, and whilst the polls of the proper district are open, deliver the envelope … to the proper election officer, who shall open the same … and deposit the ballots."); 1864 Conn. Pub. Acts 51, 52-53, §§3, 6-8 (similar); 1863 W. Va. Acts 114, 119-20, §26 (similar); 1862 Minn. Laws (Extra Sess.) 13, 15, §4 (similar); 1865 Ill. Laws 59, 61, §5 (similar).

War I, however, several had adopted absentee voting laws. Some limited absentee voting to soldiers and further limited it to only wartime elections. P. Ray, *Military Absent Voting Laws*, 12 Am. Pol. Sci. Rev. 461, 461-62 (1918). New York, for example, allowed commanding officers to set a date for voting and account for military emergencies, but "in no case shall it be later than the day of the general or special election." *Id.* at 464. Other states required ballots to be marked and submitted before Election Day. *Id.* Still others required ballots to be returned by mail "in time to be counted at home on election day." *Id.* "Thus, *even* during the height of war time exigency, a ballot could be counted only if *received* by Election Day." Pet.App.16a.

Around the same time, and decades after the first two of the Election-Day statutes were enacted, states began experimenting with civilian absentee voting laws. But even then, the universal practice was to require absentee ballots to be received by election officials by Election Day. Pet.App.16a-17a (citing P. Ray, *Absent-Voting Laws, 1917*, 12 Am. Pol. Sci. Rev. 251, 253 (1918)). Those laws fell into one of "two general types, namely, the Kansas and the North Dakota types." *Absent-Voting Laws*, *supra*, at 251. States in the Kansas camp (including Missouri, Washington, New Mexico, Oklahoma, Oregon, and Florida) required absent voters to cast their ballots *in person on Election Day* at the local precinct where they were temporarily located. P. Ray, *Absent Voters*, 8 Am. Pol. Sci. Rev. 442, 443 (1914). The "election official" at the local precinct would then endorse the ballot and mail it to the voter's home precinct. *See id.*; *Absent-Voting Laws*, *supra*, at 253-54; Harris, *supra*,

at 287-88. States in the North Dakota camp required absentee voters to fill out a ballot in the presence of a magistrate and mail their completed ballots to election officials in time to be "opened only on election day at the polls while the same are open." *Absent Voters*, *supra*, at 444-45.

Even as absentee and mail-in voting became "more common over the course of the twentieth century," the vast majority of states required ballot receipt on or before Election Day. Pet.App.17a; *but see* VVF.Br.36-37. According to one count, by 1977, "only two of the 48 States permitting absentee voting counted ballots received after Election Day." Pet.App.17a (citing Overseas Absentee Voting: Hearing on S.703 Before the S. Comm. on Rules and Admin, 95th Cong. 33-34 (1977)). Even today, the majority of states prohibit officials from counting ballots received after Election Day. Of the states that permit absentee ballots from the general public to be received after Election Day, most did not do so until the 21st century.[15] The other states continue to require *receipt* on or before that date. Pet.App.17a (citing Nat'l Conf. of State Legislatures, Table 6: The Evolution of Absentee/Mail Voting Laws, 2020-22 (Oct. 26, 2023)).

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[15] Alaska Stat. §15.20.150 (1979); Cal. Elec. Code. §3020 (2014); D.C. Code §1-10001.05(a)(10A) (2019); 10 ILCS 5/19-8 (2005); 1987 Md. Laws, ch. 398, §1 (27-9); Mass. Gen. Laws ch.54, §93 (2022); Miss. Code Ann. §23-15-637 (2020); Nev. Rev. Stat. §293.317 (2020); N.J. Stat. Ann. §19:63-22 (2018); N.Y. Elec. Law §8-412 (1994); Or. Rev. Stat. §253.070(3) (2022); Tex. Elec. Code Ann. §86.007(a) (2017); Va. Code Ann. §24.2-709(B) (2011); Wash. Rev. Code §29.36.040 (1965); W. Va. Code §§3-3-5(g)(2) (1993).

In short, the historical practice provides considerable support for the notion that the "election" concludes when all ballots are received. "A few 'late-in-time outliers' say nothing about the original public meaning of the Election-Day statutes," which clearly provided that the election ended when the ballot box closed on the single day specified by Congress. Pet.App.18a.

C. Precedent Reaffirms That Ballots Must be Received by Election Day.

This Court's precedents reaffirm that an "election" includes both ballot submission and receipt, not just the former. In *Foster*, this Court held that Louisiana violated the Election-Day statutes by administering an open primary in October that could conclusively select a winner before Election Day in November. 522 U.S. at 71-73. That holding turned on the plain meaning of "the election" in the Election-Day statutes. Although the Court did not "par[e] the term 'election' … down to the definitional bone," it construed "the election" in those statutes as "the combined actions of voters and officials meant to make a final selection of an officeholder." *Id.* at 71-72.

Foster undermines Petitioners' argument that the official's distribution of the ballot and the voter's submission of the ballot in the mail is the final step in "the election." First, ballot submission *and* receipt together comprise the "combined actions of voters and officials" necessary for "the election" to occur. *Id.* at 71; *see supra*, pp.14-18. Of course, a voter must mark and submit their ballots in an election because those completed ballots are how "the will of the voters [is] ascertained." *Maddox v. Bd. of State Canvassers*, 149

P.2d 112, 115 (Mont. 1944). But the "action[] of … officials" of receiving those ballots is equally important, *Foster*, 522 U.S. at 71, because no ballot can affect the outcome of an election "until it is deposited with the election officials," *Maddox*, 149 P.2d at 115; *see supra*, pp.17-18. Second, the "final selection of an officeholder" does not occur until the final ballots are received. *Foster*, 522 U.S. at 71. Mail-in ballots can be lost, they can be recalled, and they can be delayed, thus illustrating that such ballots "are less final than Mississippi claims." Pet.App.12a. So long as the ballot box remains open to receive those ballots after Election Day, the election has not concluded because the universe of votes is unsettled and the electoral outcome is contingent on ballots yet to be received. Pet.App.12a-13a. Simply put, no "final selection" happens—and thus no election happens—until the ballots are received. Pet.App.9a.

To be sure, this Court had no need to definitively parse the term "election," and thus, for example, did not explore the distinction between the election and canvassing. But *Foster* did get close enough "to the definitional bone" to undermine Petitioners' effort to divorce the submission of a ballot from its receipt and view the election as the act of the voter alone. This case presents the flipside of the law in *Foster*. Louisiana tried to end the election too early—well before Election Day. Mississippi ends the election too late—keeping the ballot box open well after the federal Election Day.

II. Petitioners' Contrary Arguments Lack Merit.

A. Petitioners' Text and History Arguments Fall Short.

Petitioners argue that "an election occurs when the voters have cast their ballots"—*i.e.*, when they have "marked and submitted them to election officials as state law requires." Pet.Br.25; *see* VVF.Br.18-19. That counterintuitive and voter-centric interpretation of "election" lacks any principled textual basis and departs from that term's broader historical meaning, this Court's precedent, and common sense.

1. Petitioners begin with dictionary definitions, pointing out that some dictionaries in the 1800s defined "election" to mean "[t]he act of choosing a person to fill an office." Pet.Br.24; VVF.Br.17. But "words 'must be read' and interpreted 'in their context,'" *Sw. Airlines v. Saxon*, 596 U.S. 450, 455 (2022), and that includes the context in which words are used and the historical context in which the relevant statutes were enacted, *see New Prime v. Oliveira*, 586 U.S. 105, 114-16 (2019). When Congress set a single national Election Day, it was plainly setting deadlines for the mechanics of voting, which is, not coincidentally, the principal focus of the Elections and Electors Clauses. These laws set the date on which states shall hold elections, provide instructions for states as they administer elections, and impose consequences on states that interfere with the rights of voters to participate in those elections. *See* 38 Stat. at 384; 17 Stat. at 28-29; 5 Stat. at 721. Thus, the legislation was not addressed exclusively to voters, but was instead directed principally to state election

officials whose disparate laws were being displaced by a uniform federal rule. It makes sense, then, that Congress would use "election" in the sense that invokes the state official's role in "receiving" or "taking" the ballots. *See supra*, pp.14-18, 20. By focusing narrowly on dictionaries that define "election" only from the perspective of the voter, Petitioners at best address only half the electoral equation and at worst ignore the context in which Congress enacted the statutes. *See, e.g.*, *ITCA*, 570 U.S. at 10-12 (looking to statutory context to interpret the National Voter Registration Act).

What is more, when Congress set the "Tuesday next after the 1st Monday in November" as "the day for the election," 2 U.S.C. §7, there was little question that the "act of choosing a person to fill an office," Pet.Br.24, encompassed both the casting of ballots by electors *and* the receiving of ballots by election officials, *see supra*, pp.14-18, 20. Casting a ballot, after all, was just an "offer to vote." The "offer must be made to some one authorized to accept it," and only "when accepted, the vote is complete." *Twitchell*, 13 Mich. at 143-44. That is why other dictionaries and judicial decisions at the time defined "election" to include not just the casting of ballots, but the receipt of them as well. *See supra*, pp.20-22.

VVF (but not Mississippi) insists that if an "election" includes ballot receipt, then there is no reason it would not include *counting* the ballots as well. VVF.Br.22-24; *accord* DNC.Amicus.Br.25. That contention is equally ahistorical and insensitive to context. There is a critical and historically grounded difference between the "election" and the "canvass of

the votes," which is why state election codes at the time routinely distinguished between the two. *See supra*, pp.19-20. While states routinely permitted officials to *tally* votes after Election Day when the Election-Day statutes were enacted, *see* DNC.Amicus.Br.20, no state counted ballots *received* after Election Day. *See supra*, pp.18-19. Indeed, the possibility of a "recount" all but necessitates separating the election from canvassing and forecloses the possibility that canvassing could end on a single nationally uniform date.

VVF (but not Mississippi) points to several contemporaneous state laws (it says) authorized ballot receipt after Election Day. VVF.Br.33-35 (Pennsylvania, Nevada, and Rhode Island). In reality, all three states permitted "voting in the field" whereby soldiers would cast ballots *on Election Day* to military officers empowered by the state to administer elections. *See supra*, pp.23-25. Contrary to VVF's claim (VVF.Br.35), Pennsylvania deputized those officers as election officials. *See* 1839 Pa. Laws 519, 528 §§44-46. Nevada and Rhode Island likewise required military officers tasked with administering the field election to certify the legitimacy of the votes before sending the ballots to the Secretary of the State for counting. *See supra*, pp.24-25 & n.13. Thus, the ballots of soldiers in those states were effectively received into official custody on Election Day. *See* Pet.App.15a-16a. But even if VVF were right about those state laws, a "few late-in-time outliers" do not overcome the "overwhelming weight of other evidence" from the remaining 19th-century practice that uniformly supports Respondents. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 67-70 (2022).

VVF questions why "calling military officers 'election officials' would change the analysis, when their role is the same as the Postal Service's role today—to convey the ballots to the real election officials who will then count them." VVF.Br.35. But that understates the role that deputized military officials played in the electoral process and overstates the sanctity of a mailbox. Unlike the postal service, those officers were specifically tasked with administering the election in the field, swore an oath to uphold the law and accept ballots only from qualified voters, and had affirmative duties to prevent fraudulent ballots and to certify the legitimacy of the votes. *See* 90 Fed. Reg. 52,883, 52,886 (Nov. 24, 2025). The postal service, by contrast, accepts all comers.

The Democratic National Committee, for its part, grossly misrepresents state practice in an effort to give VVF's position historical pedigree. It claims that states (most of which were in the confederacy at the time) "routinely authorized post-election-day receipt windows: North Carolina accepted ballots received within 'twenty days' after election day; Alabama 'two or three weeks after the election,' Georgia 'within fifteen days after the election,' South Carolina on 'the first Saturday next ensuing' after the election, Florida on 'the twentieth day after the election,' and Maryland 'fifteen days after the election.'" DNC.Amicus.Br.20 (quoting J.H. Benton, *Voting in the Field* 317-18 (1915)). But the source they cite says nothing whatsoever about "receipt windows." That source explains how states routinely provided more time "for *canvassing* the votes." Benton, *supra*, at 317 (emphasis added). Thus, North Carolina "counted"

ballots "twenty days" after Election Day,[16] Alabama "counted" ballots two or three weeks after the election,[17] Georgia "counted" ballots "within fifteen days after the day of elections,"[18] South Carolina "counted" ballots on "the first Saturday next ensuing" after the election,[19] Florida "counted" ballots on "the twentieth day after the election,"[20] and Maryland "count[ed]" ballots "fifteen days after" the election.[21] Benton, *supra*, at 317-18. If anything, the DNC's argument underscores why the Fifth Circuit was right to distinguish between ballot receipt (which must occur by Election Day) and the counting of the vote (which *may* occur after Election Day and *must* occur afterward in the context of recounts).[22]

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[16] 1861 N.C. Laws 40, 40-41, §§2-3.

[17] 1861 Ala. Acts 79, 80 §3.

[18] 1861 Ga. Laws 31, §2.

[19] S.C. Act No. 4572, §3 (Dec. 21, 1861).

[20] 1862 Fla. Laws 55, ch.1379, §4.

[21] Md. Const. of 1864, art. XII, §14. Maryland allowed soldiers to hold their election day up to five days *after* the day that civilians cast their ballots. *See id.*, art. XII, §11. Nonetheless, because soldiers deposited their ballots in the field with military officers that had been deputized as election officials, their ballots were submitted and cast on the election day set by state law.

[22] The Democratic National Committee makes the even bolder claim that "Founding-era documents" prove that an "election" did not include ballot receipt. DNC.Amicus.Br.6-7. But it can do so only by conflating the discrete steps in the process for electing the President, specifically the process of electing the President and the process for counting the votes in the Senate, which is analogous to canvassing and can and does occur well after the election is finished.

With virtually no contemporary historical practice to point to, Petitioners dismiss it as irrelevant because "even if States generally received ballots by election day in the 1800s," that does not necessarily mean that "the federal election-day statutes require" that practice. Pet.Br.32. That misses the mark. The principal relevance of contemporary state practices is that they inform the original public meaning of the term "election" in the Election-Day statutes. And the proper interpretation of that term makes clear that a state that deviated from the uniform practice of treating the election as ending when the polls and the ballot box shut would have found its law preempted. The fact that no state even tried such an innovation until long after the Election-Day statutes were enacted just underscores that such a practice cannot be squared with the proper understanding of "election" or the basic idea of having a single national Election Day. *Cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 505-06 (2010) (treating "the lack of historical precedent" as a "telling indication of the" problems with it).

Petitioners next resort to a parade-of-horribles argument, insisting that Respondent's position would freeze election law in the 19th Century. Pet.Br.33-35. Putting aside the prudence of some "permissive" contemporary practices, that alarmist argument has no basis in reality. The relevant provisions in the Election-Day statutes do not regulate the *manner* in which ballots may be cast (absentee, secret, or otherwise). They just set the *time* by which federal elections must occur. *See Foster*, 522 U.S. at 71-73. Because those statutes do not dictate the manner in which the elections must occur, states may continue to

"innovat[e]" on "whether, when, and by whom to allow absentee voting" or "the manner in which absentee voting" occurs, subject to the ultimate supervision of Congress via the Elections Clause. Pet.Br.31. Whether state law allows for absentee voting, secret ballots, or some future innovation, all the Election-Day statutes demand is that the casting and receiving of the vote occur by the day set for the election, so that the polls and the ballot boxes close on the same date nationwide. And contrary to Mississippi's insistence, there is nothing "implausible" about the Election-Day statutes setting the deadline for ballot receipt. Pet.Br.31. The point of creating a time for the election is to establish a deadline by which the election will be consummated. What *is* "implausible" is Mississippi's view that the Election-Day statutes set a uniform time for the election to occur but permit ballots to be received days, weeks, or months after Election Day. That would make the Election-Day statutes "self-defeating." *Quarles v. United States*, 587 U.S. 645, 654 (2019).

Nor would affirming the Fifth Circuit's judgment imperil early voting. As the Fifth Circuit explained, *Foster* instructs that the election concludes once all the ballots have been submitted by the voters and received by the election officials—that cannot happen either before or after "the day" for the election. 522 U.S. at 72-73. That is the "consummation" of the electoral process referenced by the decision below, and it only occurs once the final ballots have been received. *See* Pet.App.8a-13a. As a slew of Civil-War era laws demonstrate, ballots could be kept in the custody of election officials *before* Election Day so long as they were received *by* Election Day. *See supra*, pp.23-25;

see, e.g., 1864 Conn. Pub. Acts 51, 52-53, §§3, 6-8; 1863 W. Va. Acts ch.100, §26; 1862 Minn. Laws (Extra Sess.) 13, 13-15, §§1-4.

Petitioners' other responses to the historical practice fall flat. Mississippi argues that Congress enacted the Election-Day statutes to combat fraud and corruption, not in response to "a problem of ballot receipt." Pet.Br.30-32. Setting aside the obvious problems of Mississippi's "psychoanalysis" of "what Congress probably had in mind" when enacting the Election-Day statutes, *United States v. Pub. Util. Comm'n*, 345 U.S. 295, 319 (1943) (Jackson, J., concurring), the notion that ballot receipt has nothing to do with election fraud (or suspicions about election fraud) is fanciful, *see infra*, pp.46-47, especially in the context of absentee voting, *see Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 685 (2021). Mississippi also ignores Congress' textually evident concern with uniformity. *See Foster*, 522 U.S. at 73 (noting that Congress sought to remedy "more than one evil" in enacting the statutes). All good things, including elections, must end, and Congress wanted the election to end on Election Day nationwide. Just as a vote does not count until it is received, the election cannot end until the ballot boxes are closed. Letting votes trickle in for days and weeks after the date Congress specified for the election cannot be squared with the statutes Congress enacted.

Finally, Petitioners insist that state post-election receipt laws cannot be preempted because the Election-Day statutes do not explicitly say "ballots must be received by Election Day." *See* Pet.Br.38-39; VVF.Br.19-20. Petitioners thus insist that states are

free to experiment and adopt post-election receipt deadlines akin to a "mailbox rule" as a "policy choice." Pet.App.28, 38. But that misunderstands how the preemption inquiry works in this unique context. A state law need not create a "direct conflict" with the text of the federal statute to be invalid under the Elections Clause; it is enough that it is simply "inconsistent with" that statute. *ITCA*, 570 U.S. at 15. As explained above, text, historical context, and precedent all indicate that the term "election" as used in the Election-Day statutes includes ballot receipt, so states lack the discretion to choose when ballots must be received into official custody. That must happen by Election Day.

B. Congress Has Neither Endorsed nor Acquiesced to Post-Election-Day Receipt of Mail Ballots.

Unlike Mississippi, VVF devotes the lion's share of its brief to arguments based on legislative history and ostensible congressional acquiescence and approval of post-election ballot-receipt deadlines. VVF.Br.28-51. Those arguments are meritless and no match for the text, historical practice, or precedent—all of which establish that the ordinary meaning of an "election" includes ballot receipt.

1. To the extent VVF invokes "legislative acquiescence," VVF.Br.49-50, its argument is a non-starter. "Congressional inaction cannot amend a duly enacted statute." *Cent. Bank of Denv. v. First Interstate Bank of Denv.*, 511 U.S. 164, 186 (1994). Nor does VVF improve its lot by framing its argument in terms of congressional "incorporat[ion]" of state post-election receipt deadlines. VVF.Br.50. The

question before the Court concerns the meaning of "the election" at the time the Election-Day statutes were enacted, which in turn informs the preemptive scope of those statutes. "[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," *United States v. Price*, 361 U.S. 304, 313 (1960), and thus it is neither here nor there whether Congress "in 1942, 1944, 1970, 1986, and 2009" thought that ballots could or could not be received on Election Day, VVF.Br.49.

VVF's argument runs into a more fundamental problem. Virtually all of the statutes VVF cites arise in the narrow context of absentee ballots cast by overseas voters. Congress' treatment of ballots in that specific atypical setting sheds little light on what baseline rule the Election-Day statutes impose. The specific controls the general in the specific context in which it applies, but using specialized statutes to displace the meaning of statutes designed to supply the general rule for federal elections nationwide gets matters backwards.

2. At any rate, the enactments VVF invokes do not even demonstrate congressional acquiescence or approval. VVF spends considerable time scrutinizing two short-lived wartime statutes—from 1942 and 1944—imposing specific ballot-receipt deadlines to argue that the Election-Day statutes did not "already impose" ballot-receipt deadlines. VVF.Br.38-42 (citing Pub. L. No. 77-712, 56 Stat. 753 (1942); Pub. L. No. 78-277, 58 Stat. 136 (1944)). The statutes do not support that argument.

The 1942 Act created the federal war ballot, which the military could use to cast their votes (in federal

and certain state elections) rather than rely on state-created absentee ballots. *See* §§1, 5, 56 Stat. at 753, 754-55. Consistent with the Election-Day statutes, the Act instructed that war ballots would be invalid if "received by the appropriate election officials of the [State] … after the hour of the closing of the polls on the date of … holding the election." §9, 56 Stat. at 756. That reinforces the understanding that the election is over when the polls close and thus the ballot receipt must occur by Election Day for the vote to count. It does not, as VVF suggests, VVF.Br.49-50, produce surplusage because the 1942 act addresses the newly created federal war ballot and extends the ballot-receipt deadline to new contexts not covered by the general federal Election-Day statutes—primary elections, *see* §13, 56 Stat. at 757, and even elections for state officers, if authorized by the state, *see* §5(a), 56 Stat. at 754. *Accord J.E.M. Ag Supply v. Pioneer Hi-Bred Int'l*, 534 U.S. 124, 144 (2001). VVF emphasizes §12, which allows members of the military "to vote … in accordance with the law of the State of his residence." VVF.Br.39. But that provision just makes clear that voters have the option of using the war ballot or state-issued absentee ballots. It should not be read to incorporate states' post-election receipt deadlines simply because Congress "did not displace" those existing practices "expressly." VVF.Br.39.

VVF's arguments about the 1944 act fare little better. VVF identifies a provision explaining that "any extension of time for the receipt of absentee ballots permitted by State laws shall apply to ballots cast under this title." §311(b)(3), 58 Stat. at 146. VVF.Br.40-41. That refinement of the procedures available to servicemembers given the availability of a

specialized federal war ballot says next to nothing about the Election-Day statutes enacted by different Congresses decades earlier. Moreover, whatever limited value that provision offers is weakened further by the fact that Congress repealed it two years later in 1946. *See* Pub. L. No. 79-348, 60 Stat. 96 (1946). That rapid repeal underscores that §311(b)(3) was a short-lived wartime accommodation—not a durable gloss on the meaning of "election" in the Election-Day statutes.

The 1970 amendments to the Voting Rights Act take us three decades further removed from original meaning, but they do not otherwise move the needle. VVF invokes language in those amendments stating that "[n]othing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein," Pub. L. No. 91-285, §202(g), 84 Stat. 314, 317 (1970) (codified at 52 U.S.C. §10502(g)), to prove that states "*may* accept absentee ballots that arrive later" than Election Day, VVF.Br.44. That is wrong. The "voting practices … prescribed herein" do not include the federal Election-Day statutes, and thus the 1970 amendments say nothing about the baseline rule of Election-Day ballot receipt that those statutes establish. Moreover, these changes apply only to presidential elections and not congressional elections, §202(a)-(g), 84 Stat. at 316-17—providing yet another reason the amendments do not support VVF's inference that Congress allowed ballots to be received after Election Day all along.

VVF relies heavily on the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") to suggest that Congress approved state post-election

ballot receipt deadlines. VVF.Br.44-46. But that statute did no such thing. UOCAVA provides that a *federal* absentee ballot "shall not be counted" if a state receives a *state* absentee ballot by "the deadline for receipt of [that] ballot under State law." 52 U.S.C. §20303(b)(3). In other words, it ensures that an overseas absentee voter does not get to vote twice—if a voter submits both a federal ballot and a state ballot, the former does not count if the latter is timely received. So why set the deadline for the state ballot by reference to state law rather than Election Day? The answer is because at least one state at the time required absentee ballots to be received *before* Election Day. *See* §206, 1986 Miss. Laws 773, 832. Congress thus preserved the pre-election receipt deadlines that existed in those states.

Finally, VVF cites the MOVE Act's amendments to UOCAVA, which requires federal military officials to transmit overseas ballots to state election officials "not later than the date by which an absentee ballot must be received in order to be counted in the election." 52 U.S.C. §20304(b)(1). Setting aside the fact that this provision does not regulate absentee voters one way or another, it is also explained by the fact that some states at the time—as now—require absentee ballots to be delivered before the day set for federal elections. *See* §206, 1986 Miss. Laws 773, 832; §1308(c), 1987 La. Sess. Law Serv. 831; La. R.S. 18:1308(C).

At the very most, these provisions show that Congress created certain carveouts from the general rule for exceptional circumstances involving absentee ballots cast by members of the armed forces overseas.

They do not establish that, when Congress enacted the Election-Day statutes in 1845, 1872, and 1914, an "election" excluded ballot receipt.

3. If anything, the subsequent congressional enactments highlighted by VVF support *Respondent*'s reading of the statute. Congress repeatedly used the word "election" in the relevant statutes to refer to the combined process of ballot submission and receipt. For example, both the Civil Rights Act of 1960 and the Voting Rights Act of 1965 define voting to include "casting a ballot" and "having such ballot counted properly and included in the appropriate totals of votes" for candidates and ballot propositions "for which votes are received *in an election*." *See* Pub. L. No. 89-110, §14(c)(1), 79 Stat. 437, 445 (1965) (codified at 52 U.S.C. §10310(c)(1)) (emphasis added); Pub. L. No. 86-449, 74 Stat. 86, 91 (1960) (codified at 52 U.S.C. §10101(e)). By describing a vote as something that is "received *in an election*," Congress demonstrated its understanding that ballot receipt is part and parcel of an "election." *See also* 52 U.S.C. §10308(b) (describing a ballot as something that is "cast in [an] election"). That supports interpreting "election" in this context to encompass ballot receipt. *See supra*, p.16 & n.5 (state codes referencing voting as what happens "at" an election).

C. Petitioners' Strained Reliance on *RNC v. DNC* Lacks Merit.

Petitioners' invocation of *Republican National Committee v. Democratic National Committee*, 589 U.S. 423 (2020) (per curiam) ("*RNC*"), gets them nowhere. They boldly claim that the *RNC* decision stands for the proposition that "ballot receipt is not

part of an election." Pet.Br.27. That decision arose from an emergency stay application filed with this Court in the early weeks of the pandemic. The "narrow" question before the Court was whether absentee ballots in Wisconsin's primary election "must be mailed and postmarked by election day, Tuesday, April 7, as state law would necessarily require," or if those ballots may instead (as the district court ordered) be "mailed and postmarked after election day, so long as they are received by Monday, April 13." *RNC*, 589 U.S. at 423-24.

"Importantly," the plaintiffs had not asked the district court to "allow ballots mailed and postmarked after election day … to be counted." *Id.* at 424. "By changing the election rules so close to the election date and by affording relief that the plaintiffs themselves did not ask for in their preliminary injunction motions," the district court violated principles foreclosing federal courts from "alter[ing] the election rules on the eve of an election." *Id.* (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). The Court observed in passing that "the deadline … to receive absentee ballots has been extended from [election day] to Monday, April 13," but noted that the legality of "[t]hat extension … *[was] not challenged in this Court*." *Id.* at 423-24 (emphasis added).

RNC has no bearing on the question presented here for multiple reasons. First, that decision did not turn on the meaning of an "election." It certainly did not involve the Election-Day statutes because the stay application arose from Wisconsin's *primary* election, the timing of which is governed exclusively by state law. Nor did *RNC* address the meaning of "election"

more generally. The Court's holding instead rested on the district court's failure to abide by the *Purcell* limits on a federal court's equitable authority. *See id.* at 424. Second, Petitioners read too much into the fact that the Court's disposition permitted votes to be received after Election Day. The receipt-deadline extension was "not challenged" in this Court. *Id.* at 423. As important as the federal election deadline is, it is not jurisdictional, so this Court was under no obligation to raise it itself. If drive-by jurisdictional rulings are entitled to "no precedential effect," *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006), a non-jurisdictional, non-ruling (on an emergency motion, no less) carries no force whatsoever. Indeed, Petitioners' felt-need to rely on *RNC* only underscores the utter paucity of actual authority for their position.

D. Policy Concerns Cannot Rewrite the Election-Day Statutes.

As a final resort, Petitioners and amici raise a flood of arguments about why faithful application of the Election-Day statutes makes for bad policy. Those policy arguments cannot overcome what the plain text of the Election-Day statutes require. But that aside, their arguments are wide of the mark. There are compelling policy arguments in favor of having the election end when the ballot box closes on Election Day. And the one thing all parties can agree on is that the Elections and Electors Clauses give Congress the power to adjust the rules in the unlikely event that Petitioners' arguments gain traction with the body to which those arguments are properly directed.

Petitioners and their amici worry that affirming the judgment below would invalidate a slew of state

laws. But they neglect to mention that up until 2014, the overwhelming majority of states imposed Election Day deadlines for ballot receipt. *See supra*, pp.23-28. Indeed, until the early 2000s, post-election receipt deadlines were the rare exception rather than the rule.[23] Far from having "disastrous consequences," DNC.Amicus.Br.27 (capitalization altered), affirming the judgment would just return things to the status quo that largely prevailed for more than two centuries. And contrary to their contentions, affirming the decision below would not interfere with the ability of "overseas citizens, rural voters, elderly and disabled voters, and voters lacking reliable transportation" from voting absentee. No matter what the deadline is, there will always be a few voters who miss it. *See Democratic Nat'l Comm. v. Wis. Legislature*, 141 S.Ct. 28, 39 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) ("*DNC*"). If anything, having a single clear nationwide deadline should avoid confusion and make it easier to comply.

In reality, the policy arguments cut the other way. As several members of Congress explained at the time, the absence of a uniform Election Day invites fraud—and, just as important, the appearance of fraud. Morley.Amicus.Br.9-17 (collecting sources). The relevant Congresses addressed those concerns about fraud with a uniform federal deadline. And there is no serious debate that a uniform federal deadline for casting *and receiving* ballots better serves that federal interest. As members of this Court have recognized,

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[23] In all events, Congress of course remains free to carve out exceptions from the general rule that the Election-Day statutes set.

there are "important reasons" to "require absentee ballots to be *received* by election day, not just *mailed* by election day." *DNC*, 141 S.Ct. at 33 (Kavanaugh, J., concurring). That rule "avoid[s] the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the results of an election." *Id.*

As things stand under state law, the ballot boxes remain open in some states for days and even weeks after the day designated by Congress to bring the election to a close. That reality would make no sense to the legislators who enacted the Election-Day statutes or the voters who first read them. Instead, the original public meaning and the common sense of the matter is that the polls and the ballot box should close on Election Day. That allows the counting to begin promptly and substantially reduces both the opportunities for fraud and the perception that the votes are still coming in from precincts that favor one candidate or the other. In short, the policy arguments, plain text and common sense are in one accord: the election ends when the ballot box is closed, and federal law commands that to happen on Election Day.

CONCLUSION

This Court should affirm.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OREGON
EUGENE DIVISION

JUDICIAL WATCH, INC.; CONSTITUTION PARTY OF OREGON; SUNI DANFORTH; and HANNAH SHIPMAN, Plaintiffs, v. LAVONNE GRIFFIN-VALADE, in her official capacity as the Oregon Secretary of State; and THE STATE OF OREGON, Defendants.	Civil Action No. 6:24-cv-1783 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE NATIONAL VOTER REGISTRATION ACT**

* *Application for admission pro hac vice forthcoming.*

Plaintiffs Judicial Watch, Inc., the Constitution Party of Oregon ("Constitution Party"), Suni Danforth, and Hannah Shipman ("Plaintiffs") file this complaint for declaratory and injunctive relief against Lavonne Griffin-Valade, in her official capacity as Oregon Secretary of State, and the State of Oregon ("Defendants").

1. Plaintiffs seek declaratory and injunctive relief to compel Defendants to comply with their voter list maintenance obligations under Section 8 of the National Voter Registration Act of 1993 ("NVRA" or "Act"), 52 U.S.C. § 20507. Plaintiffs also seek reasonable attorneys' fees, litigation expenses, and costs, which are available to prevailing parties under the Act. *Id.*, § 20510(c).

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, and in particular under 52 U.S.C. §§ 20507 and 20510(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Defendant Griffin-Valade's main office is in Marion County and all defendants are residents of Oregon. Venue is also proper in this district under 28 U.S.C. § 1391(b)(2), and proper in this division under Local Rule 3-2(a), because a substantial part of the events and omissions giving rise to the claims alleged herein occurred in Marion County, including (a) the acts and omissions constituting Defendant Griffin-Valade's failure to comply with the NVRA, which occurred in her Marion County office; (b) the consequences of Defendants' failures to comply with the NVRA, which include the fact that, during the most recent two-year measuring period, Marion County removed almost no registrations pursuant to Section 8(d)(1)(B), and did not report critical NVRA-related data to the Election Assistance Commission; and (c) the resulting injuries to Plaintiff Constitution

Party, which is headquartered in Marion County, and to Plaintiff Hannah Shipman, who permanently resides in Marion County.

PARTIES

4. Plaintiff Judicial Watch, Inc. ("Judicial Watch") is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, D.C. 20024.

5. Plaintiff Constitution Party is a registered political party in the State of Oregon. It is devoted to recruiting and maintaining Constitution Party members and electing candidates who espouse its principles to state and federal office in Oregon. It is currently headquartered in Marion County, Oregon.

6. Plaintiff Suni Danforth is a resident and lawfully registered voter in Umatilla County, Oregon. Ms. Danforth is a member of Judicial Watch.

7. Plaintiff Hannah Shipman is a resident and lawfully registered voter in Marion County, Oregon. Ms. Shipman is a member of the Constitution Party.

8. Defendant LaVonne Griffin-Valade is Oregon's Secretary of State. As described herein, her statutory duties include coordinating state responsibilities under the NVRA; ensuring the uniform application, operation, and interpretation of election laws; issuing directives and instructions to local officials about registration and election procedures; adopting rules concerning the efficient administration of election laws; and enforcing compliance with her directives, instructions, and rules. Her executive offices are in Marion County, at 900 Court Street NE, Capitol Room 136, Salem, Oregon 97301. She is sued in her official capacity.

9. Defendant State of Oregon is a sovereign state of the United States of America.

STATUTORY BACKGROUND

10. Section 8 of the NVRA provides that "each State shall … conduct a general program that makes a reasonable effort to remove … from the official lists of eligible voters" the names of voters who have become ineligible by reason of death or a change of residence. 52 U.S.C. § 20507(a)(4).

11. With respect to voters who have changed residence, Section 8 provides that no registration may be cancelled on that ground unless the registrant either (1) confirms this fact in writing, or (2) fails to timely respond to an address-confirmation notice described by the statute (the "Confirmation Notice"). 52 U.S.C. § 20507(d)(1).

12. A Confirmation Notice must incorporate a "postage prepaid and pre-addressed return card, sent by forwardable mail," asking the registrant to confirm his or her residence address. *Id*. at (d)(2). If a registrant fails to respond to such a Confirmation Notice, and then fails to vote (or contact the registrar) during a statutory waiting period extending from the date of the notice through the next two general federal elections, the registration is cancelled. *Id*. at (d)(1)(B).

13. Federal and state regulations refer to voter registrations as "inactive" when a registrant has failed to respond to a Confirmation Notice and the statutory waiting period has commenced but has not yet concluded. 11 C.F.R. § 9428.7; O.R.S. § 247.563(3).

14. A voter with an inactive registration may still vote on election day. 52 U.S.C. § 20507(d)(2)(A). Accordingly, inactive voters are still registered voters.

15. In June of each odd-numbered year, the U.S. Election Assistance Commission ("EAC") is required by law to report to Congress its findings relating to state voter registration practices. 52 U.S.C. § 20508(a)(3).

16. Section 8(i) of the NVRA grants the public the right to request information

concerning voter list maintenance. It provides: "Each State shall maintain for at least 2 years and shall make available for public inspection" and copying "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).

17. Though not purporting to be an exhaustive list, Section 8(i)(2) provides specific examples of responsive records: "The records maintained … shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i)(2).

18. The NVRA provides that "[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. Oregon law designates the Secretary of State as this officer. O.R.S. § 246.110.

19. Under Oregon law, the Secretary of State is responsible for "obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election laws." O.R.S. § 246.110. In carrying out these duties, the Secretary of State "shall prepare and distribute to each county clerk detailed and comprehensive written directives, and shall assist, advise and instruct each county clerk, on registration of electors and election procedures which are under the direction and control of the county clerk," and a "county clerk affected thereby shall comply with the directives or instructions." O.R.S. § 246.120. Further, a Secretary of State may adopt rules considered "necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws." O.R.S. § 246.150.

20. Oregon law also provides:

> Whenever it appears to the Secretary of State that a county clerk, city elections officer or a local elections official has failed to comply with an interpretation of any election law made by the Secretary of State under ORS 246.110 (Secretary of State as chief elections officer) or has failed to comply with a rule, directive or instruction made by the Secretary of State under ORS 246.120 (Directives, instructions and assistance to county clerks) … or 246.150 (Rules), the Secretary of State may apply to the appropriate circuit court for an order to compel the county clerk, city elections officer or local elections official to comply.

O.R.S. § 246.820.

21. The NVRA affords a private right of action to any "person who is aggrieved by a violation" of the Act. 52 U.S.C. § 20510(b). Ordinarily, a private litigant is required to send notice of a violation to the chief State election official 90 days prior to commencing a lawsuit. Notice of only 20 days is required "if the violation occurred within 120 days before the date of an election for Federal office." No notice is required if a "violation occurred within 30 days before the date of an election for Federal office." *Id.* § 20510(b)(1), (2), (3).

FACTS

Oregon's Low Numbers of Removals Pursuant to Section 8(d)(1)(B).

22. On June 29, 2023, the EAC published its biennial, NVRA-related report, entitled ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE REPORT, A REPORT FROM THE U.S. ELECTION ASSISTANCE COMMISSION TO THE 118TH CONGRESS, available at https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

23. Along with this report, the EAC published the responses it received to a voter registration survey it sent to the states. The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys under the heading for 2022, at a link entitled "2022 Election Administration and Voting Survey Instrument." States, in consultation with their own county and local officials, transmit their answers to this voting survey directly to the EAC.

24. States' responses to EAC surveys are compiled in datasets available online in several different software formats, at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys. Responses to the most recent survey were published on June 29, 2023. They are available online under the heading for 2022 as "EAVS Datasets Version 1.0."[1]

25. The largest number of outdated registrations subject to removal under the NVRA usually belong to those who have changed residence. For this reason, the largest number of removals under the NVRA are usually made pursuant to Section 8(d)(1)(B), for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.

26. The data Oregon transmitted to the EAC shows that 19 counties removed zero voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B). The 19 counties are Baker County, Benton County, Clatsop County, Columbia County, Gilliam County, Grant County, Harney County, Hood River County, Klamath County, Lane County, Linn County, Malheur County, Morrow County, Multnomah County, Polk County, Sherman County, Wallowa County, Wasco County, and Wheeler County

27. The data Oregon transmitted to the EAC also showed that 10 other counties removed 11 or fewer voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B). These 10 counties are Douglas County (1 removal), Jackson County (11), Josephine County (3), Lincoln County (2), Marion County (5), Tillamook County (1), Umatilla County (3), Union County (3), Washington County (6), and Yamhill County (1).

28. In all, these 29 counties reported a combined total of 2,404,849 voter registrations as of November 2022. Yet they reported removing a combined total of 36 registrations in the last

[1] An updated version of the initial responses ("EAVS Datasets Version 1.1") was published on the same webpage on December 18, 2023, to account for new information submitted by Delaware, Hawaii, West Virginia, and Wisconsin. The Oregon data was unchanged.

two-year reporting period pursuant to Section 8(d)(1)(B) because the registrants failed to respond to a Confirmation Notice and failed to vote in the next two general federal elections.

29. In Plaintiffs' experience, based on years of enforcing the NVRA, these are woefully inadequate numbers of removals under Section 8(d)(1)(B). There is no possible way these counties can be conducting a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible because of a change of residence while removing so few registrations under Section 8(d)(1)(B).

30. According to the Census Bureau, 14.5% of Oregon residents are not living at the same residence address as they were one year ago.

31. According to the Census Bureau, about 157,729 Oregon residents moved out of state in 2022 (the most recent year for which such data is available).

32. If the identified counties were complying with Section 8(d)(1)(B) of the NVRA, the number of registrations they remove pursuant to that provision in any two-year period should be much higher. In particular, that number should never be zero, in any jurisdiction.

33. By way of comparison, Curry County, Oregon, with a much smaller total of 19,183 voter registrations in November 2022, removed 1,408 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period.

34. By way of comparison, Lake County, Oregon, with 5,604 voter registrations, removed 330 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period. That is still many more voter registrations than were removed under that provision in all 29 identified counties *combined*.

35. The fact that Oregon's own data shows that more than four fifths of its counties removed few or no registrations under Section 8(d)(1)(B) for failing to respond to a Confirmation

Notice and failing to vote in the next two general federal elections establishes a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, for which Defendants Griffin-Valade and the State of Oregon are liable.

36. The fact that Oregon's own data shows that more than four fifths of its counties removed few or no registrations under Section 8(d)(1)(B) establishes that Defendant Griffin-Valade has failed in her duty, as Oregon's chief State election official, to coordinate State responsibilities under the NVRA.

Oregon's High Overall Registration Rates

37. A jurisdiction's overall registration rate is (1) the number of its voter registrations, divided by (2) the number of citizens over the age of 18 who live there.

38. When a registration rate exceeds 100%, meaning that the number of registrations exceeds the number of citizens old enough to register and vote, it is an indication that a jurisdiction is not taking steps required by law to cancel the registrations of ineligible registrants.

39. In October 2024, Plaintiffs compared the total number of registrants, active and inactive, on Oregon's voter rolls with the most recent five-year American Community Survey estimates from the Census Bureau of the citizen voting-age populations of Oregon's counties. This comparison indicated that 35 of Oregon's 36 counties had more voter registrations than citizens over the age of 18. In other words, these 35 Oregon counties showed total registration rates exceeding 100%.

40. The foregoing comparison also revealed that Oregon as a whole had significantly more voter registrations than citizens over the age of 18, with a statewide registration rate of 119%.

41. The high registration rates of Oregon and its counties is evidence of a statewide

failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible under the NVRA, for which Defendants are liable.

42. The high registration rates of Oregon and its counties show that Defendant Griffin-Valade has failed in her duty as Oregon's chief State election official to coordinate State responsibilities under the NVRA.

Oregon's High Percentage of Inactive Voters

43. Under Section 8(d)(1)(B) of the NVRA, registrants who do not respond to a Confirmation Notice are marked inactive and removed from the rolls after the statutory waiting period. These removals are mandatory. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018) ("federal law makes this removal mandatory").

44. Removing registrations that have been inactive for two general federal elections is a necessary part of any effort to comply with the NVRA's mandate to conduct a general program that makes a reasonable effort to remove ineligible registrants.

45. Having a high percentage of inactive registrations is an indication that a jurisdiction is not removing inactive registrations after two general federal elections as the NVRA requires.

46. A jurisdiction's inactive registration rate is obtained by dividing (1) the number of inactive registrations in that jurisdiction by (2) the total number of registrations.

47. The inactive registration rates of Oregon and its counties are excessively high when compared to the inactive registration rate of the nation and the inactive registration rates of other states.

48. The inactive registration rate for the entire United States is about 11%.

49. The median inactive registration rate of all individual states where data is available is about 10%.

50. Oregon's inactive registration rate is about 20%. This is the highest known inactive registration rate of any state in the nation.

51. Oregon's median county inactive registration rate is about 18%, and its largest county, Multnomah, has an inactive registration rate of about 27%.

52. The inactive registration rates of Oregon and its counties are so high that they indicate a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, for which Defendants Griffin-Valade and the State of Oregon are liable.

53. The high inactive registration rates of Oregon and its counties show that Defendant Griffin-Valade has failed in her duty, as Oregon's chief State election official, to coordinate State responsibilities under the NVRA.

Oregon's Large Numbers of Old, Inactive Registrations

54. Under the NVRA, a registration that was made inactive for failure to respond to a Confirmation Notice must be removed after two consecutive general federal elections of inactivity.

55. Where voter rolls contain a large number of registrations that have been inactive for more than two general federal elections, it is an indication that a jurisdiction is failing to remove old, inactive registrations as required by NVRA Section 8(d)(1)(B).

56. Oregon's voter rolls contain over 640,000 inactive registrations that show no voter activity for three or more consecutive general federal elections.

57. Oregon's voter rolls contain over 570,000 inactive registrations that show no voter activity for four or more consecutive general federal elections.

58. Oregon's voter rolls contain over 490,000 inactive registrations that show no voter activity for five or more consecutive general federal elections.

59. On information and belief, Oregon's voter rolls contain many inactive registrations that have had no voter activity for six or more consecutive general federal elections.

60. A high number of registrations that have been inactive for more than two consecutive general federal elections indicates that a jurisdiction is failing to remove old, inactive registrations as required by NVRA Section 8(d)(1)(B).

61. The high number of old, inactive registrations on Oregon's voter rolls shows a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible under the NVRA, for which Defendants Griffin-Valade and the State of Oregon are liable.

62. The high number of old, inactive registrations on Oregon's voter rolls shows that Defendant Griffin-Valade has failed in her duty, as Oregon's chief State election official, to coordinate State responsibilities under the NVRA.

63. The fact that Oregon has a high number of old, inactive registrations on its rolls, and the previously cited facts showing that 29 Oregon counties removed few or no registrations under Section 8(d)(1)(B), that Oregon and 35 of its counties had *overall* registration rates exceeding 100%, and that Oregon has high *inactive* registration rates, are all consistent with each other, and, in combination, show that Oregon is failing to remove inactive registrations pursuant to Section 8(d)(1)(B) of the NVRA.

Defendants' Failure to Provide Confirmation Notice Data And Other NVRA-Related Data to the EAC

64. Sending Confirmation Notices is a necessary first step under Section 8(d)(1)(B) to removing potentially ineligible registrants from the voter rolls. A registrant's failure to respond to this notice makes the registration inactive and starts the NVRA's statutory "clock," after which that registration is cancelled.

65. The EAC's voter registration survey, available online at https://www.eac.gov/sites/default/files/EAVS%202022/2022_EAVS_FINAL_508c.pdf, asked states, including Oregon, to report voters' responses to Confirmation Notices that were sent during the period from November 2020 to November 2022. In particular, the following survey questions asked states to supply the following information:

> A8b. Notices received back from voter confirming registration:
> The total number of notices returned that confirmed an individual was still eligible to vote in the jurisdiction.
>
> A8c. Notices received back from voter confirming registration should be invalidated:
> The total number of notices returned that confirmed an individual was no longer eligible to vote in the jurisdiction or no longer wanted to be registered to vote.
>
> A8d. Notices returned as undeliverable:
> The total number of notices returned to the election office because the U.S. Postal Service (USPS) could not deliver the notice to the voter.
>
> A8e. Unreturned confirmation notices (neither received back from voters nor returned as undeliverable):
> Any notice that was sent to a voter but was not received back confirming registration (A8b), confirming invalidation (A8c), or returned as undeliverable (A8d).

Id. at 9.

66. Oregon reported to the EAC that not a single one of its 36 counties provided any numerical data in response to survey questions A8b, A8c, A8d, or A8e for the period from November 2020 to November 2022. Instead, the data cells for each Oregon county merely declare, in the relevant columns, "Data not available."

67. Oregon officials cannot ensure the accuracy and currency of Oregon's voter registration list unless they have the information about Confirmation Notices solicited by EAC survey questions A8b, A8c, A8d, and A8e.

68. The fact that no Oregon county provided data in response to survey questions A8b and A8c shows that Oregon officials do not know how many Oregon voters responded to Confirmation Notices either by confirming their ongoing eligibility or by indicating that their registrations should be cancelled.

69. The fact that no Oregon county provided data in response to survey questions A8d and A8e shows that Oregon officials do not know how many, if any, Confirmation Notices were either returned as undeliverable or not returned at all, and, in consequence, do not know how many Oregon voters who received Confirmation Notices should be placed in an inactive status pending removal after the statutory waiting period.

70. Oregon also reported to the EAC that none of its 36 counties provided any data in response to survey questions A3g (address changes that crossed a jurisdiction's border), A9d (removal for a disqualifying felony conviction), or A9f (removal for being declared mentally incompetent), all of which are relevant to ensuring the accuracy and currency of Oregon's voter rolls and to complying with the NVRA.

71. If a jurisdiction were conducting a general program that makes a reasonable effort to cancel the registrations of ineligible voters as required by the NVRA, it could comply with its federal reporting obligations to the EAC.

72. Defendants' failure to satisfy their federal reporting obligations to the EAC suggests that they are not conducting a general program that makes a reasonable effort to cancel the registrations of ineligible voters as required by the NVRA.

Defendants' Failure to Provide Records Plaintiffs Requested Pursuant to Section 8(i) of the NVRA

73. On August 4, 2023, Plaintiff Judicial Watch wrote a letter to Defendant Griffin-Valade on a number of NVRA-related subjects, including the State's low number of removals

under Section 8(d)(1)(B). The letter also requested seven categories of public records pursuant to Section 8(i) of the NVRA. The second request, quoting the language of Section 8(i)(2), sought a list "of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) [*i.e.*, Confirmation Notices] were sent, and information concerning whether or not each such person responded to the notice." Other requests sought records relating to communications, list maintenance manuals, and audits.

74. On September 15, 2023, Greg Bergerson, OCVR Support Desk Analyst, from Defendant Griffin-Valade's office responded by means of an email. In response to the second request, Mr. Bergerson stated:

> After internal review, we have identified significant additional labor cost to provide a full data set of returned voter notification cards (VNCs). Counties have historically used slightly different processes and have latitude to define some process steps in our current system. Researching this historical information would require significant consultation with county officials, including some who may have retired, and significant additional review of data by the SOS after such consultation. We estimate this work would take approximately 5,000 hours to complete due to the level of customization required for each of the 36 counties in Oregon.

75. The foregoing response shows that Defendants have failed to comply with Section 8(i) and 8(i)(2) of the NVRA, which specifically required them to maintain and provide for public inspection and photocopying at a reasonable cost "the names and addresses of all persons to whom" Confirmation Notices were sent "and information concerning whether or not each such person responded to the notice."

76. The NVRA and related federal regulations require Oregon, and not its counties, cities, or local authorities, to maintain and make available statewide records of Confirmation Notices sent and of responses to them. 52 U.S.C. § 20507(i) ("Each State shall …"); 11 C.F.R. § 9428.7(a), (b)(8) (chief state election official "shall" report the "statewide number" of

Confirmation Notices and "the statewide number of responses").

77. Defendants cannot conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, unless Defendants have easy access to local election authorities' list maintenance records, and, in particular, access to their data and statistics concerning the mailing and disposition of Confirmation Notices.

78. Defendant Griffin-Valade cannot fulfill her statutory duty as Oregon's Chief State Election Official to be responsible for the coordination of State responsibilities under the NVRA, unless she has access to local election authorities' list maintenance records, and, in particular, access to their data and statistics concerning the mailing and disposition of Confirmation Notices.

79. The NVRA supersedes and preempts any Oregon law or practice that

a. restricts Defendants' access to local election authorities' list maintenance records, including access to data regarding the mailing of and responses to Confirmation Notices;

b. diminishes the responsibility of the Chief State Election Official to coordinate State responsibilities under the NVRA;

c. assigns ultimate responsibility for conducting NVRA-related tasks to county, city, or local officials; or

d. assigns ultimate responsibility for performing NVRA-mandated public record obligations to county, city, or local officials.

The Interests of the Plaintiffs

80. Plaintiff Judicial Watch's mission is to promote transparency, integrity, and accountability in government and fidelity to the rule of law. The organization, which has been in

existence since 1994, fulfills its mission through public records requests and litigation, among other means.

81. Judicial Watch is supported in its mission by hundreds of thousands of individuals across the nation. An individual becomes a member of Judicial Watch by making a financial contribution, in any amount, to the organization. Members' financial contributions are by far the single most important source of income to Judicial Watch and provide the means by which the organization finances its activities in support of its mission. Judicial Watch in turn represents the interests of its members.

82. Over the past several years, Judicial Watch's Oregon members; Plaintiff Suni Danforth, who is a Judicial Watch member; and Plaintiff Hannah Shipman, who is a Constitution Party member, have become increasingly concerned about the state of the nation's voter registration rolls, including whether state and local officials in Oregon are complying with the NVRA's voter list maintenance obligations. They are concerned that failing to comply with these obligations impairs the integrity of elections by increasing the opportunity for ineligible voters to receive and cast ballots for federal elections in Oregon.

83. Defendants' failure to comply with their NVRA voter list maintenance obligations burdens the federal and state constitutional rights to vote of all individual members of Judicial Watch and the Constitution Party who are lawfully registered to vote in Oregon, including Suni Danforth and Hannah Shipman, by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted by unlawful ones.

84. Protecting the voting rights of Oregon members who are lawfully registered to vote in Oregon is germane to both Judicial Watch's and the Constitution Party's missions. It also is

well within the scope of the reasons why members join Judicial Watch and the Constitution Party and support their missions.

85. Because the relief sought herein will inure to the benefit of Judicial Watch and Constitution Party members who are lawfully registered to vote in Oregon, neither the claims asserted nor the relief requested requires the participation of all of Judicial Watch's or the Constitution Party's individual members in Oregon.

86. In response to the concerns of its members, Judicial Watch commenced a nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations. As part of this program, Judicial Watch utilizes public records laws to request and receive records and data from jurisdictions across the nation about their voter list maintenance efforts. It then analyzes these records and data and publishes the results of its findings to the jurisdictions, to its members, and to the general public.

87. Judicial Watch's concerns with Oregon's list maintenance practices led it to send correspondence to Secretary Griffin-Valade in August 2023, and to send further correspondence threatening legal action (along with the Constitution Party and Suni Danforth) in July 2024 and in August 2024. This correspondence noted Oregon's apparent non-compliance with the NVRA. Judicial Watch's concerns also led it to analyze the State's responses, and to conduct multiple analyses of Oregon's voter rolls, total registration rates, Section 8(d)(1)(B) removal rates, and inactive rates.

88. Judicial Watch has expended substantial resources, including staff and attorney time, investigating Defendants' programs concerning their NVRA voter list maintenance obligations, communicating with Oregon officials about addressing non-compliance, and communicating with concerned members about these efforts.

89. The resources expended by Judicial Watch to investigate and communicate with Defendants in order to address and counteract their failure to comply with their NVRA voter list maintenance obligations, and to communicate with its own members about these matters, are distinct from and above and beyond Judicial Watch's regular, programmatic efforts to monitor state and local election officials' NVRA compliance.

90. Were it not for Defendants' failure to comply with their NVRA voter list maintenance obligations, Judicial Watch would have expended these same resources on its regular, programmatic activities or would not have expended them at all. Instead, it diverted its resources to counteract Defendants' noncompliance and to protect members' rights.

91. Judicial Watch's core business activity and mission is to ensure government accountability and transparency. As part of that mission, Judicial Watch regularly requests public records from state and federal government agencies to ensure those agencies are compliant with the law.

92. By failing to disclose the information required by the NVRA and federal regulations, Defendants have interfered with Judicial Watch's core business activity and mission, making it impossible to fully determine the extent of Defendants' compliance with the NVRA without initiating this lawsuit.

93. As a result of Defendants' actions and omissions, Judicial Watch has had to involuntarily divert its resources from its core business activity and mission in order to counteract Defendants' noncompliance.

94. Plaintiff Constitution Party of Oregon is a registered political party in the State of Oregon. The Constitution Party of Oregon, along with its members, supporters, and candidates, exercise their rights under the First and Fourteenth Amendments to join together and associate in

support of their common political beliefs.

95. The Constitution Party of Oregon organizes, selects, and promotes the election of party standard bearers and others who promote its beliefs.

96. To these ends, the Constitution Party of Oregon purchases and relies on Oregon's voter rolls to identify in-state voters and to contact them and encourage them to assist the candidates it supports by learning about the party and its beliefs, volunteering, organizing, contributing, and voting. These voter-contact and election-related activities are core activities of the Constitution Party, and, indeed, are core activities of any political party.

97. Acquiring Oregon's voter rolls is necessary in order to achieve political success in the state of Oregon.

98. Oregon's voter rolls may be obtained at a far lower cost than any other commercially available voter database, which is a major reason why the Constitution Party relies on the state's rolls.

99. The Constitution Party of Oregon's ability to contact eligible Oregon voters is interfered with and made more difficult because Defendants' failure to conduct list maintenance required by the NVRA causes Oregon's voter rolls to have many more outdated and ineligible registrations—both on its active and inactive voter lists—than they otherwise would.

100. Defendants' failure to timely remove ineligible registrants from Oregon's voter rolls causes the Constitution Party of Oregon to waste significant time, effort, and money trying to contact voters, both by mail and in person, who are listed on the rolls but who no longer live at the registered address or who are deceased.

COUNT I

(Violation of Section 8(a)(4) of the NVRA, 52 U.S.C. § 20507(a)(4))

101. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

102. Plaintiffs Judicial Watch, Constitution Party of Oregon, Suni Danforth, and Hannah Shipman are persons aggrieved by a violation of the NVRA, as set forth in 52 U.S.C. § 20510(b).

103. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the NVRA to conduct a general program that makes a reasonable effort to cancel the registrations of Oregon voters who have become ineligible by reason of a change of residence.

104. Defendant Griffin-Valade has failed in her duty as Oregon's chief State election official to coordinate State responsibilities under the NVRA.

105. Plaintiffs have suffered and will continue to suffer irreparable injury as a direct result of Defendants' failure to fulfill their obligations under the NVRA.

106. Plaintiffs have no adequate remedy at law.

COUNT II

(Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i))

107. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

108. Defendants have failed to fulfill their obligations under Section 8(i) of the NVRA to make available to Plaintiffs "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."

109. Plaintiffs have suffered, and will continue to suffer, irreparable injury as a direct result of Defendants' failure to fulfill their obligations under Section 8(i) of the NVRA.

110. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of a judgment:

a. Declaring Defendants to be in violation of Section 8(a)(4) of the NVRA;

b. Permanently enjoining Defendants from violating Section 8(a)(4) of the NVRA;

c. Ordering Defendants to develop and implement a general program that makes a reasonable effort to remove the registrations of ineligible registrants from the voter rolls in Oregon;

d. Declaring that the NVRA supersedes and preempts any contrary Oregon law or practice;

e. Declaring that Defendants have violated Section 8(i) of the NVRA;

f. Permanently enjoining Defendants from refusing to allow Plaintiffs to inspect and copy the requested records at a reasonable cost;

g. Ordering Defendants to pay Plaintiffs' reasonable attorney's fees and costs; and

h. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 23, 2024 By: s/ *Stephen J. Joncus*

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** Application for admission pro hac vice forthcoming*

Exhibit 3

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JUDICIAL WATCH, INC., and THE LIBERTARIAN PARTY OF CALIFORNIA,

Plaintiffs,

v.

SHIRLEY N. WEBER, in her official capacity as California Secretary of State; and the STATE OF CALIFORNIA,

Defendants.

Case No. 2:24-cv-3750

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Judicial Watch, Inc. and the Libertarian Party of California ("Plaintiffs") file this First Amended Complaint for Declaratory and Injunctive Relief against defendants Shirley N. Weber, in her official capacity as the California Secretary of State, and the State of California ("Defendants").

1. Plaintiffs seek declaratory and injunctive relief to compel Defendants to comply with their voter list maintenance obligations under Section 8 of the National Voter Registration Act of 1993 ("NVRA" or "Act"), 52 U.S.C. § 20507. Plaintiffs also

seek reasonable attorneys' fees, litigation expenses, and costs, which are available to prevailing parties under the Act. *Id*. § 20510(c).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, and in particular under 52 U.S.C. §§ 20507 and 20510(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a defendant resides in this district and all defendants reside in California, and because a substantial part of the events and omissions giving rise to the claims herein occurred in this district.

PARTIES

4. Plaintiff Judicial Watch, Inc. ("Judicial Watch") is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, D.C. 20024.

5. Plaintiff Libertarian Party of California ("LPCA") is a registered political party in California and a state affiliate of the national Libertarian Party, and is devoted to recruiting and maintaining LPCA members and to electing candidates who espouse its principles to state and federal office in California.

6. Defendant SHIRLEY N. WEBER is the California Secretary of State. The Secretary of State is designated by California law as the chief state elections official responsible for coordination of the state's responsibilities under the NVRA. The Secretary of State also ensures that election laws are enforced, and maintains the statewide database of all registered voters. The Secretary of State's Elections Division oversees all federal and state elections within California. Secretary Weber is sued in her official capacity only.

7. Defendant STATE OF CALIFORNIA is a sovereign state of the United States of America.

STATUTORY BACKGROUND

8. Section 8 of the NVRA provides that "each State shall … conduct a general program that makes a reasonable effort to remove … from the official lists of eligible voters" the names of voters who have become ineligible by reason of death or a change of residence. 52 U.S.C. § 20507(a)(4).

9. With respect to voters who have changed residence, Section 8 provides that no registration may be cancelled on that ground unless the registrant either (1) confirms this fact in writing, or (2) fails to timely respond to an address-confirmation notice described by the statute (the "Confirmation Notice"). 52 U.S.C. § 20507(d)(1).

10. A Confirmation Notice must incorporate a "postage prepaid and pre-addressed return card, sent by forwardable mail," asking the registrant to confirm his or her residence address. *Id*. at (d)(2). If a registrant fails to respond to such a Confirmation Notice, and then fails to vote (or contact the registrar) during a statutory waiting period extending from the date of the notice through the next two general federal elections, the registration is cancelled. *Id*. at (d)(1)(B). These cancellations are mandatory under both federal and California law. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018) ("federal law makes this removal mandatory"); CAL. ELEC. CODE § 2226(b).

11. Under both federal and California law, a voter registration is referred to as "inactive" when a registrant has failed to respond to a Confirmation Notice and the statutory waiting period has commenced but has not yet concluded. 11 C.F.R. § 9428.2(d); CAL. ELEC. CODE § 2225(c), (f).

12. Under both federal and California law, a voter with an inactive registration may still vote on election day. 52 U.S.C. § 20507(d)(2)(A); CAL. ELEC. CODE § 2226(c). Accordingly, inactive voters are still registered voters.

13. In June of each odd-numbered year, the U.S. Election Assistance Commission ("EAC") is required by law to report to Congress its findings relating to state voter registration practices. 52 U.S.C. § 20508(a)(3).

14. Federal regulations require states to provide various kinds of NVRA-related data to the EAC for use in its biennial report. 11 C.F.R. § 9428.7.

15. Section 8(i) of the NVRA grants the public the right to request information concerning voter list maintenance. It provides: "Each State shall maintain for at least 2 years and shall make available for public inspection" and copying "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).

16. Though not purporting to be an exhaustive list, Section 8(i)(2) provides specific examples of responsive records: "The records maintained . . . shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i)(2).

17. The NVRA provides that "[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. California law designates the Secretary of State as this official. CAL. ELEC. CODE § 2402(a).

18. The NVRA affords a private right of action to any "person who is aggrieved by a violation" of the Act. 52 U.S.C. § 20510(b). Ordinarily, a private litigant is required to send notice of a violation to the chief State election official 90 days prior to commencing a lawsuit. *Id.* § 20510(b)(1), (2). However, notice of only 20 days is required "if the violation occurred within 120 days before the date of an election for Federal office," and no notice is required if a "violation occurred within 30 days before the date of an election for Federal office." *Id.* § 20510(b)(2), (3).

FACTS

The Data from the Latest EAC Report

19. On June 29, 2023, the EAC published its biennial, NVRA-related report, entitled ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE

REPORT, A REPORT FROM THE U.S. ELECTION ASSISTANCE COMMISSION TO THE 118TH CONGRESS. This report is available online at https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

20. Along with this report, the EAC published the responses it received to a voter registration survey it sent to the states. The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys under the heading for 2022, at a link entitled "2022 Election Administration and Voting Survey Instrument." The chief State election officials of the states, in consultation with county and local officials, provided their responses to this voting survey directly to the EAC.

21. State responses to EAC surveys are compiled in datasets available online in several different software formats, at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys. Responses to the most recent survey were published on June 29, 2023. They are available online under the heading for 2022 as "EAVS Datasets Version 1.0."[1]

22. The largest number of outdated registrations subject to removal under the NVRA almost always belong to those who have changed residence. For this reason, the largest number of removals under the NVRA are usually made pursuant to Section 8(d)(1)(B), for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.

23. The data Defendant Weber provided to the EAC indicated that 27 California counties removed five or fewer voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B). Nineteen of these counties reported removing zero voter registrations under Section 8(d)(1)(B) during that two-year period.

24. In Plaintiffs' experience, based on years of enforcing the NVRA, these are absurdly small numbers of removals under Section 8(d)(1)(B). There is no possible way any county can be conducting a general program that makes a reasonable effort to cancel

[1] An updated version of the initial responses ("EAVS Datasets Version 1.1") was published on the same webpage on December 18, 2023, to account for new information submitted by Delaware, Hawaii, West Virginia, and Wisconsin. California's data was unchanged.

the registrations of voters who have become ineligible because of a change of residence while removing so few registrations under Section 8(d)(1)(B).

25. According to the Census Bureau, 11.6% of California residents are not living at the same residence address as they were one year ago.

26. According to the Census Bureau, about 690,000 California residents moved out of state in 2023 (the most recent year for which such data is available), and about 818,000 California residents moved out of state in 2022.

27. If the identified counties were complying with Section 8(d)(1)(B) of the NVRA, the number of registrations they remove pursuant to that provision in any two-year period should be much higher. In particular, that number should never be zero, in any jurisdiction.

28. The data Defendant Weber provided to the EAC indicated that another 19 California counties did not report any data regarding the number of voter registrations cancelled from November 2020 to November 2022 under Section 8(d)(1)(B), but reported instead, "Data not available."

29. In Plaintiffs' experience, jurisdictions do not ignore their reporting obligations to the EAC where the data is favorable to them. Rather, they often fail to report data that suggests non-compliance with the NVRA.

30. The data Defendant Weber provided to the EAC indicated that 17 California counties did not report any data regarding Confirmation Notices received back confirming an existing registration address; 22 California counties did not report any data regarding Confirmation Notices received back confirming a change of address; 14 California counties did not report any data regarding Confirmation Notices returned as undeliverable; and 20 California counties did not report any data regarding Confirmation Notices that were not returned. Instead, in the relevant columns where the data should have been, the survey responses for these counties merely state, "Data not available."

Allegations and Admissions in Correspondence

A. Judicial Watch's August 4, 2023 Inquiry.

31. On August 4, 2023, Plaintiff Judicial Watch wrote a letter to Defendant Weber referring to the data California reported to the EAC. The letter identified the 46 California counties whose NVRA data was problematic—27 counties who reported five or fewer removals pursuant to Section 8(d)(1)(B) in the previous reporting period, and 19 counties who reported that their data was "not available." The letter asked that Secretary Weber confirm whether the reported information was accurate, and, if not, it asked her to supply the correct data. The letter did not purport to be a pre-suit notice of violation or to start a notice period described in 52 U.S.C. § 20510, but was styled as an "Inquiry and request for public records." This letter is attached to this complaint as Exhibit 1.

32. Judicial Watch's August 4, 2023 letter also requested seven categories of public records pursuant to Section 8(i) of the NVRA.

33. The second public records request in the August 4, 2023 letter, quoting the language of Section 8(i)(2), sought a "list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) [i.e., Confirmation Notices] were sent, and information concerning whether or not each such person responded to the notice."

34. The third public records request in the August 4, 2023 letter requested "[c]ommunications concerning the EAC's 2022 Election Administration and Voting Survey," including "responses to Section A of that survey, and any records provided along with those responses."

B. The Secretary of State's August 29, 2023 Response.

35. On August 29, 2023, Judicial Watch received a response to its August 4 letter, from Constituent Affairs at the Secretary of State's office. A copy of this email is attached to this complaint as Exhibit 2.

36. The August 29, 2023 email treated Judicial Watch's detailed inquiries about

Section 8(d)(1)(B) removals in 46 California counties as if they were simply requests for public records—which they were not—and, in response, merely stated, "We have no records responsive to your requests."

37. The August 29, 2023 email was accompanied by documents, and by links to documents, purporting to respond to Judicial Watch's seven identified public records requests. However, in response to the second request, which sought records specifically identified by Section 8(i)(2) of the NVRA, the email admitted in response, "We have no records responsive to your request."

38. In response to Judicial Watch's third request for public records, the August 29, 2023 email stated, "We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review."

C. Plaintiffs' October 30, 2023 Notice of NVRA Violations.

39. On October 30, 2023, Judicial Watch, on its own behalf and on behalf of Plaintiff LPCA, sent a letter to Defendant Weber in her capacity as California's chief State election official notifying her of violations of the NVRA and of Plaintiffs' intention to file a lawsuit unless those violations were cured within 90 days. The letter expressly stated that it constituted the pre-suit notice prescribed by 52 U.S.C. § 20510. This letter is attached to this complaint as Exhibit 3 (the "Notice Letter").

40. The Notice Letter repeated the allegations contained in Judicial Watch's August 4, 2023 correspondence. It identified again the 46 California counties who reported removing no or only a few registrations under Section 8(d)(1)(B), or who failed to report any data at all, and it said that these low or missing numbers showed a violation of the list maintenance provisions of Section 8(a)(4) of the NVRA.

41. The Notice Letter observed that non-compliance with the NVRA was also indicated by the unusually high registration rates observed in many California's counties. Specifically, a comparison of California's responses to the EAC with the most recent Census Data suggested that 21 California counties have more voter registrations than citizens of voting age.

42. High registration rates are consistent with, and are evidence of, a failure to remove ineligible registrants from the rolls and, in particular, with a failure to utilize the procedures prescribed by Section 8(d)(1)(B) to remove registrants who have become ineligible by virtue of a change of residence.

43. The Notice Letter also observed that California's counties reported unusually high *inactive* registration rates. Specifically, California's responses to the EAC showed that in 12 California counties inactive registrations constituted more than 20% of all registrations, and in one county more than 27% of all registrations.

44. The Notice Letter pointed out that, according to the EAC's most recent NVRA report, the national inactive rate is 11.1%.

45. High inactive registration rates are consistent with, and are evidence of, a failure to remove ineligible registrants from the rolls and, in particular, with a failure to utilize the procedures prescribed by Section 8(d)(1)(B) to remove registrants who have become ineligible by virtue of a change of residence.

46. The Notice Letter confirmed that public records responsive to request nos. 2 and 3 of the seven public records requests contained in the August 4, 2023 letter had not been provided and alleged that the failure to do so violated Section 8(i) of the NVRA.

D. The Secretary of State's March 11, 2024 Response to the Notice Letter, and the Admissions it Contains.

47. The parties agreed to an extended schedule for Secretary Weber's anticipated response to the Notice Letter to allow her office to individually contact the counties identified in that letter.

48. On March 11, 2024, the Secretary of State sent a written response to Plaintiffs. This letter constitutes Defendants' first and only substantive response to the detailed factual allegations made in the Notice Letter and in the August 4, 2023 inquiry letter. This response is attached to this complaint as Exhibit 4 (the "March Response").

49. The March Response purported to address, by county, the information reported to the EAC and referred to in Plaintiffs' correspondence, and to confirm, deny,

or correct that information as appropriate. The March Response also included information purporting to set forth what some of the counties have done, or intend to do, to comply with the NVRA.

50. Even if Plaintiffs conceded the accuracy of all of the information contained in the March Response (which they do not concede), that letter establishes a statewide failure to comply with the NVRA.

51. The March Response admits that 21 California counties removed five or fewer registrations pursuant to Section 8(d)(1)(B) (*i.e.*, for failing to respond to a Confirmation Notice and then failing to vote in two general federal elections) in the measuring period from November 2020 to November 2022. Sixteen of the 21 counties removed *zero* such registrations during this period. The 21 counties are: Alameda (1 such removal), Alpine (0), Calaveras (0), Imperial (0), Lake (1), Modoc (0), Placer (0), Plumas (0), San Benito (0), San Bernardino (0), San Luis Obispo (5), San Mateo (0), Santa Barbara (0), Santa Cruz (0), Shasta (0), Siskiyou (2), Solano (0), Stanislaus (0), Trinity (0), Ventura (0), and Yolo (2).

52. Together, these 21 counties reported a combined total of 11 removals under Section 8(d)(1)(B) during this two-year reporting period.

53. According to census estimates these 21 counties contain about 22% of the population of California.

54. According to the data published by the EAC, these 21 counties had 5,976,426 voter registrations as of November 2022.

55. As a point of comparison, San Diego County, California, with a smaller total of 2,398,443 voter registrations in November 2022, removed 130,050 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period.

56. As a point of comparison, Mariposa County, California, with a comparatively miniscule voter roll of 13,197 registrations, removed 294 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period. That is, literally, an exponentially greater number than were removed under that provision in all 21 identified

counties combined.

57. The fact that the March Response admits that 21 of California's 58 counties, which contain more than a fifth of California's population, removed a combined total of 11 registrations under Section 8(d)(1)(B) in a two-year period for failing to respond to a Confirmation Notice and failing to vote in the next two general federal elections establishes both a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, and a failure by Defendant Weber to fulfill her duties as California's chief State election official to coordinate State responsibilities under the NVRA.

58. These statutory failures by Defendants are supported by admissions in the March Response that other counties removed too few registrations pursuant to Section 8(d)(1)(B), albeit more than five. For example, Merced County's "best estimate" is that it removed 15 such registrations in the last two-year period, which amounts to 0.01% of the County's reported voter registrations.

59. For example, Tulare County was "unable to report precisely how many" registrations were removed under Section 8(d)(1)(B), though "[b]y the county's best estimate," the number "is less than 50." Assuming that the number was exactly 50, this amounts to 0.02% of the County's reported voter registrations.

60. Similarly, Riverside County did not know the "precise number" of registrations removed under Section 8(d)(1)(B), though "[b]y the county's best estimate," the number "is approximately 750." This amounts to 0.05% of the County's reported registrations.

61. The March Response admits that 16 California counties could not, at the time of the EAC's survey, tell how many registrations were removed pursuant to Section 8(d)(1)(B) in the period from November 2020 to November 2022, although some of these counties did provide reconstructed or estimated numbers for the March Response. The 16 counties are: Del Norte, El Dorado, Inyo, Kern, Lassen, Marin, Mendocino, Merced, Mono, Nevada, Orange, Riverside, San Joaquin, Santa Clara, Sonoma, and Tulare.

62. According to census estimates these 16 counties contain about 28% of the population of California.

63. The fact that the March Response admits that 16 of California's 58 counties, which together contain more than a fourth of California's population, did not know how many registrations they removed under Section 8(d)(1)(B) in a two-year period establishes both a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, and a failure by Defendant Weber to fulfill her duties as California's chief State election official to coordinate State responsibilities under the NVRA.

64. The March Response purports to identify steps that California counties have taken since November 2022 or will take to comply with the NVRA. Even if true, which Plaintiffs do not concede, they do not establish statewide compliance with the NVRA.

65. Most often the March Response states that a county "expects to be able" to report precisely on Section 8(d)(1)(B) removals (*e.g.*, San Joaquin, Orange, Sonoma), or "expects to remove" certain numbers of registrations at a certain point (*e.g.*, Kern, Stanislaus, Tulare), which is another way of saying that it has not happened yet.

66. Even where the March Response asserts that a county has made removals or taken other concrete steps since November 2022, it is often apparent that these actions were taken only after Judicial Watch contacted the Secretary of State alleging that the county had a problem. *E.g.*, Alameda, Placer, San Luis Obispo, Yolo, Shasta, Imperial, Lake.

67. Even where a county claims to have taken steps on their own since November 2022 which, if true, would represent genuine progress towards compliance with the NVRA, the same county often will have reported few or no Section 8(d)(1)(B) removals, or no data, in the last two-year reporting period.

68. The fact that a county only complied with the NVRA after Judicial Watch pointed out its non-compliance, or that a county attempted compliance with the NVRA in one reporting period but failed abysmally to comply in the preceding period, suggests

that Defendants have not instituted a systematic, reasonable, general program of compliance required by the NVRA, and that non-compliance is likely to recur.

69. Other admissions in the March Response suggest that California's efforts to comply with the NVRA are in disarray. For example, San Bernardino County reported that its previous Confirmation Notices did not comply with the requirements of Section 8(d)(2) of the NVRA, with the result that it "issued or re-issued over 200,000 new" Confirmation Notices in 2023. Of course, these new Confirmation Notices restart the statutory time period and delay any removal of ineligible registrations at least through November 2026.

70. Similarly, Imperial County reported that its previous Confirmation Notices "did not contain Section 8(d)(2)-compliant language," with the result that it issued "approximately 88,000" new Confirmation Notices in September 2023.

71. Throughout the March Response, county data is expressed as estimates or approximations, in round numbers, as bounded ranges, and, in the case of Ventura County, as words (citing removal of "a large number" of registrations). The general unwillingness to cite precise numbers suggests that California counties simply do not have necessary access to NVRA-related data.

72. The March Response confirmed that Defendants could not provide records response to Judicial Watch's request no. 2, and admitted that "the Secretary does not maintain the requested list."

73. The March Response stated that Defendants would not provide "communications concerning the EAC's 2022 EAVS survey," sought by Judicial Watch's request no. 3, on the grounds that it "is not a program or activity undertaken by State or county election officials within the meaning of Section 8(i)." This position is clearly incorrect. The whole purpose of that survey is to allow the EAC to make its statutorily required report to Congress about the NVRA (*see* 52 U.S.C. § 20508(a)(3)), and communications regarding the portion of that report concerning California and its counties are "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).

74. The March Response makes no mention of the allegations in the Notice Letter concerning high registration rates in certain California Counties.

75. The March Response makes no mention of the allegations in the Notice Letter concerning high inactive registration rates in certain California Counties.

76. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the NVRA to conduct a general program that makes a reasonable effort to cancel the registrations of California voters who have become ineligible by reason of a change of residence.

77. Defendant Weber has failed in her duty as California's chief State election official to coordinate State responsibilities under the NVRA.

The Interests of the Plaintiffs

78. Plaintiff Judicial Watch's mission is to promote transparency, integrity, and accountability in government and fidelity to the rule of law. The organization, which has been in existence since 1994, fulfills its mission through public records requests and litigation, among other means.

79. Judicial Watch is supported in its mission by hundreds of thousands of individuals across the nation. An individual becomes a member of Judicial Watch by making a financial contribution, in any amount, to the organization. Members' financial contributions are by far the single most important source of income to Judicial Watch and provide the means by which the organization finances its activities in support of its mission. Judicial Watch in turn represents the interests of its members.

80. Over the past several years, Judicial Watch's members have become increasingly concerned about the state of the nation's voter registration rolls, including whether state and local officials are complying with the NVRA's voter list maintenance obligations. They are concerned that failing to comply with the NVRA's voter list

maintenance obligations impairs the integrity of elections by increasing the opportunity for ineligible voters or voters intent on fraud to cast ballots.

81. In response to the concerns of its members, Judicial Watch commenced a nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations. As part of this program, Judicial Watch utilizes public records laws to request and receive records and data from jurisdictions across the nation about their voter list maintenance efforts. It then analyzes these records and data and publishes the results of its findings to the jurisdictions, to its members, and to the general public.

82. Defendants' failure to comply with their NVRA voter list maintenance obligations burdens the federal and state constitutional rights to vote of all individual members of Judicial Watch and LPCA who are lawfully registered to vote in California by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted.

83. Mr. Michael Sienkiewicz is a registered voter in San Francisco County and a member of Judicial Watch. His knowledge of California politics has convinced him that the state's voter list maintenance practices are so inadequate that they impair the integrity of its electoral process. As a result, his confidence in that process has been undermined. This discourages his participation in it and instills in him the fear that his legitimate votes will be nullified or diluted by ineligible votes. Mr. Sienkiewicz now doubts whether there is any point in casting his ballot in California elections.

84. Mr. Nick Apostolopoulos is a registered voter in San Diego County and a member of LPCA. He is also an At-Large Alternate for LPCA. His involvement in California politics has convinced him that the state's voter list maintenance practices are so inadequate that they impair the integrity of its electoral process. As a result, his confidence in that process has been undermined, which discourages his participation in it and instills in him the fear that his legitimate votes will be nullified or diluted by

ineligible votes. As a further result, Mr. Apostolopoulos no longer votes in California's elections.

85. Ms. Trendalyn Hallsey is a registered voter in San Mateo County and the Treasurer of LPCA. Her involvement in California politics has convinced her that the state's voter list maintenance practices are so inadequate that they impair the integrity of its electoral process. As a result, her confidence in that process has been undermined, which discourages her participation in it and instills in her the fear that her legitimate votes will be nullified or diluted by ineligible votes. Ms. Hallsey has considered abandoning the effort of voting in California elections.

86. Protecting the voting rights of Judicial Watch and LPCA members who are lawfully registered to vote in California is germane to their mission.

87. Because the relief sought herein will inure to the benefit of Judicial Watch and LPCA members who are lawfully registered to vote in California, neither the claims asserted nor the relief requested requires the participation of Judicial Watch's or LPCA's individual members.

88. Plaintiff LPCA, along with its members, supporters, and candidates, exercise their rights under the First and Fourteenth Amendments to join together and associate in support of their common political beliefs.

89. LPCA purchases and relies on California's voter rolls to identify in-state voters and to contact them and encourage them to assist its candidates by learning about the Party and its beliefs, volunteering, organizing, contributing, and voting. These voter-contact and election-related activities are core activities of LPCA, and, indeed, are core activities of any political party.

90. California's centralized voter registration database is the official system of record for voter registration in the state. It maintains all of the voter registration information for all voters in all 58 California counties.

91. Acquiring California's official voter lists is necessary in order to contact California's voters.

92. Private contractors often are employed by the largest political parties to help identify outdated voter registrations on California's official voter lists. But even voter lists processed by private contractors ultimately are based on, and are limited by the accuracy of, California's official voter lists.

93. Hiring private contractors to process California's voter lists costs money that LPCA does not have.

94. The California voter list itself is always the least expensive way for cash-strapped parties like LPCA to obtain the information needed to reach out to California voters.

95. Defendants' failure to conduct list maintenance required by the NVRA causes California's voter rolls to have many more outdated and ineligible registrations—both on its active and inactive voter lists—than they otherwise would.

96. LPCA's candidates use California's active voter lists to contact voters to ask them to volunteer, organize, contribute, and vote.

97. LPCA uses California's inactive voter registration lists to contact LPCA members whose registrations have become inactive in order to verify their residence addresses and to encourage them, if they are still eligible, to become active voters again.

98. California's voter data includes a field indicating whether a voter is active or inactive. It is easy to search and sort on this field.

99. LPCA has no employees. It has a limited budget, and it relies on volunteers for its activities. It has to make hard choices about how to use its limited resources.

100. LPCA engages in targeted mailings concerning specific elections or issues.

101. Mailings are important to LPCA, as they are to any political party. Older voters in particular, who tend to have more disposable income and are more likely to contribute and to vote, like to receive physical mail and are more likely to respond to it.

102. Mailings are expensive.

103. A significant proportion of LPCA's mailings to active voters are returned as undeliverable because the addressee no longer lives at the stated address.

104. A significant proportion of LPCA's mailings to inactive voters are returned as undeliverable because the addressee no longer lives at the stated address.

105. The cost of mailings to addresses taken from California's voter list returned as undeliverable constitutes an economic loss to LPCA and its candidates.

106. The proportion of mailings to addresses from California's voter list returned as undeliverable is greater than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

107. Another way LPCA reaches out to voters is through door-to-door visits. Like mailings, this activity relies on voter information found on California's official voter list.

108. LPCA depends on volunteers to conduct these door-to-door visits.

109. At a significant number of the addresses visited by LPCA's volunteers, the address is plainly not accurate or current.

110. At many of the addresses visited by LPCA volunteers, a current resident confirms that the person the volunteers are seeking no longer resides there.

111. It costs LPCA scarce volunteer and organizational resources to visit addresses taken from California's voter list that are not accurate or current.

112. LPCA also uses volunteers to make telephone calls on behalf of candidates to ask for contributions and votes.

113. LPCA obtains many of the telephone numbers that it uses for these calls directly from California's voter rolls.

114. A significant number of the calls made by volunteers on behalf of LPCA candidates result in no contact with the intended resident. Many of these calls are answered by someone who informs LPCA volunteers that the person the volunteers are seeking no longer resides there.

115. It costs LPCA scarce volunteer and organizational resources to make telephone calls, based on voter information from California's voter list that is no longer accurate or current, to individuals who no longer reside at a listed address.

116. Based on the proportion of returned mailings observed when LPCA conducts mailings, and based on the number of times a current resident confirms that a person sought in person or by telephone has moved, and on information and belief, the proportion of addresses visited or called by LPCA volunteers that do not result in any contact with the intended voter because the addressee has moved is greater than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

117. Monetary losses from returned mailings sent to voters who have moved, and resource losses from door-to-door visits and telephone calls to voters who have moved, are greater than they would be if Defendants complied with their list maintenance obligations as required by Section 8(a)(4) of the NVRA.

118. Because losses from returned mailings and fruitless home visits and telephone calls are higher than they would be if Defendants complied with the NVRA, the average monetary and volunteer costs associated with each successful voter contact made by LPCA are higher.

119. Because losses from returned mailings and fruitless home visits and telephone calls are higher than they would be if Defendants complied with the NVRA, LPCA is able to contact fewer voters with its current monetary and volunteer resources to encourage them to assist its candidates by learning about the Party and its beliefs, volunteering, organizing, contributing, and voting.

120. Losses from returned mailings and fruitless home visits and telephone calls that are due to Defendants' failure to comply with Section 8(a)(4) of the NVRA directly injure LPCA's ability to conduct its core activities. These injuries arise independently of, and apart from, any response by LPCA to Defendants' failure to comply with the NVRA.

121. Inaccuracies on California's voter list affect LPCA in another way. As a political party, LPCA has a heightened interest in the accuracy and currency of voter registration information, which is different from that of other California organizations and individuals. Defendants' failure to conduct proper list maintenance impairs LPCA's

particular informational interest under the NVRA in ensuring the maintenance of an accurate and current voter registration roll for elections for federal office.

122. Inaccuracies on California's voter list affect LPCA in yet another way. When LPCA receives a supportive email, it often tries to locate the author's name on California's voter list in order to ensure that that person is a California voter and to allow the Party to respond by focusing on local issues and candidates that are likely to interest that person.

123. The information on California's voter rolls is less accurate and current than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

124. When voter registration lists wrongly indicate that email authors are California voters when, in fact, they have moved out of state, or when those lists provide the wrong local addresses for those authors, LPCA's ability to perform its core activity of identifying in-state voters and contacting them and encouraging them to assist the candidates it supports by learning about the Party and its beliefs and by volunteering, organizing, contributing, and voting, is impaired.

125. Plaintiff Judicial Watch was denied access to a category of public records concerning California's "programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" that it was entitled to access under the NVRA.

126. The fact that Judicial Watch could not access these records hampered its mission to promote transparency, integrity, and accountability in government and fidelity to the rule of law.

COUNT I

(Violation of Section 8(a)(4) of the NVRA, 52 U.S.C. § 20507(a)(4))

127. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

128. Plaintiffs are persons aggrieved by a violation of the NVRA, as set forth in 52 U.S.C. § 20510(b).

129. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the

NVRA to conduct a general program that makes a reasonable effort to cancel the registrations of California voters who have become ineligible by reason of a change of residence.

130. Defendant Weber has failed in her duty as California's chief State election official to coordinate State responsibilities under the NVRA.

131. Plaintiffs have suffered and will continue to suffer irreparable injury as a direct result of Defendants' failure to fulfill their obligations under the NVRA.

132. Plaintiffs have no adequate remedy at law.

COUNT II

(Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i))

133. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

134. Defendants have failed to fulfill their obligations under Section 8(i) of the NVRA to make available to Plaintiff Judicial Watch "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."

135. Plaintiff Judicial Watch has suffered, and will continue to suffer, irreparable injury as a direct result of Defendants' failure to fulfill their obligations under Section 8(i) of the NVRA.

136. Plaintiff Judicial Watch has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of a judgment:

a. Declaring Defendants to be in violation of Section 8(a)(4) of the NVRA;

b. Permanently enjoining Defendants from violating Section 8(a)(4) of the NVRA;

c. Ordering Defendants to develop and implement a general program that makes a reasonable effort to remove the registrations of ineligible registrants from the voter rolls in California;

d. Declaring that Defendants have violated Section 8(i) of the NVRA by

refusing to allow Plaintiffs to inspect and copy the requested records;

e. Permanently enjoining Defendants from refusing to allow Plaintiffs to inspect and copy the requested records;

f. Ordering Defendants to pay Plaintiffs' reasonable attorney's fees, including litigation expenses and costs; and

g. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

March 26, 2024

Respectfully submitted,

JUDICIAL WATCH, INC.

By: /s Eric W. Lee_____
ERIC W. LEE

Attorneys for Plaintiffs

EXHIBIT 1

Judicial Watch®
Because no one is above the law!

August 4, 2023

VIA USPS CERTIFIED MAIL AND EMAIL

Hon. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Re: Inquiry and request for public records

Dear Secretary Weber:

I write on behalf of Judicial Watch, Inc., a non-partisan educational foundation that promotes transparency, accountability and integrity in government, politics and law. We wish to inquire about certain data you recently provided to the Election Assistance Commission (EAC) regarding your state's implementation of the National Voter Registration Act of 1993 (NVRA).[1] This letter also serves as a public records request seeking records related to the accuracy of the voter registration list, which you are obligated to provide under Section 8(i) of the NVRA.[2] We write to you as the chief State election official responsible for coordinating state compliance with the NVRA.[3]

Background

As you are no doubt aware, the NVRA was intended both to "increase the number of eligible citizens who register" and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained."[4] The goal of ensuring election integrity was embodied in Section 8, which requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of … the death of the registrant; or … a change in the residence of the registrant."[5]

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.[6] Second, if a registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the "Confirmation Notice"), fails to respond to it, and then fails to vote in the next

[1] 52 U.S.C. § 20501 *et seq*.
[2] *Id*., § 20507(i).
[3] Cal. Elec. Code § 10(a).
[4] 52 U.S.C. § 20501(b).
[5] *Id.*, § 20507(a)(4).
[6] *Id*., § 20507(d)(1)(A).

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two general federal elections, that registration is cancelled.[7] Registrants who have failed to respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be "inactive."[8] However, inactive registrations may still be voted on election day.[9]

Federal law requires the EAC to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.[10] Federal regulations require chief State election officials to provide data to the EAC for use in this report.[11] The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.[12]

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022. Our inquiries concern the data you sent to the EAC, which are revealed in that release.

Inquiries

1. According to the EAC, your survey responses show that 19 California counties reported removing *zero* voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.[13] These counties are: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County.

Another eight counties had five or fewer removals under that NVRA provision. These are: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Within two weeks of the date of this letter, please confirm whether this data is accurate. If it is accurate, please explain why or whether you believe such data is consistent with NVRA compliance. If the data is not accurate, please provide the correct data.

---

[7] *Id.*, § 20507(d)(1)(B), (d)(2), (d)(3); *see Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) ("federal law makes this removal mandatory").
[8] *E.g.*, 11 C.F.R. § 9428.2(d).
[9] 52 U.S.C. § 20507(d)(2)(A).
[10] 52 U.S.C. § 20508(a)(3).
[11] 11 C.F.R. § 9428.7.
[12] The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "2022 Election Administration and Voting Survey Instrument."
[13] The data referred to is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ, which contains the responses to question A9e of the survey.

2. According to the EAC, your state did not report any data for another 19 counties regarding the number of voter registrations cancelled from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal election. Instead, in the relevant column where the data should have been, the state merely reported "Data not available," for those counties.[14] The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

Please provide us the data that is missing from the EAC's report regarding cancellations under Section 8(d)(1)(B) of the NVRA, for each of these 19 counties, within two weeks of the date of this letter.

Request for Records

Section 8(i)(1) of the NVRA requires that "[e]ach state shall maintain for at least 2 years and shall 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."[15] That provision goes on to specifically provide that "[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice."[16]

Pursuant to Section 8(i) of the NVRA, Judicial Watch requests that you produce the following records within two weeks of the date of this letter:

1. Copies of the state's most recent voter registration database, including fields indicating each registered voters' name, full date of birth, home address, most recent voter activity, and active or inactive status.

2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

3. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

[14] The responses referred to are also available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ.
[15] 52 U.S.C. § 20507(i)(1).
[16] *Id.*, § 20507(i)(2).

4. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.

5. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.

6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.

7. Records sufficient to support any explanation you provided in response to the inquiries contained in this letter.

If we do not hear within two weeks of the date of this letter that you intend to provide these records, we will assume that you do not intend to do so, and will treat your course of conduct as a violation of Section 8(i) of the NVRA.

Please contact us if you have any questions about the foregoing. We look forward to receiving your prompt response.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

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EXHIBIT

Robert Popper

From: Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov>
Sent: Tuesday, August 29, 2023 12:06 PM
To: Robert Popper
Subject: Re: [EXTERNAL] Inquiry and request for public records
Attachments: CA inquiry and pub rec req - 8-4-2023.pdf; 23032cik.pdf; CCROV 22132rj.pdf; CCROV 22135jh.pdf; CCROV 22203bk.pdf; CCROV 22214bk.pdf; CCROV 22262rd.pdf; CCROV 22264pk.pdf; nvra-updates.pdf; sos-nvra-toolkit.pdf; county-elections-officials.pdf

Dear Mr. Popper,

Thank you again for contacting the Secretary of State with your requests for information and records relating to implementation of the National Voter Registration Act.

The following will respond to each of your requests on an item-by-item basis.

1. According to the EAC, your survey responses show that 19 California counties reported removing zero voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.

These counties are: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County.

Another eight counties had five or fewer removals under that NVRA provision. These are: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Within two weeks of the date of this letter, please confirm whether this data is accurate. If it is accurate, please explain why or whether you believe such data is consistent with NVRA compliance. If the data is not accurate, please provide the correct data.

2. According to the EAC, your state did not report any data for another 19 counties regarding the number of voter registrations cancelled from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal election. Instead, in the relevant column where the data should have been, the state merely reported "Data not available," for those counties.14 The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

Please provide us the data that is missing from the EAC's report regarding cancellations under Section 8(d)(1)(B) of the NVRA, for each of these 19 counties, within two weeks of the date of this letter.

Response: We have no records responsive to your requests.

1. Copies of the state's most recent voter registration database, including fields indicating each registered voters' name, full date of birth, home address, most recent voter activity, and active or inactive status.

Response: To receive the requested information, you will need to submit an application and be approved to receive this restricted information. https://www.sos.ca.gov/elections/voter-registration/voter-registration-information-file-request

2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

Response: We have no records responsive to your request.

3. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

Response: We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review.

4. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.

Response: After a diligent search, we have identified 10 records responsive to your request. Also note that these additional items are available on our website:

https://elections.cdn.sos.ca.gov/votecal/guidance/ballot-processing.pdf

https://elections.cdn.sos.ca.gov/nvra/training/pdf/list-maintenance.pdf

https://www.sos.ca.gov/elections/voter-registration/nvra/laws-standards/nvra-manual

https://elections.cdn.sos.ca.gov/votecal/guidance/ems-message.pdf

5. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.

Response: We have no records responsive to your request. VoteCal exchanges information with the Employment Development Department (EDD) to get national address change information from the United States Postal Service (USPS) for voter registration records. If a voter's address has been changed with the USPS in California, his or her information will be updated in VoteCal and the voter's registration record and voting history is transferred to the voter's new California address.

6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.

Response: This request is not specific enough to perform a search to identify any specific record or records that might be responsive, (not "a reasonable and focused request" per Rogers v. Superior Court (1993) 19 Cal. App. 4th 469, 481). Information related to the processes to maintaining accurate and current official lists of eligible voters is available on our website at https://www.sos.ca.gov/elections/voter-registration/votecal-project.

7. Records sufficient to support any explanation you provided in response to the inquiries contained in this letter.

Response: We have no records responsive to your request.

We hope this information is helpful to you.

Sincerely,

Constituent Affairs
Secretary of State

EXHIBIT

Judicial Watch®
Because no one is above the law!

October 30, 2023

VIA EMAIL AND USPS CERTIFIED MAIL

Hon. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Re: Notice of iolation of t e National oter Registration Act of , U. .C.

Dear Secretary Weber:

I write on behalf of Judicial Watch, Inc. ("Judicial Watch") and the Libertarian Party of California ("LPCA") to notify you that your office is currently in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA). We write to you as the chief state election official responsible for coordinating California's compliance with Section 8 of the NVRA.[1] This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) (2) that Judicial Watch and the LPCA will file a lawsuit against you if these violations are not corrected within 90 days.

Background

As you are no doubt aware, the NVRA was intended both to "increase the number of eligible citizens who register" and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained."[2] The goal of ensuring election integrity was embodied in Section 8, which requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of … the death of the registrant; or … a change in the residence of the registrant."[3]

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.[4] Second, if the registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the "Confirmation Notice"), fails to respond to it, and then fails to vote in the next two general federal elections, that registration must be cancelled.[5] Registrants who have failed to

1 Cal. Elec. Code § 10(a); Cal. Gov. Code § 12172.5(a).
2 52 U.S.C. § 20501(b).
3 *Id.*, § 20507(a)(4).
4 *Id.*, § 20507(d)(1)(A).
5 *Id.*, § 20507(d)(1)(B) ("Section 8(d)(1)(B)"); (d)(2), (d)(3); *see Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) ("federal law makes this removal mandatory").

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respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be "inactive."[6] However, inactive registrations may still be voted on election day.[7]

The NVRA contains a public records provision. Section 8(i) requires that "[e]ach state shall maintain for at least 2 years and shall 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."[8] That provision goes on to specifically provide that "[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice."[9]

Federal law requires the Election Assistance Commission ("EAC") to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.[10] Federal regulations require you to provide data to the EAC for use in this report.[11] The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.[12]

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022.

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According to your state's responses to the EAC's survey, 27 California counties reported removing five or fewer and, in most of those counties, zero voter registrations from the list of eligible voters during the period from November 2020 to November 2022 for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.[13] Another 19 counties simply did not report any data whatsoever to the EAC regarding removals under

6 *E.g.*, 11 C.F.R. § 9428.2(d).
7 52 U.S.C. § 20507(d)(2)(A).
8 52 U.S.C. § 20507(i)(1).
9 *Id.*, § 20507(i)(2).
10 52 U.S.C. § 20508(a)(3).
11 11 C.F.R. § 9428.7.
12 The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "2022 Election Administration and Voting Survey Instrument."
13 The data referred to is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ, which contains the responses to question A9e of the survey. The following 19 counties reported zero such removals during that period: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County. Another eight counties reported from one to five such removals during that period: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Section 8(d)(1)(B). Instead, in the relevant column where the data should have been, the survey response for each of these counties merely states, "Data not available."[14]

On August 4, 2023, Judicial Watch wrote to you to pointing out these facts and asking you to confirm the data contained in the EAC's report and to provide the data that was omitted. We also asked for certain public records pursuant to Section 8(i). On August 29, 2023, your office responded by means of an email from "Secretary of State, Constituent Affairs," which treated our factual inquiries about the aforementioned county data as requests for public records, and stated that "[w]e have no records responsive to your requests." (Both our letter and your email response, without documentary attachments, are annexed hereto.) Our inquiries were not requests for public records, however, but requests for information, which your response signally failed to provide.

Both common sense and Judicial Watch's enforcement experience confirm that there is no possible way California has complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 46 of its 57 counties either removed no or ust a few registrations under that provision, or failed to report removals at all, for the past two reporting years. Nor is it possible, given these facts, that California is complying with its list maintenance obligations to "conduct a general program that makes a reasonable effort to remove the names" of voters who have moved or died. *See* 52 U.S.C. § 20507(a)(4).

California's non-compliance with the NVRA is further indicated by the unusually high registration rates observed in its counties. Comparing the data your state reported to the EAC regarding the total registration numbers for each county[15] to the U.S. Census Bureau's most recent five-year estimates of the numbers of resident citizens over the age of eighteen[16] suggests that 21 California counties have more voter registrations than citizens of voting age.[17] Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure

[14] These responses are also found at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)" in Column CZ. The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

[15] See the data at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column E.

[16] This data is found on the U.S. Census Bureau's website in table DP05 ("ACS Demographic and Housing Estimates"), by selecting "2021: ACS 5-Year Estimates Data Profiles" as the data source and scrolling down to the heading, "Citizen, 18 and over population" for each county For example, the relevant data for Alameda County is available at https://data.census.gov/table/ACSDP5Y2021.DP05_q_Alameda_County,_California.

[17] These are: Alameda County, Alpine County, Calaveras County, El Dorado County, Imperial County, Marin County, Modoc County, Nevada County, Placer County, Plumas County, Riverside County, San Benito County, San Diego County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, Ventura County, and Yolo County. The same is true for the State of California as a whole, in that its total registration exceeds its citizen voting-age population.

to comply with the NVRA's mandate to make reasonable efforts to remove voters by reason of death or change of address.[18]

Consistent with the foregoing facts, your own data shows that California's counties have unusually high inactive registration rates. For example, data your state supplied to the EAC shows that in 12 California counties inactive registrations constitute more than 20 of all registrations, and in one county more than 27 of all registrations.[19] By contrast, the national inactive rate is 11.1 .[20] High inactive rates are also sufficient grounds for alleging non-compliance with the NVRA.[21]

The foregoing facts amply demonstrate that California is not complying with the list maintenance provisions of the NVRA.

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Judicial Watch's August 4, 2023 letter also requested, pursuant to Section 8(i) of the NVRA, seven categories of public records concerning California's programs and activities to ensure the accuracy and currency of its voter lists.

The second request and the response we received from you on August 29, 2023, were:

> 2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.
>
> Response: We have no records responsive to your request.

This request seeks a category of documents that the NVRA specifically requires states to provide on request.[22] Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

The third request and your response are as follows:

---

[18] *See e.g. reen v. ell*, No. 3:21-cv-00493-RJC-DCK, 2023 U.S. Dist. LEXIS 45989, at 12 (W.D.N.C. Mar. 20, 2023); *udi ial at h In . v. ris old*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021); *Voter Integrit Pro e t NC In . v. a e Cnt . d. o Ele tion*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017).

[19] These are: Del Norte County, Imperial County, Lake County, Modoc County, Plumas County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, and Yolo County. The data are obtained for each county by dividing Column G by Column E, in the document entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys.

[20] *See* ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE REPORT at 141-42, available at link entitled "2022 Election Administration and Voting Survey Report (Full PDF Version)," at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys.

[21] *See udi ial at h In . v. ris old*, 554 F. Supp. 3d at 1107.

[22] *See* 52 U.S.C. § 20507(i)(2).

> 3. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.
>
> Response: We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review.

Until responsive documents have been provided, this request has not been complied with.

The sixth request and your response are:

> 6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.
>
> Response: This request is not specific enough to perform a search to identify any specific record or records that might be responsive, (not "a reasonable and focused request" per Rogers v. Superior Court (1993) 19 Cal. App. 4th 469, 481). …

This request restricts its reach both to a particular kind of evaluation and to a particular kind of topic for such an evaluation, and is specific enough to allow a proper search. Your failure to conduct a search or provide documents violates the public records provisions of the NVRA.

If you do not contact us about correcting or otherwise resolving the above-identified violations within 90 days, Judicial Watch and the LPCA will commence a federal lawsuit seeking declaratory and in unctive relief against you. In such a lawsuit we would seek, in addition to in unctive relief, a udgment awarding reasonable attorney's fees, expenses, and costs. *See* 52 U.S.C. § 20510(c). For the reasons set forth above, we believe that such a lawsuit would be likely to succeed.

We have long experience with list maintenance litigation and are well aware of the practical difficulties urisdictions face in trying to maintain their voter rolls. As we believe we showed during our previous litigation involving your office and Los Angeles County, we are absolutely willing to compromise and work together to come up with a realistic plan to address these difficulties. We are always glad to avoid costly litigation and to amicably resolve disputes.

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Please contact us if you have any questions about the foregoing. We look forward to hearing from you.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

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EXHIBIT

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

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March 11, 2024

VIA EMAIL

Robert Popper
Judicial Watch
425 Third St. SW, Suite 800
Washington, DC 20024
rpopper@judicialwatch.org

RE: Letters dated August 4, 2023 and October 30, 2023

Dear Mr. Popper:

On behalf of Secretary of State Dr. Shirley N. Weber, we respond further to your letters of August 4, 2023, and October 30, 2023 inquiring about the responses of 46 California counties to question A9e on the 2022 Election Administration and Voting Survey (EAVS) conducted by the U.S. Election Assistance Commission (EAC). We acknowledge that a person aggrieved by an alleged violation of the National Voter Registration Act (NVRA) may bring a civil lawsuit within 90 days of providing notice of the alleged violation (52 U.S.C. § 20510(b)(2)), and we appreciate your willingness to provide additional time to look into your inquiries.

Your letters allege that the list-maintenance practices of 46 California counties fail to comply with Section 8(a)(4) of the NVRA. This section requires elections officials to "conduct a general program to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" change in a registrant's residence. (52 U.S.C. § 20507(a)(4).)

Under California's system for administering elections, each county has primary responsibility for carrying out its list maintenance practices in accordance with California and federal law. California law requires counties to engage in numerous list maintenance activities, as detailed below. This includes amendments to state law to conform to the United States Supreme Court's 2018 decision regarding the cancellation of voter registrations under the NVRA, *Husted v. A. Philip Randolph Institute* (2018) 584 U.S. 756. The Secretary has issued detailed written guidance and conducted in-person and webinar trainings for county elections officials on this subject. Together, these California laws and the related guidance and training offered by the Secretary, as well as the commitments made (and kept) by the Secretary under its prior

settlement with Judicial Watch, constitute a general program that makes a reasonable effort to maintain accurate lists of eligible voters, and thus comports fully with Section 8(a)(4) of the NVRA.

BACKGROUND

I. LIST-MAINTENANCE REQUIREMENTS UNDER CALIFORNIA LAW

In requiring elections officials to conduct a general program to make a reasonable effort to remove the names of ineligible voters, the NVRA does not mandate any particular method of identifying ineligible voters. Elections officials in California must follow the procedures for confirming registrants' addresses set forth in sections 2220 through 2226 of the Elections Code. These procedures are described in detail in Chapter 4 of California's NVRA Manual, entitled "Voter Registration Applications and Voter List Maintenance," a copy of which is enclosed with this response. The procedures include:

- the sending of voter notification cards (Elec. Code, §§ 2155, 2155.3);
- the use of a pre-election residency confirmation postcard (Elec. Code, § 2220) or an alternative procedure, such as
    - the use of national change-of-address data from the U.S. Postal Service (Elec. Code, § 2222);
    - the mailing of county voter information guides with address correction requests (Elec. Code, § 2223); or
    - obtaining change-of-address data from a consumer credit reporting agency (Elec. Code, § 2227);
- the sending of address confirmation notices in response to information indicating that a registrant has moved (Elec. Code, §§ 2155, 2225, 2226);
- the intra- or inter-county transfer of voter registrations, when appropriate (Elec. Code, § 2155);
- the placement of voter registration records on inactive status, when appropriate (Elec. Code, §§ 2221, 2225); and
- the cancellation of voter registrations when all requirements of Section 8(d) of the NVRA (52 U.S.C. § 20507(d)(2)) have been satisfied (Elec. Code, §§ 2225, 2226).

In accordance with these requirements under California law, county elections officials conduct list maintenance through confirmatory mailings, the use of change-of-address data, the placement of voters on inactive status, and, ultimately, the cancellation of registrations in compliance with Sections 8(a)(4), 8(d)(1)(B), and 8(d)(2) of the NVRA.

New and updated registrations are checked against a number of data points to determine their accuracy. VoteCal, the federally mandated and compliant statewide voter registration database, automatically runs voter-to-voter duplicate checks on new registrations and updates to existing voter registrations. If a potential match (for example, the same registrant, registered twice with different addresses) is determined, VoteCal notifies relevant county election officials for a potential match final determination. If the county election official determines that the records are a match based upon a variety of data points, the records are merged and the most recent information is applied to the record.

Additionally, voter registration records are reviewed and updated regularly based on data from the California Department of Corrections, California Department of Public Health, Department of Motor Vehicles (DMV), and the Employee Development Department (EDD). With respect to changes of address, the Secretary provides the full voter registration database to the EDD on a monthly basis to compare against its National Change of Address (NCOA) database. EDD is the sole licensed provider of the NCOA database for the State. In return, EDD marks the voters that may have moved and provides this data to the Secretary, which is processed into VoteCal. Notices of potential address changes are then sent to county election officials for final determination. The Secretary also receives daily change of address notifications from the DMV from registrants who update their address records with DMV about changes of address made at DMV. VoteCal identifies potential changes of address and sends notices to county election officials for final determination.

II. CANCELLATION OF VOTER REGISTRATIONS IN ACCORDANCE WITH SECTION 8 OF THE NVRA

Section 8(b)(2) of the NVRA prohibits the cancellation of a registration for failure to vote, and Section 8(d)(1)(B) allows for removal on the ground that the registrant has changed residence only after a qualifying notice has been sent and certain conditions are thereafter satisfied.[1] (52

[1] An address confirmation notice that begins the Section 8(d)(2) cancellation process must provide a postage paid, pre-addressed return form on which a registrant may confirm their current address, and must explain that: (1) if the registrant did not change their place of residence, or changed residence within California, the registrant should return the card not later than 15 days prior to the date of the next election; (2) if the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice; (3) if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and (4) if the registrant has changed their place of

U.S.C. § 20507(b)(2), (d)(2).) A qualifying notice can be sent in response to information indicating that the registrant has moved out of state, or has moved and left no forwarding address. (Elec. Code, §§ 2221, subd. (a)(1); 2225, subd. (c).) After this, if a voter fails to return the address confirmation notice; does not offer or appear to vote in any election within the next two federal general election cycles following the mailing of that notice; and does not notify a county elections official of continued residency within California, the county elections official must update the voter's registration record to reflect that the registration is cancelled. (Elec. Code, §§ 2225, subd. (c); 2226, subd. (b); 52 U.S.C. §§ 21803(a)(4)(A), 20507(a)(4), (d)(3); *Husted*, 584 U.S. 767.)

Previously, Elections Code section 2226 was permissive, allowing removal once Section 8(d)(1)(B) requirements had been met, but without requiring it. This reflects the California Legislature's prior understanding that such removals were permitted, but not mandatory, under the NVRA. Although Section 8(d)(1)(B) does not explicitly require removal, the Supreme Court clarified for the first time in its *Husted* decision that cancellation is mandatory under federal law. (584 U.S. at p. 767 ["Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory."], citing 52 U.S.C. § 20507(d)(3); 52 U.S.C. § 21083(a)(4)(A).)

As you know, in *Judicial Watch v. Logan*, No. 17-cv-8948 (C.D. Cal. 2017), which concerned the list-maintenance practices of Los Angeles County and removal obligations under Section 8 of the NVRA, the parties entered into a settlement agreement that required the Secretary to update the California NVRA Manual (which the Secretary did in 2019) to reflect the Supreme Court's interpretation of Section 8 in *Husted*. In addition, the Legislature amended the Elections Code to align California law with the Supreme Court's pronouncement in *Husted*. As of January 1, 2020, Elections Code section 2226, as amended, required the cancellation of registrations once all Section 8(d)(1)(B) prerequisites had been satisfied. (Cal Stats. 2019, ch. 262, § 6.)

RESPONSE TO INQUIRIES AND RECORDS REQUESTS

Your letters allege that 19 California counties (Alpine, Amador, Calaveras, Del Norte, Glenn, Humboldt, Madera, Merced, Modoc, Monterey, Placer, San Bernardino, San Francisco, San Mateo, Santa Barbara, Santa Cruz, Sierra, Solano, and Stanislaus) have failed to conduct a general program that makes a reasonable effort to remove the names of ineligible voters based on the sole fact that these counties reported removing zero voter registration records during the EAVS 2020-2022 reporting period. The letters make similar allegations as to eight counties (Alameda, Colusa, Lake, Mendocino, San Joaquin, San Luis Obispo, Siskiyou, and Yolo) that reported removing between one and five registration records under Section 8(d)(1)(B), and as to

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residence to a location outside of California, the notice must include information concerning how the voter can remain eligible to vote.

19 counties that reported that data on the number of registration records removed under Section 8(d)(1)(B) was unavailable.

Your letters do not inquire about the Section 8(a)(4) compliance efforts of the remaining 12 counties (Butte, Contra Costa, Fresno, Kings, Los Angeles, Mariposa, Sacramento, San Diego, Sutter, Tehama, Tuolumne, and Yuba). Over 10 million registered voters, corresponding to more than 45 percent of registered voters statewide, reside in these 12 counties.[2]

At the outset, it is not correct to infer that a county is failing to comply with Section 8(a)(4) based on few or no reported Section 8(d)(1)(B) removals or the unavailability of the requested data. There are a variety of reasons why an NVRA-compliant county might respond to the EAVS survey in this manner. Some are operational. For example, a county that did not remove inactive registrations prior to *Husted*, and that first revised its form of Section 8(d)(2) notice to comply with the Section 8, as construed by *Husted*, in 2019, would not have become eligible to remove those inactive registration records during the 2020-2022 EAVS reporting period. Some are related to the EAVS survey instrument itself. The 2022 survey instrument recognizes that elections officials may not track registration data in a way that corresponds precisely to the categories of information requested by the EAC, and in such cases directs the respondent to state that the data is not available.[3] Others are demographic. For example, a rural county with a small population might expect to see fewer address changes and higher response rates to Section 8(d)(2) mailings as compared with larger counties, such that few, if any, Section 8(d)(1)(B) removals would be mandated during a given federal election cycle.

With respect to the 46 counties at issue in your letters, as explained below, their elections officials follow general programs that make a reasonable effort to remove registration records of those who become ineligible to vote by reason of a change of address, as the NVRA requires. Twenty counties either removed significantly more registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period than were reported to the EAC, or believe that they have done so but were unable to provide precise reporting on the number of removals based on data limitations at the time of the survey response. Seventeen counties have demonstrated compliance with Section 8(a)(4) by removing the registration records of those who became inactive by nature of Section 8(d)(2) notices mailed prior to the 2020 general election. These counties expect to timely report such removals to the EAC in response to its anticipated 2024

[2] Cal. Secretary of State, Report of Registration as of February 20, 2024: Registration by County, https://elections.cdn.sos.ca.gov/ror/15day-presprim-2024/county.pdf.

[3] EAC, 2022 Election Administration and Voting Survey, at 2 (instructions for survey section A). The EAC has acknowledged that the questions in Section A of the 2022 EAVS survey instrument do not reflect current "data collection practices" and use "outdated vocabulary" (including its definition of "confirmation notice") and "confusing instructions" that have led to "recurrent help desk and data quality issues." (EAC, Planned Changes to Section A of the 2024 Election Administration and Voting Survey, Jul. 2022), at 2.) The EAC is proposing changes to the 2024 survey instrument intended to address these issues.

survey. The remaining nine counties, despite reasonable efforts, did not report removing registration records under Section 8(d)(1)(B) during the 2020-2022 reporting periods for other reasons, as discussed below.

These county election officials also comply fully with the NVRA and state-law requirements applicable to inactive-status registrants. Such registrants can only vote in person, using a provisional ballot, and after confirming their residence address. They are not mailed ballots or election materials, and they are not taken into consideration in determining the number of signatures required for qualification of candidates or ballot measures, precinct size, or other election administration processes. (Elec. Code, § 2226(a)(2).)

I. ADDITIONAL INFORMATION BY COUNTY

Alameda County. Alameda County reported in response to Question A9e on the EAVS survey instrument that it had removed one registration record under Section 8(d)(1)(B) during the 2020-2022 reporting period. Upon further investigation, the county identified additional registration records that had become eligible for removal under Section 8(d)(1)(B) during the same reporting period. The county removed approximately 40,000 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Alpine County. Alpine County, the smallest in California by population, accurately reported its response to Question A9e on the 2022 EAVS survey instrument. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing those registrants who do not vote or update their registration during the next two general federal election cycles. The county is not presently aware of any inactive registrants who will become eligible for cancellation on account of failure to respond to a Section 8(d)(2) notice. For example, when the county last sent Section 8(d)(2) notices to inactive registrants in September 2023, all recipients responded to the notice.

Amador County. Amador County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 220 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Calaveras County. Calaveras County's response to Question A9e on the EAVS survey instrument was accurately reported. 2,389 registrants were removed under Section 8(d)(1)(B) in 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Colusa County. Colusa County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting

period. The county removed 17 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Del Norte County. Del Norte County's response to Question A9e on the EAVS survey instrument was not accurately reported. The county removed registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period, but it was unable to determine how many using the data classification scheme in place at the time. By the county's best estimate, the number of Section 8(d)(1)(B) removals during this period exceeds 100. The county is taking steps to improve the tracking capabilities of its election management system so that it can report on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

El Dorado County. El Dorado County's response to Question A9e on the EAVS survey instrument was accurately reported. 13,088 registration records were removed under Section 8(d)(1)(B) in January 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Glenn County. Glenn County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 722 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Humboldt County. Humboldt County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed approximately 7,800 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Imperial County. Imperial County is not able to determine whether any registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period, but by its best estimate using available data, there were few or no Section 8(d)(1)(B) removals. The county attempted to conduct a mass mailing of Section 8(d)(2) notices to inactive registrants in 2020. In 2023, the county determined that its form of notice did not contain Section 8(d)(2)-compliant language. Accordingly, the county issued approximately 88,000 Section 8(d)(2)-compliant notices to inactive registrants in September 2023.

Inyo County. Inyo County's response to Question A9e on the EAVS survey instrument was accurately reported; at the time, the county's election management system was not set up to allow for reporting on this category of information. The county, which has since improved its tracking and reporting capabilities, later determined that 203 registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period. The county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Kern County. Kern County's response to Question A9e on the EAVS survey instrument was accurately reported. The county expects to remove roughly 60,000 registration records of inactive voters during the 2022-2024 reporting period, although the precise number of removals will depend upon voting and registration activity. The county expects to report these cancellations to the EAC in response to the 2024 EAVS survey.

Lake County. Lake County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 438 registration records under Section 8(d)(1)(B) in September 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Lassen County. Lassen County's response to Question A9e on the EAVS survey instrument was accurately reported. The number of removals under Section 8(d)(1)(B) during the 2020-2022 reporting period could not be determined using the county's existing data classification scheme. The tracking capabilities of the county's election management system have improved, and the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Madera County. Madera County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed approximately 944 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Marin County. Marin County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county projects that approximately 2,500 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Mendocino County. Mendocino County's response to Question A9e on the EAVS survey instrument reflects the total number of Section 8(d)(1)(B) removals from the 2020-2022 reporting period that can be confirmed as such based on existing records. The county removed a total of 623 registration records during the same reporting period; this population likely includes more than one Section 8(d)(1)(B) removal, but the precise number could not be determined using the data classification scheme in place at the time of the county's response. The county is improving its tracking capabilities and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Merced County. Merced County's response to Question A9e on the EAVS survey instrument may not accurately reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022

reporting period. By the county's best estimate, the number of Section 8(d)(1)(B) removals during this period is approximately 15. Additionally, the county projects that approximately 25,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Modoc County. Modoc County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) cards to inactive registrants and removing the records of those registrants that do not vote or update their registration in two general federal election cycles. The county anticipates removing registration records under Section 8(d)(1)(B) after the 2024 general election.

Mono County. Mono County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed approximately 600 registration records removed under Section 8(d)(1)(B) in December 2023. The county has improved its tracking capabilities and expects to report these removals to the EAC in response to the 2024 EAVS survey.

Monterey County. Monterey County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county did not interpret the survey instrument to include cancellations between reporting years. The county removed 493 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. Monterey County removed approximately 8,000 additional registration records in January 2023; the county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Napa County. Napa County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county's response to this question did not correctly reflect county-level data. The county removed approximately 1,412 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. The tracking capabilities of the county's election management system have improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Nevada County. Nevada County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed, by its best estimate, between 750 and 800 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. Because the precise number of removals could not be determined using the county's existing data classification scheme, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county's election management system have improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Orange County. Orange County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 77,691 registration records for "other reasons," as reported in response to Question A9g, during the 2020-2022 reporting period. This population includes removals under Section 8(d)(1)(B), but the precise number of Section 8(d)(1)(B) removals cannot be determined using the county's existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county's election management system have improved, and the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Placer County. Placer County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 19,146 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Plumas County. Plumas County did not remove any registrants under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Riverside County. Riverside County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The precise number of Section 8(d)(1)(B) removals could not be determined using the county's existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. By the county's best estimate, which is based on reporting capabilities at the time, the number of registration records removed under Section 8(d)(1)(B) during the 2020-2022 reporting period is approximately 750.

San Benito County. San Benito County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed 144 registration records under Section 8(d)(1)(B) in April 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

San Bernardino County. San Bernardino County's response to Question A9e on the 2020-2022 EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county was unable to remove registration records under Section 8(d)(1)(B) based on failure to vote in the 2018 and 2020 general elections because, among other reasons, the county determined that its form of Section 8(d)(2) notice did not contain Section 8(d)(2)-compliant language. Accordingly, the county issued or re-issued over 200,000 new, Section 8(d)(2)-compliant notices in 2023.

San Francisco County. San Francisco County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county's response to this question did not correctly reflect county-level data. 12,657 registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period.

San Joaquin County. San Joaquin County removed 3,232 registration records during the 2020-2022 reporting period; this population may include Section 8(d)(1)(B) removals, but the precise number could not be determined using the county's existing data classification scheme. The county is improving its tracking capabilities and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

San Luis Obispo County. San Luis Obispo County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 6,192 registration records under Section 8(d)(1)(B) in October 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

San Mateo County. San Mateo County's response to Question A9e on the EAVS survey instrument was accurately reported. Approximately 105,000 registration records were removed under Section 8(d)(1)(B) in March 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Barbara County. Santa Barbara's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 23,509 registration records under Section 8(d)(1)(B) in 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Clara County. Santa Clara County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed approximately 204,000 registration records under Section 8(d)(1)(B) in March 2023. This statistic was not reflected in the 2022 EAVS report, because the cancellation of these voters took place after the EAVS report was submitted. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Cruz County. Santa Cruz County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county projects that approximately 50,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2026 general election, but the actual number of removals will vary depending upon voting and registration activity prior to the election.

Shasta County. Shasta County had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed 1,192 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Sierra County. Sierra County's response to Question A9 on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 99 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Siskiyou County. Siskiyou County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) cards to inactive registrants and removing those registrants who do not vote or update their registration during the next two general federal election cycles. The county projects that approximately 900 registration records will be removed under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Solano County. Solano County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 63,053 registration records under Section 8(d)(1)(B) in December 2022. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Sonoma County. Sonoma County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed over 15,000 registration records in total during the 2020-2022 reporting period. This population may include Section 8(d)(1)(B) removals, but the precise number for any particular category could not be determined using the county's existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county's election management system have since improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Stanislaus County. Stanislaus County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not vote or update their registration during the next two general federal election cycles. The county expects to remove approximately 2,500 registrants under Section 8(d)(1)(B) before the November 2024 election, and to report these removals to the EAC in response to the 2024 EAVS survey.

Trinity County. Trinity County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county follows a general program of sending Section

8(d)(2) notices to inactive registrants and removing the records of those registrants who do not vote or update their registration during the next two general federal election cycles. The county projects that approximately 1,300 registration records will be removed under Section 8(d)(1)(B) after the 2026 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Tulare County. Tulare County's response to Question A9e on the EAVS survey instrument was correctly reported. The county removed registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period, but it is unable to report precisely how many using its existing data classification scheme. By the county's best estimate, the number of Section 8(d)(1)(B) removals during this period is less than 50. The county projects that approximately 11,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election. The county has improved the tracking capabilities of its election management system and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during future EAVS reporting periods.

Ventura County. Ventura County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed a large number of registration records under Section 8(d)(1)(B) in April 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Yolo County. Yolo County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 14,120 registration records under Section 8(d)(1)(B) in November 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

II. RESPONSES TO RECORDS REQUESTS

Invoking Section 8(i) of the NVRA, 52 U.S.C. § 20507(i), your August 4 letter requests seven categories of records. The Secretary will provide copies of existing records that respond to these requests, to the extent required by Section 8(i), and as explained below.

Request 1 from your letters seeks "[c]opies of the state's most recent voter registration database, including fields indicating each register voters' [sic] name, full date of birth, home address, most recent voter activity, and active or inactive status." In accordance with state law, the Secretary provides a copy of the California state voter registration file to applicants who certify that they will use the voter file data only for a purpose disclosed by the applicant and permitted by law, maintain its data in a secure and confidential manner, and not disclose any data to any third person without further written authorization from the Secretary. (*See* Elec. Code, §§ 2188, 2194, 18109; Gov. Code, § 7924.000; Cal. Code Regs., tit. 2, §§ 19001–19009.) Enclosed with this letter is a form application to request access to California's voter registration file. If you would like to apply for a copy of the file, please complete and return this form, specifying which counties you would like the file to include.

Request 2 asks for "[a] list of the names and addresses of all persons in the county to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice." Without conceding that this information is encompassed by Section 8(i), the Secretary does not maintain the requested list.

Request 3 seeks communications concerning the EAC's 2022 EAVS survey. The EAVS survey is not a program or activity undertaken by State or county election officials within the meaning of Section 8(i)

Request 4 seeks "[a]ll contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters." The Secretary does not contract with any federal agency to provide change of address information concerning registered voters; instead, it relies on data from the state Employee Development Department to aid in determining address changes for registered voters. We construe your request to include the Secretary's contract with the Employee Development Department, a current copy of which is enclosed.

Request 5 asks for "[a]ll manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters." Each January since 2019, as part of the settlement agreement in *Logan*, the Secretary provides Judicial Watch with copies of manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters from the previous calendar year. We enclose copies of these materials from the past two years.

Request 6 concerns "[a]ll records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of the official lists of eligible voters." By way of background, the Elections Division follows a number of protocols that use information from the statewide voter registration database, VoteCal, as well as administrative records from other state agencies, including the Employee Development Department, the California Department of Public Health, the California Department of Corrections and Rehabilitation, and the Department of Motor Vehicles, to aid in determining registrant eligibility. Voter registration eligibility checks are performed on all new registrants pursuant to automated processes. Other processes confirm the eligibility of existing registrants, including checks to identify duplicate voter registrations, process voter-initiated changes to registration records, and compare existing registration records with state administrative records reflecting address changes, felony criminal histories, and deaths. Checks resulting in a "match" may, after confirmation, require updates to a registrant's voting record, including with respect to factors affecting a registrant's eligibility to vote. VoteCal disseminates "match" information to county elections officials so that they may determine whether changes to the registrant's record are needed. Combined, these processes perform tens of thousands of individual determinations daily. Even if Section 8(i) applied to this request, it would be infeasible to generate and produce "all" records associated with these

processes. Nonetheless, without conceding that this request falls within the scope of Section 8(i), the Secretary would be willing to confer about an appropriately narrowed request.

Request 7 requests "[r]ecords sufficient to support any explanation you provided in response to the inquiries contained in this letter." To the extent such records fall within the ambit of Section 8(i), we enclose copies.

California is committed to complying fully with the requirements of the NVRA. We remain available to discuss any further questions or concerns that you may have.

Sincerely,

ANNA FERRARI
Deputy Attorney General

For ROB BONTA
Attorney General

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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDICIAL WATCH, INC.; ILLINOIS FAMILY ACTION; BREAKTHROUGH IDEAS; and CAROL J. DAVIS,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS; and BERNADETTE MATTHEWS, in her capacity as the Executive Director of the Illinois State Board of Elections,

Defendants.

No. 24 Civ 1867

Judge Sara L. Ellis

FIRST AMENDED COMPLAINT

Plaintiffs Judicial Watch, Inc., Illinois Family Action, Breakthrough Ideas, and Carol J. Davis ("Plaintiffs") file this First Amended Complaint for declaratory and injunctive relief against the Illinois State Board of Elections and its Executive Director Bernadette Matthews, in her official capacity ("Defendants").[1]

1. Plaintiffs seek declaratory and injunctive relief to compel Defendants to comply with their voter list maintenance obligations under Section 8 of the National Voter Registration Act of 1993 ("NVRA" or "Act"), 52 U.S.C. § 20507. Plaintiffs also seek reasonable attorneys' fees, litigation expenses, and costs, which are available to prevailing parties under the Act. *Id.* § 20510(c).

[1] The Court permitted Plaintiffs to file an amended complaint in Doc.68 and Doc. 69 at 22.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, and in particular under 52 U.S.C. §§ 20507 and 20510(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a defendant resides in this district and all defendants reside in Illinois, and because a substantial part of the events and omissions giving rise to the claims herein occurred in this district.

PARTIES

4. Plaintiff Judicial Watch, Inc. ("Judicial Watch") is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, D.C. 20024.

5. Plaintiff Illinois Family Action (IFA) is a non-profit political advocacy and lobbying organization incorporated under the laws of Illinois and headquartered in Tinley Park, Illinois.

6. Plaintiff Breakthrough Ideas (BI) is a non-profit advocacy organization incorporated under the laws of Illinois and headquartered in Wheaton, Illinois.

7. Plaintiff Carol J. Davis is a resident and lawfully registered voter in DuPage County, Illinois. Ms. Davis is a member of Judicial Watch.

8. Defendant Illinois State Board of Elections (the "State Board") is an independent state agency created under the laws of the State of Illinois. Defendant State Board is responsible for supervising the administration of registration and election laws throughout the State.

9. Defendant Bernadette Matthews is the Executive Director of the Illinois State Board of Elections and the Chief State Election Official of the State of Illinois. She is sued in her official capacity.

STATUTORY BACKGROUND

10. Section 8 of the NVRA provides that "each State shall … conduct a general program that makes a reasonable effort to remove … from the official lists of eligible voters" the names of voters who have become ineligible by reason of death or a change of residence. 52 U.S.C. § 20507(a)(4).

11. With respect to voters who have changed residence, Section 8 provides that no registration may be cancelled on that ground unless the registrant either (1) confirms this fact in writing, or (2) fails to timely respond to an address-confirmation notice described by the statute (the "Confirmation Notice"). 52 U.S.C. § 20507(d)(1).

12. A Confirmation Notice must incorporate a "postage prepaid and pre-addressed return card, sent by forwardable mail," asking the registrant to confirm his or her residence address. *Id*. § 20507(d)(2). If a registrant fails to respond to such a Confirmation Notice, and then fails to vote (or contact the registrar) during a statutory waiting period extending from the date of the notice through the next two general federal elections, the registration is cancelled. *Id*. § 20507(d)(1)(B). These cancellations are mandatory under both federal and state law. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018) ("federal law makes this removal mandatory" (citations omitted)); 26 Ill. Adm. Code § 216.50(b) (registration "of an inactive voter who has not voted in two consecutive general federal elections shall be canceled at the completion of procedures set forth in Section 8(d)").

13. Federal and state regulations refer to voter registrations as "inactive" when a registrant has failed to respond to a Confirmation Notice and the statutory waiting period has commenced but has not yet concluded. 11 C.F.R. § 9428.7; 26 Ill. Adm. Code § 216.20.

14. A voter with an inactive registration may still vote on election day. 52 U.S.C. § 20507(d)(2)(A). Accordingly, inactive voters are still registered voters.

15. In June of each odd-numbered year, the U.S. Election Assistance Commission ("EAC") is required by law to report to Congress its findings relating to state voter registration practices. 52 U.S.C. § 20508(a)(3).

16. Federal regulations require states to provide various kinds of NVRA-related data to the EAC for use in its biennial report, specifically including:

a. The "total number of registered voters statewide" in the most recent election, "including both 'active' and 'inactive' voters." 11 C.F.R. § 9428.7(b)(2).

b. The "total number of registrants statewide that were considered 'inactive'" in the most recent election. *Id*. § 9428.7(b)(4).

c. The "total number of registrations statewide that were, for whatever reason, deleted from the registration list" between the last two elections. *Id*. § 9428.7(b)(5).

d. The "statewide number" of Confirmation Notices mailed between the last two elections, and "the statewide number of responses received" to them. *Id*. § 9428.7(b)(8).

17. Section 8(i) of the NVRA grants the public the right to request information concerning voter list maintenance. It provides: "Each State shall maintain for at least 2 years and shall make available for public inspection" and copying "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).

18. Though not purporting to be an exhaustive list, Section 8(i)(2) provides specific examples of responsive records: "The records maintained . . . shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i)(2).

19. Under Illinois law, Defendant State Board has "general supervision over the administration of the registration and election laws throughout the State." 10 ILCS 5/1A-1. Its powers and duties include: "(2) Disseminat[ing] information to and consult[ing] with election authorities concerning the conduct of elections and registration …"; "(6) Requir[ing] such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary"; "(7) Review[ing] and inspect[ing] procedures and records relating to conduct of elections and registration as may be deemed necessary, and [] report[ing] violations of election laws …"; "(8) Recommend[ing] … legislation to improve the administration of elections and registration"; "(9) Adopt[ing], amend[ing] or rescind[ing] rules and regulations in the performance of its duties …"; and "(12) Supervis[ing] the administration of the registration and election laws throughout the State." 10 ILCS 5/1A-8. Illinois law further provides that the State Board may "by regulation delegate any of its duties or functions under this Article," although "final determinations and orders under this Article shall be issued only by the Board." *Id.*

20. Illinois law provides that the "centralized statewide voter registration list required by … the Help America Vote Act of 2002 ("HAVA") shall be created and maintained" by Defendant State Board. 10 ILCS 5/1A-25.

21. HAVA requires the centralized statewide voter registration list to be updated to remove ineligible registrants from the list "in accordance with the provisions of the National Voter Registration Act," including "subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act." 52 U.S.C. § 21083(a)(2)(A)(i).

22. The NVRA provides that "[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. Illinois law designates the Executive Director of the State Board as the Chief State Election Official. 26 Ill. Adm. Code § 216.100(b). Illinois law further provides that Executive Director "may issue such opinions or directions as he or she deems necessary to insure that" the NVRA and provisions of the Illinois Administrative Code dealing with voter registration "are implemented uniformly throughout Illinois." *Id.* § 216.100(c).

23. The NVRA affords a private right of action to any "person who is aggrieved by a violation" of the Act. 52 U.S.C. § 20510(b). Ordinarily, a private litigant is required to send notice of a violation to the chief State election official 90 days prior to commencing a lawsuit. *Id.* § 20510(b)(1), (2). However, notice of only 20 days is required "if the violation occurred within 120 days before the date of an election for Federal office," and no notice is required if a "violation occurred within 30 days before the date of an election for Federal office." *Id.* § 20510(b)(2), (3).

FACTS

The Data from the Latest EAC Report

24. On June 29, 2023, the EAC published its biennial, NVRA-related report, entitled ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE REPORT, A REPORT FROM THE U.S. ELECTION ASSISTANCE COMMISSION TO THE 118TH CONGRESS, available at https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

25. Along with this report, the EAC published the responses it received to a voter registration survey it sent to the states. The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys under the heading for 2022, at a link entitled "2022 Election Administration and Voting Survey Instrument." States, in consultation with their own county and local officials, certified their answers to this voting survey directly to the EAC.

26. States' responses to EAC surveys are compiled in datasets available online in several different software formats, at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys. Responses to the most recent survey were published on June 29, 2023. They are available online under the heading for 2022 as "EAVS Datasets Version 1.0."[2]

27. The largest number of outdated registrations subject to removal under the NVRA almost always belong to those who have changed residence. For this reason, the largest number of removals under the NVRA are usually made pursuant to Section 8(d)(1)(B), for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.

28. The data Illinois certified to the EAC shows that 11 counties removed zero voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B). The 11 counties are Christian County, Clark County, DeKalb County, Johnson County, Lee County, Macon County, Marshall County, Pike County, Stark County, Union County, and Washington County.

29. The data Illinois certified to the EAC showed that 12 other counties removed 15 or fewer voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B). These 12 counties are Bureau County (1 removal), Edwards County (12), Franklin County (11),

[2] An updated version of the initial responses ("EAVS Datasets Version 1.1") was published on the same webpage on December 18, 2023, to account for new information submitted by Delaware, Hawaii, West Virginia, and Wisconsin. The Illinois data was unchanged.

Hamilton County (5), Henry County (10), Lake County (8), Marion County (12), Ogle County (11), Piatt County (15), Pulaski County (6), Putnam County (5), and Randolph County (4).

30. In all, these 23 counties reported a combined total of 980,089 voter registrations as of November 2022. Yet they reported removing a combined total of 100 registrations in the last two-year reporting period pursuant to Section 8(d)(1)(B) because the registrants failed to respond to a Confirmation Notice and failed to vote in the next two general federal elections.

31. In Plaintiffs' experience, based on years of enforcing the NVRA, these are absurdly small numbers of removals under Section 8(d)(1)(B). There is no possible way these counties can be conducting a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible because of a change of residence while removing so few registrations under Section 8(d)(1)(B).

32. According to the Census Bureau, 11.8% of Illinois residents are not living at the same residence address as they were one year ago.

33. According to the Census Bureau, 297,005 Illinois residents moved out of state in 2023 (the most recent year for which such data is available), and 344,027 Illinois residents moved out of state in 2022.

34. If the identified counties were complying with Section 8(d)(1)(B) of the NVRA, the number of registrations they remove pursuant to that provision in any two-year period should be much higher. In particular, that number should never be zero, in any jurisdiction.

35. As a point of comparison, Stephenson County, Illinois, with a much smaller total of 28,385 voter registrations in November 2022, removed 5,214 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period.

36. As a point of comparison, tiny Pope County, Illinois, with 2,772 voter registrations, removed 175 registrations pursuant to Section 8(d)(1)(B) in the last two-year reporting period. That is still more voter registrations than were removed under that provision in all 23 identified counties *combined*.

37. The fact that Illinois' own data shows that more than one fifth of its counties removed few or no registrations under Section 8(d)(1)(B) for failing to respond to a Confirmation Notice and failing to vote in the next two general federal elections establishes a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence.

38. Illinois also informed the EAC that another 34 jurisdictions simply failed to report any data whatsoever regarding Section 8(d)(1)(B) removals in the most recent reporting period, indicating instead "Data not available." These are Adams County, Alexander County, Brown County, Cass County, Chicago City, Clay County, Clinton County, Cook County, Crawford County, Douglas County, East St. Louis City, Fayette County, Gallatin County, Greene County, Grundy County, Jefferson County, Kane County, Kankakee County, Knox County, LaSalle County, Logan County, Mason County, McDonough County, Mercer County, Monroe County, Morgan County, Perry County, Richland County, Scott County, Vermilion County, Warren County, White County, Winnebago County, and Woodford County.

39. Nineteen of these 34 jurisdictions also failed to report any data regarding registrations removed on account of the death of the registered voter. These 19 are Alexander County, Clay County, Clinton County, Cook County, Fayette County, Gallatin County, Grundy County, Knox County, Logan County, McDonough County, Mason County, Mercer County,

Monroe County, Chicago City, Perry County, Richland County, Scott County, Warren County, and Winnebago County.

40. In Plaintiffs' experience, jurisdictions do not ignore their reporting obligations to the EAC where the data is favorable to them. Rather, they often fail to report data that suggests non-compliance with the NVRA.

41. The fact that Illinois admitted to the EAC that almost one third of its counties and cities did not report data concerning removals under Section 8(d)(1)(B) for failing to respond to a Confirmation Notice and failing to vote in the next two general federal elections establishes a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence.

42. The sending of Confirmation Notices is a necessary first step under Section 8(d)(1)(B) to removing the outdated registrations of voters who changed address. The failure to respond to this notice makes the registration inactive and starts the NVRA's statutory "clock," after which the registration is cancelled.

43. Illinois informed the EAC that 29 of its counties failed to report any data regarding the number of Confirmation Notices sent during the period from November 2020 to November 2022, indicating instead "Data not available." These counties are Alexander County, Boone County, Brown County, Champaign County, Clay County, Clinton County, DeKalb County, Fayette County, Franklin County, Gallatin County, Greene County, Grundy County, Henry County, Johnson County, Kankakee County, Logan County, McDonough County, Mercer County, Monroe County, Montgomery County, Ogle County, Richland County, Schuyler County, Scott County, Union County, Warren County, Wayne County, Williamson County, and Winnebago County.

44. The fact that Illinois admitted to the EAC that more than one fourth of its counties did not report data concerning the number of Confirmation Notices mailed establishes a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence.

45. If a registrant does not respond to a Confirmation Notice, the registrant is marked inactive. Accordingly, the number of inactive registrations is a critical indicator of whether Confirmation Notices are being sent and followed up and, in general, whether a jurisdiction is complying with the NVRA.

46. Illinois informed the EAC that 22 jurisdictions did not report any data regarding the number of inactive registrations on their rolls during the relevant period from November 2020 to November 2022, reporting instead "Data not available." These are Adams County, Alexander County, Brown County, Clay County, DeKalb County, Fayette County, Grundy County, Johnson County, Knox County, LaSalle County, McDonough County, Mercer County, Monroe County, Morgan County, Piatt County, Pike County, Randolph County, Rockford City, Shelby County, Stark County, Union County, and Warren County.

47. The fact that Illinois admitted to the EAC that one fifth of its jurisdictions did not report data regarding the number of inactive registrations establishes a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence.

48. Fifty-two of 108 Illinois' jurisdictions failed to report any data to the EAC in one or more of the crucial data categories identified above, *viz*., relevant statutory removals, Confirmation Notices, or inactive registrations. This shows a statewide failure to comply with reporting obligations embodied in federal regulations, including 11 C.F.R. § 9428.7.

49. In all, 66 of Illinois' 108 jurisdictions—or 60% of them—either reported fewer than 15 Section 8(d)(1)(B) removals, or failed to report one of the crucial data categories (relevant statutory removals, Confirmation Notices, or inactive registrations) identified above.

50. These 66 jurisdictions contain a total of 5.8 million registered voters. These amount to about 66% of Illinois' reported 8.8 million voter registrations.

51. The foregoing facts establish a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, and establish a statewide failure to enforce the NVRA, for which Defendant State Board and Defendant Matthews are liable.

Facts Arising from Correspondence

52. On August 4, 2023, Plaintiff Judicial Watch wrote a letter to Defendant Matthews discussing the data Illinois had reported to the EAC. It asked that she confirm whether the data concerning low removals in 23 counties was accurate, and, if it was not accurate, to supply correct data. It also asked her to supply the missing county or city-level data about Section 8(d)(1)(B) removals, Confirmation Notices, and inactive registrations. The letter did not purport to be a pre-suit notice of violation or to start a notice period described in 52 U.S.C. § 20510, but was styled as an "Inquiry and request for public records." This letter is attached hereto as Exhibit 1.

53. Judicial Watch's August 4, 2023 letter also requested six categories of public records pursuant to Section 8(i) of the NVRA. The first request, quoting the language of Section 8(i)(2), sought a list "of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) [*i.e.*, Confirmation Notices] were sent, and information concerning whether or not each such person responded to the notice."

54. On September 1, 2023, counsel for Defendant Matthews responded by letter. This letter is attached hereto as Exhibit 2.

55. Defendants' September 1, 2023 letter did not confirm whether the data concerning low removals in 23 counties was accurate, or supply corrected data. Instead, the letter stated that Defendant State Board was not obligated to respond to Judicial Watch's inquiries.

56. Defendants' September 1, 2023 letter admitted that Defendant State Board "does not have access to local election authorities' list maintenance records." The letter added that "[a]ny request for more information regarding specific jurisdictions' list maintenance activities and/or EAVS survey statistics should be made [] directly to the local election authority."

57. Defendants' September 1, 2023 letter further stated that "local election authorities, not SBE, maintain lists of all voters to whom a forwardable confirmation of address notice has been sent."

58. Defendants' September 1, 2023 letter, and a subsequent communication a few days later, produced public records in response to Judicial Watch's requests. However, in response to Judicial Watch's request no. 1, for records concerning the mailing and disposition of Confirmation Notices—which are specifically identified as responsive records by Section 8(i)(2) of the NVRA—the letter admitted, "SBE does not possess documents responsive to this request, as explained above."

59. The NVRA and related federal regulations require the State of Illinois, and not its counties, cities, or local authorities, to maintain and make available statewide records of Confirmation Notices sent and of responses to them. 52 U.S.C. § 20507(i) ("Each State shall …"); 11 C.F.R. § 9428.7(a), (b)(8) (chief state election official "shall" report the "statewide number" of Confirmation Notices and "the statewide number of responses").

60. Defendants cannot conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence, unless Defendants have access to local election authorities' list maintenance records, and, in particular, access to their data and statistics concerning (1) removals of registrations under Section 8(d)(1)(B), (2) the mailing and disposition of Confirmation Notices, (3) the number of inactive registrations on their voter rolls, and (4) their responses to the EAC's biennial survey.

61. Defendant Matthews cannot fulfill her statutory duty as Illinois' Chief State Election Official to be responsible for the coordination of State responsibilities under the NVRA, unless she has access to local election authorities' list maintenance records, and, in particular, access to their data and statistics concerning (1) removals of registrations under Section 8(d)(1)(B), (2) the mailing and disposition of Confirmation Notices, (3) the number of inactive registrations on their voter rolls, and (4) their responses to the EAC's biennial survey.

62. The NVRA supersedes and preempts any Illinois law or practice that

a. restricts Defendants' access to local election authorities' list maintenance records, including access to data regarding the cancellation of registrations, the mailing of and responses to Confirmation Notices, and the number of inactive registrations;

b. diminishes the responsibility of the Chief State Election Official to coordinate State responsibilities under the NVRA;

c. assigns ultimate responsibility for conducting NVRA-mandated list maintenance to city or county officials; or

d. assigns ultimate responsibility for performing NVRA-mandated public record obligations to county, city, or local officials.

63. Requiring a party who is or may be aggrieved by a violation of the list maintenance provisions of the NVRA to individually contact 108 Illinois counties and cities to set forth its concerns, make inquiries, or serve statutory notice-of-violation letters, and to follow up as may be necessary in each of those jurisdictions—including, perhaps, by means of multiple lawsuits—makes NVRA enforcement exponentially harder in Illinois, and effectively allows statewide officials at the State Board, including the designated Chief State Election Official, to duck responsibilities assigned by federal law.

64. Requiring a party who seeks a specific set of public records guaranteed by Section 8(i) of the NVRA to individually contact 108 Illinois counties and cities to make the same requests, and then to follow up in each of those jurisdictions depending on their responses, makes using the NVRA public records provision exponentially harder in Illinois. It also makes the process much longer, in that a full statewide response will always depend on the slowest of 108 jurisdictions.

65. The list maintenance provisions of the NVRA, which help ensure that voters will neither be wrongly removed from the rolls nor have their votes nullified by ineligible voters, promote the fundamental right to vote, and enhance voter participation.

66. The public records provisions of the NVRA embody Congress' conviction that the right of Americans who are eligible to vote must not be sacrificed to administrative chicanery, oversights, or inefficiencies. Making these provisions harder to enforce contravenes the will of Congress and injures the public.

67. Illinois has previously attempted to thwart the purposes of the NVRA. In *Ill. Conservative Union v. Illinois*, 2021 U.S. Dist. LEXIS 102543 (N.D. Ill. June 1, 2021), the plaintiffs challenged the State's requirement that restricted electronic access to the centralized statewide voter registration list to political committees and governmental bodies. The Illinois law

effectively forced members of the public to view Illinois' millions of voter registration files one at a time on a computer screen at the Springfield office of the State Board during business hours, without being able to copy, query, or otherwise obtain the data electronically. The plaintiffs were held to have stated a claim that Illinois law frustrated the NVRA's purpose and was superseded by federal law. *Id*. at *19-20.

68. Defendants' September 1, 2023 letter further stated that "Electronic Registration Information Center ('ERIC') participation is the cornerstone of Illinois' voter list maintenance scheme."

69. ERIC is a non-profit that purports to assist both with encouraging new voter registrations and identifying outdated ones, including by comparing registrations among its member states.

70. Participation as a member of ERIC does not ensure compliance with the NVRA.

71. ERIC recently has been plagued by accusations of partisanship and ineffectiveness and has been rapidly losing member states.

72. ERIC's membership currently includes 24 states and D.C., which together contain only 40% of the total U.S. population.

73. According to the Census Bureau, the greatest number of Illinoisians who left the state in 2023 moved to (in order) Indiana, Florida, Wisconsin, Texas, and California. Of these, only Wisconsin is currently a member of ERIC.

74. Defendants' September 1, 2023 letter admitted that any data obtained "in cooperation with ERIC" by cross-referencing various databases is merely shared with local election authorities. It is left to those authorities to "confirm any matches and make the required updates to the applicable voter records."

75. In order to comply with the NVRA, election officials must not merely identify potentially ineligible registrants, they must actually remove them from the voter rolls.

76. As demonstrated by the 23 Illinois counties who reported removing from zero to 15 voters from the rolls pursuant to Section 8(d)(1)(B), Illinois election officials are manifestly failing to remove ineligible residents from the voter rolls.

77. On November 15, 2023, Plaintiffs sent a letter to Defendant Matthews in her capacity as Illinois' Chief State Election Official, notifying her of violations of the NVRA and threatening this lawsuit unless those violations were cured within 90 days. The letter expressly stated that it constituted the pre-suit notice prescribed by 52 U.S.C. § 20510. It is attached hereto as Exhibit 3 (the "Notice Letter").

78. The Notice Letter repeated the allegations contained in Judicial Watch's August 4, 2023 letter.

79. The Notice Letter also observed that, "[c]omparing the data your state reported to the EAC regarding the total registration numbers for each county to the U.S. Census Bureau's most recent five-year estimates of the numbers of resident citizens over the age of eighteen suggests that 15 Illinois jurisdictions have more voter registrations than citizens of voting age." Such high registration rates suggest a statewide failure to conduct a general program that makes a reasonable effort to cancel the registrations of voters who have become ineligible by reason of a change of residence.

80. The Notice Letter also alleged a violation of Section 8(i), based on Defendants' admission that they did not have the records described in Section 8(i)(2), which the NVRA expressly requires states to maintain and provide.

81. In subsequent communications responding to the Notice Letter, Defendants have never confirmed whether the data concerning low removals in 23 counties was accurate, have never supplied the corrected data, and have never produced records concerning Confirmation Notices in response to request no. 1. Instead, these communications made legal arguments, and sought to favorably recharacterize the foregoing facts, asserting, for example, that only a "handful" of Illinois jurisdictions failed to remove registrations or report data.

82. Illinois' official voter lists contain many more outdated and ineligible registrations than they would if Defendants complied with Section 8(a)(4) of the NVRA.

The Interests of the Plaintiffs

83. Plaintiff BI is a 501(c)(4) policy advocacy and education network that advances the causes of peace, prosperity, and freedom by highlighting the virtue of taxpayer-centric and liberty-focused policies and how they benefit all community members.

84. BI has three full-time employees and one part-time employee. It has a limited budget, and it relies on volunteers for many of its activities. It has to make hard choices about how to use its limited resources.

85. BI's core activities include engaging in public advocacy and education about its core issues; persuading voters to support favored policies and candidates with money, volunteer services, and votes; setting up mailings and door-to-door "walk programs" for political groups and candidates who work with BI; and contributing funds directly to candidates it prefers.

86. All voter address lists used by BI and by those it works with to contact Illinois voters are ultimately based on Illinois' official voter list. The Illinois voter list itself is always the least expensive way for cash-strapped causes or candidates to reach out to voters.

87. BI's ability to conduct each of its core activities has been made more difficult because Illinois' voter rolls contain more outdated and ineligible registrations than they would if Defendants complied with Section 8(a)(4) of the NVRA.

88. BI periodically engages in targeted mailings concerning specific issues or elections, and expects to conduct such targeted mailings in the future. BI also works with political groups and candidates in setting up their own mailings.

89. Mailings are expensive.

90. In general, mailings to a particular, valid address can only be expected to generate a response after three to five pieces of mail have been sent to that address.

91. In every mailing based on addresses from Illinois' voter list that BI participated in or knows about, a significant proportion of mailings were returned as undeliverable because the addressee no longer lives at the stated address.

92. The proportion of mailings to addresses from Illinois' voter list that is returned as undeliverable is greater than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

93. The cost of mailings to addresses taken from Illinois' voter list that are returned as undeliverable represents an economic loss, and is part of the reason mailings are so expensive.

94. Another way BI and the political groups and candidates it works with reach out to voters is through "walk programs," which use paid employees to go door to door to contact voters directly with a political message or to get out the vote. Walkers are paid on a "per door" basis, that is, based on the number of addresses they visit, regardless of whether they contact the voter they intended to reach.

95. Like mailings, "walk programs" rely on voter addresses from Illinois' voter list.

96. At some addresses visited by members of a "walk program," the current resident confirms that the person sought does not reside at the stated address.

97. At a large percentage of addresses visited by members of a "walk program," there is simply no response. But based on the rate of returned mailings BI and the candidates it supports have observed when they conduct mass mailings, it is likely that many of these addresses where no resident is contacted are out of date.

98. The cost of paying members of the "walk program" to visit addresses from Illinois' voter list where the addressee has moved represents an economic loss.

99. The proportion of addresses visited by members of the "walk program" that do not result in any voter contact because the addressee has moved is greater than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

100. Because of the additional costs of mailings and of conducting door-to-door visits caused by Defendants' failure to comply with Section 8(a)(4) of the NVRA, BI and those it works with obtain fewer results from such expenditures than they would if the voter rolls were better maintained. That is, it costs more money to contact fewer voters, either by mail or in person. This impairs BI's ability to effectively perform its core activities of public advocacy and education, setting up mailings and door-to-door "walk programs" for political groups and candidates who work with it, and reaching out to voters.

101. Because of the relatively higher costs of mailings and door-to-door programs, BI and those it works with have relied more heavily on social media and billboards than they otherwise would.

102. Unlike mailings and door-to-door visits, social media cannot be used to contact every voter. In particular, it often fails to reach older members of the public. These older individuals are often invested in politics and are willing and financially able to contribute.

103. Billboards obviously do not reach every voter, but only those who drive by them. Billboards cannot be used to convey a lengthy or complex message.

104. Because BI and those it works with rely more heavily on social media and billboards than they otherwise would, BI's abilities to perform effectively its core activities of public advocacy and education, setting up mailings and door-to-door "walk programs" for political groups and candidates who work with it, and reaching out to voters, are impaired.

105. BI also contributes money directly to candidates it prefers.

106. BI knows that these candidates, many of whom are low on resources, use Illinois' voter lists for their own programs to contact voters to ask for contributions, volunteer services, and votes.

107. BI's contributions to candidates have less impact due to additional costs those candidates experience in their mailings and door-to-door efforts because Illinois' voter lists contain more outdated and ineligible registrations than they would if Defendants complied with Section 8(a)(4) of the NVRA. Stated differently, BI must contribute more money to have the same impact on a candidate's efforts at voter outreach, because of Defendants' non-compliance.

108. The net result of Defendants' failure to comply with Section 8(a)(4) of the NVRA is to raise the cost and lower the effectiveness of the mailing and door-to-door programs of those who, like BI and the political groups and candidates it supports, rely on Illinois' voter lists for voter information.

109. As money gets tight across the board, BI has had to cut back on other activities. For example, BI recently cut a promotional radio spot called "Reveille," a short policy discussion each morning. As another example, BI did not have enough money to air its radio show in December 2024 and was forced to make hard choices about what to do. The radio show was only preserved for the month when BI's president decided to "self-fund," meaning that she contributed her own money to keep the show on the air, without any guarantee or promise of reimbursement.

110. Inaccuracies on Illinois' voter list affect BI in another way. Whenever BI receives a supportive email, it conducts an "email check" by finding the author's name on Illinois' voter list. BI does this to make sure that that person is an Illinois voter, and also to allow BI to respond by focusing on local issues and candidates that are likely to interest that person. This allows BI to more effectively engage in its core activities of public advocacy and voter outreach. But when voter registration lists wrongly indicate that email authors are Illinois voters when, in fact, they have moved out of state, or when those lists provide the wrong local addresses, BI's public advocacy and voter outreach suffer as a result.

111. When it conducts an "email check," BI has no immediate way to tell when an address from Illinois' voter list is incorrect. But based on the rate of returned mailings BI and the candidates it supports have observed when they conduct mass mailings, it is likely that many addresses found on Illinois' voter list during BI's "email checks" are inaccurate.

112. Plaintiff IFA is a 501(c)(4), non-profit political advocacy and lobbying organization dedicated to preserving and advancing the interests of family, faith, and freedom in the political arena. It is the non-profit and tax-exempt legislative action arm of the Illinois Family Institute.

113. IFA has no full-time employees, and a limited budget. It has to make hard choices about how to use its limited resources.

114. IFA publicly endorses and supports candidates who support its core principles.

115. IFA's core activities include engaging in public advocacy and education about its core issues, and contacting voters to encourage them to assist the causes and candidates IFA supports by contributing, volunteering, and voting.

116. All voter address lists used by IFA to contact Illinois voters are ultimately based on Illinois' official voter list. The Illinois voter list itself is always the least expensive way to reach out to voters.

117. IFA's ability to conduct its core activities has been made more difficult because Illinois' voter rolls contain more outdated and ineligible registrations than they would if Defendants complied with Section 8(a)(4) of the NVRA.

118. IFA uses a telephone call service that makes automated telephone calls to deliver recorded messages concerning issues or candidates IFA cares about. The telephone calls are to lists of voters derived from Illinois' official voter lists.

119. IFA is able to reach fewer voters by means of these automated calls than it would if Defendants complied with Section 8(a)(4) of the NVRA. This impairs IFA's ability to effectively perform its core activities of public advocacy and education and reaching out to voters.

120. IFA periodically sends mailings concerning specific issues or elections to every voter in a geographic area, using addresses derived from Illinois' official voter lists.

121. A significant proportion of IFA's mailings are returned as undeliverable because the addressee no longer lives at the stated address.

122. The proportion of mailings to addresses from Illinois' voter list that is returned as undeliverable is greater than it would be if Defendants complied with Section 8(a)(4) of the NVRA.

123. The cost of mailings to addresses taken from Illinois' voter list that are returned as undeliverable is an economic loss to IFA.

124. Because of the additional costs of mailings caused by Defendants' failure to comply with Section 8(a)(4) of the NVRA, IFA obtains fewer results from mailings than it would if the voter rolls were better maintained. That is, it costs more money to contact fewer voters, either by mail or in person. This impairs IFA's ability to effectively perform its core activities of public advocacy and education and reaching out to voters.

125. Carol J. Davis has been a dedicated political actor for at least ten years. She has supported a variety of causes and has served in a variety of political organizations, as a member, including as a member of Judicial Watch; as a volunteer; and as an officer, including as Chairman of the Illinois Conservative Union.

126. Ms. Davis has become aware of problems affecting Illinois' voter list maintenance efforts.

127. Ms. Davis has served as a poll watcher, and also as a poll worker and election judge, in DuPage County, Illinois, and hopes to do so again. In those capacities, she observed several instances where clearly invalid voter registrations remained on the rolls.

128. Ms. Davis observed the Illinois legislature fail to adopt a bill sponsored by Rep. Deanne M. Mazzochi which merely provided that county clerks shall, rather than may, issue certifications of death records for death registrations and use that system to cancel the registration of any person who has died during the preceding month.

129. Ms. Davis is a knowledgeable observer of Illinois' politics and of its list maintenance programs.

130. Ms. Davis is aware of several reports of possible deceased registrants voting and requesting mail ballots in Illinois in the 2020 and 2016 general elections.

131. Due to the failure of Defendants to maintain accurate and current voter registration rolls in Illinois, Ms. Davis' confidence in the integrity of the electoral process is undermined.

132. Plaintiff Judicial Watch's mission is to promote transparency, integrity, and accountability in government and fidelity to the rule of law. The organization, which has been in existence since 1994, fulfills its mission through public records requests and litigation, among other means.

133. Judicial Watch is supported in its mission by hundreds of thousands of individuals across the nation. An individual becomes a member of Judicial Watch by making a financial contribution, in any amount, to the organization. Members' financial contributions are by far the single most important source of income to Judicial Watch and provide the means by which the organization finances its activities in support of its mission. Judicial Watch in turn represents the interests of its members.

134. Over the past several years, Judicial Watch's members, including Carol J. Davis, have become increasingly concerned about the state of the nation's voter registration rolls, including whether state and local officials are complying with the NVRA's voter list maintenance obligations. They are concerned that failing to comply with the NVRA's voter list maintenance obligations impairs the integrity of elections by increasing the opportunity for ineligible voters or voters intent on fraud to cast ballots.

135. In response to the concerns of its members, Judicial Watch commenced a nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations. As part of this program, Judicial Watch utilizes public records laws to request and receive records and data from jurisdictions across the nation about their voter list maintenance efforts. It then analyzes these records and data and publishes the results of its findings to the jurisdictions, to its members, and to the general public.

136. Defendants' failure to comply with their NVRA voter list maintenance obligations burdens the federal and state constitutional rights to vote of individual members of Judicial Watch like Carol J. Davis by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted by ineligible votes.

137. Protecting the voting rights of Judicial Watch members who are lawfully registered to vote in Illinois is germane to Judicial Watch's mission. It also is well within the scope of the reasons why members of Judicial Watch join the organization and support its mission.

138. Because the relief sought herein will inure to the benefit of Judicial Watch members who are lawfully registered to vote in Illinois, neither the claims asserted nor the relief requested requires the participation of Judicial Watch's individual members.

139. Plaintiffs Judicial Watch, Illinois Family Action, and Carol J. Davis were denied access to a category of public records concerning Illinois' "programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" that Plaintiffs were entitled to access under the NVRA.

COUNT I

(Violation of Section 8(a)(4) of the NVRA, 52 U.S.C. § 20507(a)(4))

140. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

141. Plaintiffs Judicial Watch, Illinois Family Action, Breakthrough Ideas, and Carol J. Davis are persons aggrieved by a violation of the NVRA, as set forth in 52 U.S.C. § 20510(b).

142. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the NVRA to conduct a general program that makes a reasonable effort to cancel the registrations of Illinois voters who have become ineligible by reason of a change of residence.

143. Defendant Matthews has failed in her duty as Illinois' Chief State Election Official to coordinate State responsibilities under the NVRA.

144. Plaintiffs have suffered and will continue to suffer irreparable injury as a direct result of Defendants' failure to fulfill their obligations under the NVRA.

145. Plaintiffs have no adequate remedy at law.

COUNT II

(Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i))

146. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

147. Defendants have failed to fulfill their obligations under Section 8(i) of the NVRA to make available to Plaintiff Judicial Watch "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."

148. Plaintiff Judicial Watch has suffered, and will continue to suffer, irreparable injury as a direct result of Defendants' failure to fulfill their obligations under Section 8(i) of the NVRA.

149. Plaintiff Judicial Watch has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of a judgment:

a. Declaring Defendants to be in violation of Section 8(a)(4) of the NVRA;

b. Permanently enjoining Defendants from violating Section 8(a)(4) of the NVRA;

c. Ordering Defendants to develop and implement a general program that makes a reasonable effort to remove the registrations of ineligible registrants from the voter rolls in Illinois;

d. Declaring that the NVRA supersedes and preempts any contrary Illinois law or practice;

e. Declaring that Defendants have violated Section 8(i) of the NVRA by refusing to allow Plaintiffs to inspect and copy the requested records;

f. Permanently enjoining Defendants from refusing to allow Plaintiffs to inspect and copy the requested records;

g. Ordering Defendants to pay Plaintiffs' reasonable attorney's fees, including litigation expenses and costs; and

h. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

November 29, 2024

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Judicial Watch®
Because no one is above the law!

August 4, 2023

VIA USPS CERTIFIED MAIL AND EMAIL

Ms. Bernadette Matthews
Executive Director, Illinois State Board of Elections
69 W. Washington Street
Suite LL08
Chicago, Illinois 60602

Re: Inquiry and request for public records

Dear Ms. Matthews:

I write on behalf of Judicial Watch, Inc., a non-partisan educational foundation that promotes transparency, accountability and integrity in government, politics and law. We wish to inquire about certain data you recently provided to the Election Assistance Commission (EAC) regarding your state's implementation of the National Voter Registration Act of 1993 (NVRA).[1] This letter also serves as a public records request seeking records related to the accuracy of the voter registration list, which you are obligated to provide under Section 8(i) of the NVRA.[2] We write to you as the chief State election official responsible for coordinating state compliance with the NVRA.[3]

Background

As you are no doubt aware, the NVRA was intended both to "increase the number of eligible citizens who register" and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained."[4] The goal of ensuring election integrity was embodied in Section 8, which requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of … the death of the registrant; or … a change in the residence of the registrant."[5]

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.[6] Second, if a registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address

[1] 52 U.S.C. § 20501 *et seq*.
[2] *Id*., § 20507(i).
[3] 10 Ill. Comp. Stat. Ann. 5/1A-7, 5/1A-8.
[4] 52 U.S.C. § 20501(b).
[5] *Id.*, § 20507(a)(4).
[6] *Id*., § 20507(d)(1)(A).

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confirmation (the "Confirmation Notice"), fails to respond to it, and then fails to vote in the next two general federal elections, that registration is cancelled.[7] Registrants who have failed to respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be "inactive."[8] However, inactive registrations may still be voted on election day.[9]

Federal law requires the EAC to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.[10] Federal regulations require chief State election officials to provide data to the EAC for use in this report.[11] The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.[12]

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022. Our inquiries concern the data you sent to the EAC, which are revealed in that release.

Inquiries

1. According to the EAC, your survey responses show that 11 Illinois counties reported removing *zero* voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.[13] These counties are: Christian County, Clark County, De Kalb County, Johnson County, Lee County, Macon County, Marshall County, Pike County, Stark County, Union County, and Washington County.

Another 12 counties reported 15 or fewer removals under that NVRA provision during that period. These are: Bureau County (1 removal), Edwards County (12), Franklin County (11), Hamilton County (5), Henry County (10), Lake County (8), Marion County (12), Ogle County (11), Piatt County (15), Pulaski County (6), Putnam County (5), and Randolph County (4).

Within two weeks of the date of this letter, please confirm whether this data is accurate. If it is accurate, please explain why or whether you believe such data is consistent with NVRA compliance. If the data is not accurate, please provide the correct data.

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[7] *Id.*, § 20507(d)(1)(B), (d)(2), (d)(3); *see Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) ("federal law makes this removal mandatory").
[8] *E.g.*, 11 C.F.R. § 9428.2(d).
[9] 52 U.S.C. § 20507(d)(2)(A).
[10] 52 U.S.C. § 20508(a)(3).
[11] 11 C.F.R. § 9428.7.
[12] The survey is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "2022 Election Administration and Voting Survey Instrument."
[13] The data referred to is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ, which contains the responses to question A9e of the survey.

2. Our review of the EAC's survey results revealed the following gaps in data reported by Illinois counties:

a. Thirty-four counties did not report any data regarding the number of voter registrations cancelled from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA (for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections). Instead, in the relevant column where the data should have been, the state merely reported "Data not available," for each county.[14] These counties are: Adams County Alexander County, Brown County, Cass County, Chicago City, Clay County, Clinton County, Cook County, Crawford County, Douglas County, East St. Louis City, Fayette County, Gallatin County, Greene County, Grundy County, Jefferson County, Kane County, Kankakee County, Knox County, La Salle County, Logan County, Mason County, Mcdonough County, Mercer County, Monroe County, Morgan County, Perry County, Richland County, Scott County, Vermilion County, Warren County, White County, Winnebago County, and Woodford County.

b. Twenty-nine counties did not report any data regarding the number of Confirmation Notices sent during the period from November 2020 to November 2022. Instead, in the relevant column where the data should have been, the state merely reported "Data not available," for each county.[15] These are: Alexander County, Boone County, Brown County, Champaign County, Clay County, Clinton County, De Kalb County, Fayette County, Franklin County, Gallatin County, Greene County, Grundy County, Henry County, Johnson County, Kankakee County, Logan County, Mcdonough County, Mercer County, Monroe County, Montgomery County, Ogle County, Richland County, Schuyler County, Scott County, Union County, Warren County, Wayne County, Williamson County, and Winnebago County.

c. Twenty-two counties did not report any data regarding inactive registrations during the relevant period from November 2020 to November 2022. Instead, in the column where the data should have been, the state merely reported "Data not available," for each county.[16] These are: Adams County, Alexander County, Brown County, Clay County, De Kalb County, Fayette County, Grundy County, Johnson County, Knox County, La Salle County, Mcdonough County, Mercer County, Monroe County, Morgan County, Piatt County, Pike County, Randolph County, Rockford City, Shelby County, Stark County, Union County, and Warren County.

Please provide us all of the missing data identified above for each identified county, within two weeks of the date of this letter.

[14] The responses referred to are available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ, which contains the responses to question A9e of the survey.
[15] The responses referred to are available online at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CJ, which contains the responses to question A8a of the survey.
[16] The responses referred to are available online at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column G, which contains the responses to question A1c of the survey.

Request for Records

Section 8(i)(1) of the NVRA requires that "[e]ach state shall maintain for at least 2 years and shall 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."[17] That provision goes on to specifically provide that "[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice."[18]

Pursuant to Section 8(i) of the NVRA, Judicial Watch requests that you produce the following records within two weeks of the date of this letter:

1. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

2. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

3. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.

4. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.

5. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.

7. Records sufficient to support any explanation you provided in response to the inquiries contained in this letter.

If we do not hear within two weeks of the date of this letter that you intend to provide these records, we will assume that you do not intend to do so, and will treat your course of conduct as a violation of Section 8(i) of the NVRA.

[17] 52 U.S.C. § 20507(i)(1).
[18] *Id.*, § 20507(i)(2).

Please contact us if you have any questions about the foregoing. We look forward to receiving your prompt response.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

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September 1, 2023

Robert D. Popper
Judicial Watch, Inc.
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Washington, DC 20024
rpopper@judicialwatch.org
via email
(attachments to be sent next week under separate cover)

Mr. Popper:

I am writing in response to your letter dated August 4, 2023, which inquired about Illinois' 2022 EAVS Survey results and requested records under Section 8(i) of the National Voter Registration Act of 1993 ("NVRA"), codified as 52 U.S.C. § 20507(i). As explained below, unlike the majority of states, Illinois is a bottom up jurisdiction, where local election authorities are responsible for inputting, maintaining, and cancelling voter registration records for their jurisdictions. List maintenance records like voter communications are maintained by the local election authorities, not by the Illinois State Board of Elections ("SBE"). SBE's responses to your requests for records are listed at the back of this letter, and responsive documents will be sent under separate cover due to their volume.

Response to Inquiry and Summary of Illinois' Bottom Up System

Your letter asks that SBE confirm the accuracy of certain information reported in the 2022 EAVS Survey. First, SBE's obligations under Section 8(i) of the NVRA are limited to producing existing records, not responding to interrogatory-style inquiries. Second, SBE does not have access to local election authorities' list maintenance records, as explained below.

Unlike the majority of states, Illinois is a bottom up jurisdiction, where local election authorities are responsible for inputting and maintaining voter registration records for their residents. Each election authority must "accept Voter Registration Applications tendered to it

under circumstances complying with the provisions of the National Voter Registration Act of 1993..." 26 Ill. Adm. Code 216.30(b). Any voter registration applications submitted to SBE directly must be forwarded to the county clerk or board of election commissioners having jurisdiction over the applicant's voter registration within two days of receipt. 10 ILCS 5/1A-16(b), 1A-16.5(h)(2). The local election authority must then search its voter registration database to determine whether the applicant is already registered to vote at the address on the application and whether the new registration would create a duplicate registration. *Id.* 1A-16.5(i). The local election authority then decides whether the voter is qualified, and if so, enters the voter's data into its local system, which transfers the data to IVRS, the statewide voter registration system. SBE maintains the technological aspects of IVRS, not the input or removal of voter data. *See generally* 10 ILCS 5/1A-25.

Under Illinois' regulatory scheme for ensuring NVRA compliance, each local election authority is required to "keep all records concerning the implementation of programs and activities conducted to maintain the accuracy and currency of voter registration files for at least two years[,]" as well make those records available to the public for inspection. 26 Ill. Adm. Code 216.40(f). This makes sense, as local election authorities are responsible for determining a voter's continuing eligibility to vote in their jurisdiction. Further, local election authorities, not SBE, maintain lists of all voters to whom a forwardable confirmation of address notice has been sent. *Id.* at 216.40(f).

Electronic Registration Information Center ("ERIC") participation is the cornerstone of Illinois' voter list maintenance scheme. *See* 10 ILCS 1A-16.8(a). The Election Code requires that SBE "shall utilize data provided as part of its membership in the Electronic Registration Information Center in order to cross-reference the statewide voter registration database against databases of relevant personal information kept by designated automatic voter registration agencies, including, but not limited to, driver's license information kept by the Secretary of State, at least 6 times each calendar year and shall share the findings with election authorities." *Id.* 1A-16.8(b). Illinois law also tasks SBE with cross-referencing the statewide voter registration database against the United States Postal Service's National Change of Address database twice each calendar year and sharing the findings with the election authorities. *Id.* 1A-16.8(a). This function is also performed in cooperation with ERIC. Through ERIC, Illinois residents' data is run for potential matches with the federal Master Death List and other participating jurisdictions' data, in addition to USPS data. Local election authorities must then confirm any matches and make the required updates to the applicable voter records. *Id.* 1A-16.8(c).

Any request for more information regarding specific jurisdictions' list maintenance activities and/or EAVS survey statistics should be made to directly to the local election authority.

Response to Requests for Production

Below is a response to your requests for production of responsive records.

1. *A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.*

SBE does not possess documents responsive to this request, as explained above.

2. *Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.*

See records produced.

3. *All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.*

See records produced.

4. *All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.*

SBE does not possess documents responsive to this request, as change-of-address records are obtained through ERIC.

5. *All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.*

SBE understands this request as seeking communications relating to general list maintenance, not individualized inquiries like, for example, a citizen notifying us their local election authority has not removed their deceased relative from voter rolls. Subject to this qualification, see records produced.

6. *Records sufficient to support any explanation you provided in response to the inquiries contained in this letter. (Labeled as 7)*

The explanation provided in this letter is sourced from the Illinois Election Code, Illinois Administrative Code, and the enclosed ERIC agreements and bylaws.

Sincerely,

Marni M. Malowitz
General Counsel

November 15, 2023

VIA USPS CERTIFIED MAIL AND EMAIL

Ms. Bernadette Matthews
Executive Director, Illinois State Board of Elections
69 W. Washington Street
Suite LL08
Chicago, Illinois 60602

Re: Notice of iolations of t e National oter Registration Act of , U. .C.

Dear Executive Director Matthews:

I write on behalf of Judicial Watch, Inc. ("Judicial Watch"), Carol J. Davis, a resident and registered Illinois voter, and Illinois Family Action ("IFA"), to notify you that your office is currently in violation of Section 8 of the National Voter Registration Act of 1993 ("NVRA"). We write to you as the chief state election official responsible for coordinating Illinois' compliance with Section 8 of the NVRA.[1] This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) (2) that Judicial Watch, Carol J. Davis, and IFA will file a lawsuit against you if these violations are not corrected within 90 days.

Background

As you are no doubt aware, the NVRA was intended both to "increase the number of eligible citizens who register" and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained."[2] The goal of ensuring election integrity was embodied in Section 8, which requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of … the death of the registrant; or … a change in the residence of the registrant."[3]

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.[4] Second, if the registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the "Confirmation Notice"), fails to respond to it, and then fails to vote in the next

1 10 Ill. Comp. Stat. Ann. 5/1A-7, 5/1A-8.
2 52 U.S.C. § 20501(b).
3 *Id.*, § 20507(a)(4).
4 *Id.*, § 20507(d)(1)(A).

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two general federal elections, that registration must be cancelled.[5] Registrants who have failed to respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be "inactive."[6] However, inactive registrations may still be voted on election day.[7]

The NVRA contains a public records provision. Section 8(i) requires that "[e]ach state shall maintain for at least 2 years and shall 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."[8] That provision goes on to specifically provide that "[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice."[9]

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022.

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According to your state's responses to the EAC's survey, 23 Illinois counties reported removing fifteen or fewer and, in almost half of those counties, zero voter registrations from the list of eligible voters during the period from November 2020 to November 2022 for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.[10] Another 34 Illinois urisdictions simply did not report any data whatsoever to the EAC regarding removals under Section 8(d)(1)(B). Instead, in the relevant column where the data should have been, the survey response for each of these counties merely states, "Data not available."[11]

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5 *Id.*, § 20507(d)(1)(B) ("Section 8(d)(1)(B)"); (d)(2), (d)(3); *see Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) ("federal law makes this removal mandatory").

6 *E.g.*, 11 C.F.R. § 9428.2(d).

7 52 U.S.C. § 20507(d)(2)(A).

8 52 U.S.C. § 20507(i)(1).

9 *Id.*, § 20507(i)(2).

10 The data referred to is available at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CZ, which contains the responses to question A9e of the survey. The following 11 counties reported zero such removals during that period: Christian County, Clark County, De Kalb County, Johnson County, Lee County, Macon County, Marshall County, Pike County, Stark County, Union County, and Washington County. Another twelve counties reported from one to fifteen such removals during that period: Bureau County (1 removal), Edwards County (12), Franklin County (11), Hamilton County (5), Henry County (10), Lake County (8), Marion County (12), Ogle County (11), Piatt County (15), Pulaski County (6), Putnam County (5), and Randolph County (4).

11 These responses are also found at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)" in Column CZ. The 34 urisdictions for which no data was provided are: Adams County, Alexander County, Brown County, Cass County, Chicago City, Clay County, Clinton County, Cook County, Crawford County, Douglas County, East St. Louis City, Fayette County, Gallatin County, Greene County, Grundy County, Jefferson County, Kane County, Kankakee County, Knox County,

There are other significant gaps in the data Illinois reported to the EAC. The sending of address Confirmation Notices is a crucial step in the NVRA's registration removal process. et 29 Illinois counties did not report any data regarding the number of Confirmation Notices sent during the period from November 2020 to November 2022, reporting instead "Data not available."[12] The designation of registrations as "inactive," pending their ultimate disposition, is another crucial step in the NVRA's statutory removal process. et 22 counties did not report any data regarding inactive registrations during the relevant period from November 2020 to November 2022, reporting instead "Data not available."[13]

On August 4, 2023, Judicial Watch wrote to you to pointing out these facts and asking you to confirm data contained in the EAC's report and provide data that was omitted. We also asked for certain public records pursuant to Section 8(i). On September 1, 2023, General Counsel Marni M. Malowitz responded on behalf of the Illinois State Board of Elections ("SBE"). She writes that "SBE's obligations under Section 8(i) of the NVRA are limited to producing existing records, not responding to interrogatory-style inquiries." Fair enough, but if you continue to withhold this information and we commence a lawsuit in 90 days, SBE will soon be compelled to respond to actual interrogatories, on these and other topics. Ms. Malowitz also claims that "Illinois is a bottom up urisdiction, where local election authorities are responsible for inputting and maintaining voter registration records for their residents," and that "SBE does not have access to local election authorities' list maintenance records." But the NVRA squarely places responsibility for NVRA compliance on the state, not on its counties or cities.[14] Courts have re ected state efforts to avoid their NVRA responsibilities by claiming that they have been delegated to local urisdictions.[15]

La Salle County, Logan County, Mason County, McDonough County, Mercer County, Monroe County, Morgan County, Perry County, Richland County, Scott County, Vermilion County, Warren County, White County, Winnebago County, and Woodford County.

[12] The responses referred to are available online at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column CJ, which contains the responses to question A8a of the survey. The 29 counties failing to report data about Confirmation Notices are: Alexander County, Boone County, Brown County, Champaign County, Clay County, Clinton County, De Kalb County, Fayette County, Franklin County, Gallatin County, Greene County, Grundy County, Henry County, Johnson County, Kankakee County, Logan County, McDonough County, Mercer County, Monroe County, Montgomery County, Ogle County, Richland County, Schuyler County, Scott County, Union County, Warren County, Wayne County, Williamson County, and Winnebago County.

[13] The responses referred to are available online at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys, under the heading for 2022, at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column G, which contains the responses to question A1c of the survey. The 22 counties reporting no data regarding inactive registrations are: Adams County, Alexander County, Brown County, Clay County, De Kalb County, Fayette County, Grundy County, Johnson County, Knox County, La Salle County, McDonough County, Mercer County, Monroe County, Morgan County, Piatt County, Pike County, Randolph County, Rockford City, Shelby County, Stark County, Union County, and Warren County.

[14] *See*, *e.g.*, 52 U.S.C. § 20507(a)(4) ("each *State* shall … conduct a general program"); (c)(2) ("A *State* shall complete … any program"); (i)(1) ("Each *State* shall maintain for at least 2 years … all records") (emphasis added).

[15] *See United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008) (the language of Section 8(a)(4) "clearly envisions" that the state "will actively oversee the general program"); *see id*. at 851 (lack of local compliance "remains relevant to determining whether or not" a state "is reasonably conduct[ing] a general program'" of voter list maintenance); *see also S ott v. S hedler*, 771 F.3d 831, 839 (5th Cir. 2014) (chief state election official's "coordination" power "includes enforcement power").

Both common sense and Judicial Watch's enforcement experience confirm that there is no possible way Illinois and the SBE have complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 52 Illinois urisdictions either removed no or ust a few registrations under that provision, or failed to report removals at all, for the past two reporting years. This conclusion is bolstered by the fact that Illinois failed to report important data concerning Confirmation Notices and inactive registrations to the EAC. Nor is it possible, given these facts, that Illinois is complying with its list maintenance obligations to "conduct a general program that makes a reasonable effort to remove the names" of voters who have moved or died. *See* 52 U.S.C. § 20507(a)(4).

our state's non-compliance with the NVRA is further indicated by the unusually high registration rates observed in many Illinois urisdictions. Comparing the data your state reported to the EAC regarding the total registration numbers for each county[16] to the U.S. Census Bureau's most recent five-year estimates of the numbers of resident citizens over the age of eighteen[17] suggests that 15 Illinois urisdictions have more voter registrations than citizens of voting age.[18] Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure to comply with the NVRA's mandate to make reasonable efforts to remove voters by reason of death or change of address.[19]

The foregoing facts amply demonstrate that Illinois is not complying with the list maintenance provisions of the NVRA.

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Judicial Watch's August 4, 2023 letter also requested, pursuant to Section 8(i) of the NVRA, six categories of public records concerning Illinois' programs and activities to ensure the accuracy and currency of its voter lists.

The first request and the response we received from you on September 1, 2023, were:

> *. A list o the na es and addresses o all persons to ho noti es des ribed in U.S.C. d ere sent and in or ation*

[16] See the data at https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys at the link entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," in Column E.

[17] This data is found on the U.S. Census Bureau's website in table DP05 ("ACS Demographic and Housing Estimates"), by selecting "2021: ACS 5- ear Estimates Data Profiles" as the data source and scrolling down to the heading, "Citizen, 18 and over population" for each county For example, the relevant data for Adams County is available at https://data.census.gov/table/ACSDP5 2021.DP05 q Adams County, Illinois.

[18] These are: Alexander County, Clark County, Du Page County, East St. Louis City, Franklin County, Kendall County, Lake County, Macon County, Massac County, McHenry County, Mercer County, Pulaski County, Sangamon County, Scott County, and Woodford County.

[19] *See e.g. reen v. ell*, No. 3:21-cv-00493-RJC-DCK, 2023 U.S. Dist. LEXIS 45989, at 12 (W.D.N.C. Mar. 20, 2023); *udi ial at h In . v. ris old*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021); *Voter Integrit Pro e t NC In . v. a e Cnt . d. o Ele tion*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017); *A . Civ. Rights Union v. Martinez Rivera*, 166 F. Supp. 3d 779, 793-94 (W.D. Tex. Mar. 30, 2015).

> *on erning hether or not ea h su h person responded to the noti e.*
>
> SBE does not possess documents responsive to this request, as explained above.

This request seeks a category of documents that the NVRA specifically requires states to provide on request.[20] Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

If you do not contact us about correcting or otherwise resolving the above-identified problems within 90 days, we will commence a federal lawsuit seeking declaratory and in unctive relief against you. In such a lawsuit we would seek, in addition to in unctive relief, a udgment awarding reasonable attorney's fees, expenses, and costs. *See* 52 U.S.C. § 20510(c). For the reasons set forth above, we believe that such a lawsuit would be likely to succeed.

Please do not misunderstand me. We have long experience with list maintenance litigation and are well aware of the practical difficulties states like Illinois face in trying to maintain their voter rolls. We are absolutely willing to compromise and work together to come up with a realistic plan to address these difficulties. We are always glad to avoid costly litigation and to amicably resolve disputes. In fact, we have a track record of resolving NVRA claims on reasonable terms.

Please contact us if you have any questions about the foregoing. We look forward to hearing from you.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper
Robert D. Popper
Attorney, Judicial Watch, Inc.

Attachments

[20] *See* 52 U.S.C. § 20507(i)(2).