No. 16-3746

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OHIO A PHILIP RANDOLPH INSTITUTE; NORTHEAST OHIO COALITION FOR THE HOMELESS; and LARRY HARMON,

Plaintiffs-Appellants,
v.

JOHN HUSTED, Secretary of State of Ohio,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIEF OF AMICI CURIAE COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES AND PROJECT VOTE, INC., IN SUPPORT OF APPELLANTS

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 16-3746 Case Name: A. Philip Randolph Inst. v. Jon Husted

Name of counsel: Emmet J. Bondurant, Bondurant, Mixson & Elmore LLP

Pursuant to 6th Cir. R. 26.1, Amicus Curiae Common Cause
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on July 20, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Case Number: 16-3746 Case Name: A. Philip Randolph Inst. v. Jon Husted

Name of counsel: Emmet J. Bondurant, Bondurant, Mixson & Elmore LLP

Pursuant to 6th Cir. R. 26.1, Amicus Curiae League of Women Voters of the United States
Name of Party
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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

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Case Number: 16-3746 Case Name: A. Philip Randolph Inst. v. Jon Husted

Name of counsel: Michelle E. Kanter Cohen, Project Vote, Inc.

Pursuant to 6th Cir. R. 26.1, Amicus Curiae Project Vote, Inc.
Name of Party

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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

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IDENTITY AND INTEREST OF AMICI CURIAE AND SOURCE OF THEIR AUTHORITY TO FILE

Amicus curiae Common Cause is a nonpartisan, grassroots, citizens' organization dedicated to fair elections and making government at all levels more democratic, open, and responsive to the interests of all people. Founded by John Gardner in 1970 as a "citizens' lobby," Common Cause has over 400,000 members nationwide and has local chapters in 35 states, including Ohio. Common Cause has been a leader in the fight for open, honest, and fair elections. Common Cause has also been a leading proponent of redistricting reforms and a vigorous opponent of partisan gerrymanders and voter suppression by both political parties. Common Cause is currently challenging Georgia's voter removal process which is similar to the procedure at issue here.

Amicus curiae Project Vote, Inc., is a national nonpartisan, non-profit 501(c)(3) based in Washington, D.C., whose mission is to build an electorate that accurately represents the diversity of America's citizenry. Through its research, advocacy, technical assistance, and direct legal services, Project Vote works to ensure that every eligible citizen is able to register, vote, and cast a ballot that counts. Project Vote has particular expertise in issues related to voter registration. Among its core organizational objectives is to ensure that voter list maintenance procedures do not remove eligible voters. Project Vote takes an interest in the

important question of the ramifications for eligible Ohio voters of the Secretary of State's Supplemental Process to remove voters.

Amicus curiae League of Women Voters of the United States is a nonpartisan, community-based organization that encourages Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 140,000 members and supporters, and is organized in approximately 750 communities and in every State. For over 90 years, the League has led efforts to remove the unnecessary barriers that too many Americans face in registering to vote and casting a ballot and its Ohio affiliate has worked diligently to oppose illegal purging of voters.

Common Cause, League of Women Voters of the United States and Project Vote file this brief pursuant Federal Rule of Appellate Procedure 29(a), and state that all parties have consented to its filing.

No party's counsel authored any part of this brief. No party, no party's counsel, nor any other person other than Common Cause and Project Vote, their members and their counsel, contributed any money for the preparing or submitting of this brief.

ARGUMENT

The District Court construes the National Voter Registration Act (NVRA) and related statutes and gets them exactly backwards: the District Court uses 52 U.S.C. § 20507(d), which is an additional protection ***against*** improper voter removal, to swallow the express prohibition on removing voters for failing to vote. This contradicts the plain statutory language and thus the clear intent of Congress.

I. Regarding Removal of Voters, the NVRA and HAVA Have Two Purposes: To Permit the Removal of Only Ineligible Voters and To Ensure that No Voter Is Removed for Failing to Vote.

The NVRA and the related Help America Vote Act (HAVA) were both designed to increase voter registration and participation. The NVRA's express legislative purposes include "increas[ing] the number of eligible citizens who register to vote" and "enhanc[ing] the participation of eligible citizens as voters." *Id*. § 20501(b)(1)–(2). HAVA was also intended to increase voter participation. It was enacted to "alleviate 'a significant problem voters experience, which is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.'" *Sandusky Cty. Democratic Party v. Blackwell*, 387 F.3d 565, 569 (6th Cir. 2004) (quoting H.R. Rep. 107-329 at 38 (2001) (alterations adopted)). Notably, HAVA explicitly reaffirmed the NVRA's efforts to prevent improper voter removal. *See* 52 U.S.C. § 21145(a)(4) ("[N]othing in [HAVA] may be

construed to authorize or require conduct prohibited under . . . or to supersede, restrict, or limit the application of . . . [the NVRA]."); *see also* H.R. Rep. 107-329 at 37 ("[R]emoval of those deemed ineligible must be done in a manner consistent with the [NVRA]. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, [HAVA] leaves NVRA intact, and does not undermine it in any way.").

For purposes of removing voters from a State's rolls, these statutes have two touchstones. First, they are targeted *exclusively* at removing *ineligible* voters. *See* § 20507(a)(4) (NVRA requirement that States "remove the names of *ineligible* voters" (emphasis added)); *id.* § 21083(a)(4)(A) (HAVA requirement that States "remove registrants who are *ineligible* to vote" (emphasis added)). Nothing in these statutes authorizes the removal of *eligible* voters—indeed, doing so would fly in the face of the stated purposes of "increasing the number of eligible citizens who register to vote" and "enhancing [voter] participation."

Second, both statutes expressly prohibit States from removing a voter because he or she failed to vote. *See* § 20507(b)(2) (NVRA requirement that no voter be removed "by reason of the person's failure to vote"); § 21083(a)(4)(A) (HAVA requirement that "no registrant may be removed solely by reason of a failure to vote").

II. The District Court Improperly Undermines Both of These Purposes By Misreading 52 U.S.C. § 20507(d).

The District Court construes the NVRA to undermine these two touchstones by relying on a strained reading of § 20507(d). That subsection requires a State to send a confirmation notice before removing a voter from the rolls. § 20507(d). The District Court concludes that this subsection authorizes the State of Ohio's supplemental process, which does nothing more than send a confirmation notice to voters who do not vote, and then removes them if they do not respond to the confirmation notice and continue not voting. Order, RE66, PageID# 23008-23009. The order turns on the conclusion that: "Subsection (d) . . . does not specifically state who should be sent a confirmation notice or when that confirmation notice should be sent. Therefore, . . . that decision is left to the states." *Id.*, RE66, PageID# 23015-23016; *see also id.*, RE66, PageID# 23016 ("The NVRA does not mention—explicitly or implicitly—the events that need or need not happen before a state may initiate its confirmation process.").

This conclusion directly contradicts the language and purpose of subsection (d) and all of the surrounding statutory language. When the statute is considered in its entirety, it is clear that subsection (d)'s notice process is an *additional protection* for voters who might otherwise be improperly removed. In other words, subsection (d) imposes a final requirement on the States before they can remove a voter who is ineligible because of a change in residence. Contrary to the District

Court's conclusion, this subsection is not a safe harbor that allows a state to ignore all of the other requirements of the statute.

1. Subsection (d) Is One of a Number of NVRA Voter-Removal Requirements and, Contrary to the District Court's Analysis, The State Must Meet Every Requirement.

The relevant NVRA section, 52 U.S.C. § 20507, contains a number of requirements that limit a state's ability to remove voters from its voter rolls. It states:

> (a) In general
>
> In the administration of voter registration for elections for Federal office, **each State shall**--
>
> …
>
> (3) provide that the name of a registrant **may not be removed from the official list of eligible voters except**--
>
> (A) at the request of the registrant;
> (B) as provided by State law, by reason of criminal conviction or mental incapacity; **or**
> (C) **as provided under paragraph (4)**;
>
> (4) 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--
>
> (A) the death of the registrant; or
> (B) **a change in the residence of the registrant, in accordance with subsections (b), (c), and (d)**;
>
> (b) Confirmation of voter registration
>
> **Any State program or activity** to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--
>
> (1) **shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965** (42 U.S.C. 1973 et seq.); and

(2) **shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**, ***except*** that nothing in this paragraph may be construed to prohibit a State from using the procedures **described in subsections (c) and (d)** to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) **A State may meet the requirement of subsection (a)(4) by establishing a program under which**--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

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

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) 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.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). 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 a Federal 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, and 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.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered,

> information concerning how the registrant can continue to be eligible to vote.
>
> (3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

52 U.S.C. § 20507 (emphasis added).

Subsection (a) provides requirements for how the States maintain their voter lists. Subsection (a)(3) prohibits a state from removing a voter's name unless certain conditions are met. The only voter-removal condition that is applicable here is subsection (a)(3)(C), which allows a state to remove a voter's name if the state complies with subsection (a)(4).

Subsection (a)(4) in turn requires a "general program that makes a *reasonable effort* to remove the names of *ineligible* voters." This sets the general rule applicable to this case: a State's voter removal program must be a "*reasonable effort*" to remove "*ineligible* voters."

More specifically, to remove a voter because he or she has changed residence, subsection (a)(4)(B) also requires that the State comply with subsections "(b), (c) *and* (d)." § 20507(a)(4)(B) (emphasis added). These three subsections combine to form a set of protections to prevent improper removal of eligible voters. Based on the use of the word "and," any removal of voters must comply with all three subsections. Subsection (b) requires (1) that any state activity must be uniform, nondiscriminatory and comply with the Voting Rights Act; and (2) that

any state activity "***shall not result in the removal*** . . . ***by reason of the person's failure to vote***, ***except*** that nothing in this paragraph may be construed to prohibit a state from using the procedures described in subsections (c) ***and*** (d) to remove an individual . . . ." § 20507(b)(2) (emphasis added).

Thus, for purposes of removing *ineligible* voters based on change of address, subsection (b) establishes the general rule that voters may not be removed for failure to vote. But it provides that a State is not prohibited from using the procedures in subsections "(c) *and* (d)." Subsection (c), entitled "Voter removal programs," provides a permissive safe harbor where states "*may*" comply with subsection (a)(4) by removing voters based on the USPS change of address database.

Subsection (d) is different. Unlike subsection (c), it is not a permissive safe harbor. Nowhere does the NVRA state that compliance with subsection (d)'s notice process alone meets the requirements of subsection (a)(4). Had Congress intended the subsection (d) notice process to be a safe harbor like subsection (c), it would have said so.

Instead, subsection (d)'s notice process is an additional restriction on voter removal, which expressly prohibits a State from removing a voter based on change of address without sending the voter a specific written notice and waiting the prescribed period of time. (It says: "A state *shall not* . . . ."). Given what the

statute actually says, subsection (d) cannot be a standalone safe harbor, but is instead an *additional restriction* on any voter removal program based on change of address. States must meet this requirement in addition to the others contained in § 20507. This conclusion is buttressed by the statute's description of subsection (d): it says subsection (d)'s notice requirement is used "to ***confirm*** the [voter's] change of address" before final removal. § 20507(c)(1)(B)(ii) (emphasis added). Thus, subsection (d) cannot be the initial basis for concluding that a voter has changed address; it is merely an additional "confirm[ation]" of some *other* indicia of a change of address.

The language of subsections (a)(4)(B) and (b)(2) likewise demands this conclusion. Both of those subsections use the word "*and*" in requiring compliance with subsection (d). Subsection (a)(4)(B) requires change of residence programs to be conducted "in accordance with subsections (b), (c) ***and*** (d)." (Emphasis added.) Subsection (b)(2) says that the prohibition on removing non-voters may not be construed to prohibit a State program that uses "the procedures described in subsections (c) ***and*** (d)." (Emphasis added.)

Reading the entire statute makes clear that a State may not remove a voter unless it complies with certain requirements. To satisfy these requirements, a voter removal program based on change of residence can ***either*** fall into the subsection (c) safe harbor (in which case it must comply with subsection (c) and the notice

requirements of (d)), ***or*** it must comply with all of the other requirements, which include subsection (a)(4)'s requirement that it be a "reasonable effort" to remove "ineligible" voters; subsection (b)'s requirement that it be uniform, non-discriminatory and "***not*** result in the removal" of a voter for failure to vote; and subsection (d)'s notice requirements. Contrary to the District Court's conclusion, compliance with subsection (d)'s notice process *alone* is not sufficient to render a voter-removal program lawful under the NVRA.

2. The District Court's Reading of Subsection (d) and Its Dismissal of the NVRA's "Reasonable Effort" Requirement Directly Contradict the Statutory Language.

The District Court ultimately concluded that subsection (d) "specifically permits the Ohio Supplemental Process." Order, RE66, PageID# 23017. But this cannot be true. Subsection (d) is not permissive; it cannot be a safe harbor. It does not stand alone, but instead exists only in the context of the NVRA's other restrictions. Indeed the statute plainly requires that subsection (d)'s notice process be followed alongside and in addition to those other restrictions.

There is no statutory support for the idea that compliance with subsection (d)'s *additional restriction* can eliminate the need for a State's program to comply with the other provisions of the NVRA. This conclusion renders meaningless the rest of the NVRA, which comprehensively addresses change of address programs; and this conclusion flies directly in the face of Congress's stated intent. *See* S. REP.

103-6, at 17–19 (noting that "one of the guiding principles of [the NVRA is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction," and criticizing States that "penalize . . . non-voters by removing their names from the [voter rolls] merely because they have failed to cast a ballot in a recent election").

The District Court's error is exemplified by its dismissal of the language in subsection (a)(4) that requires state programs to make a "reasonable effort to remove the names of ineligible voters." Order, RE66, PageID# 23018-23020. This requirement is spelled out unambiguously and compliance is mandatory. The District Court concludes that because subsection (a)(4)(B) references the additional restrictions in subsections (b), (c) and (d), it eliminates the "reasonable effort" requirement. *Id*., RE66, PageID# 23018-23019 (finding "no reasonableness requirement for programs that are otherwise lawful under subsections (b), (c) and (d)"). This cannot be, for several reasons. First, the District Court's repeated idea that the statute "does not say that such program needs to be reasonable," *see, e.g.*, *id*., RE66, PageID# 23019, is belied by the statute, which essentially says the opposite: § 20507(a)(4) requires a "general program that makes a reasonable effort to remove the names of ineligible voters."

Second, the requirements in (b), (c) and (d) must be *in addition to*, and not in lieu of, the reasonableness requirement. Otherwise, the "reasonable effort"

provision would be meaningless. And those requirements make perfect sense when taken together: subsection (c) provides a specific, permissive safe harbor that allows States to comply by following its strictures; otherwise, States must make a "reasonable effort to remove the names of ineligible voters" that also meets the requirements in (b) and (d).

Third, the District Court ignores the statutory language in its alternative analysis about the substance of the "reasonable effort" requirement. Specifically, the statute demands a "reasonable effort *to remove ineligible voters*." The District Court's analysis ignores this principal goal. Ohio's effort to remove voters based on failure to vote has nothing to do with eligibility. Indeed, the District Court admits that "[a] voter's non-participation in an election may not be an ideal indicator of whether a voter has moved." Order, RE66, PageID# 23019. Of course, not only is non-participation (*i.e.*, failure to vote) "not an ideal indicator" of ineligibility,[1] but it is the *one reason* for removing a voter that is *specifically forbidden* by the statute.

[1] Indeed, Amicus Curiae Project Vote's own analysis of census data reveals that most people who fail to vote do so "for reasons other than moving." LaShonda Brenson & Stephen Mortellaro, *The Numbers Don't Lie: Debunking Ohio's Rationalization for Discrimination Against Voters Who Miss an Election*, PROJECT VOTE (July 18, 2016), http://www.projectvote.org/blog/numbers-dont-lie-debunking-ohios-rationalization-discriminating-voters-miss-election. For example, "[i]n the 2012 presidential general election, *62 percent of Ohioans who did not vote also reported that they had lived at their present address for at least two years*." *Id*. (emphasis added).

In sum, the District Court read subsection (d)—a provision that imposes an additional restriction on the States' ability to remove voters—to eliminate all other requirements in the NVRA and to allow voter programs to be initiated based on the one reason that the statute says is expressly impermissible. This turns the statute on its head.[2]

3. The District Court's Order Also Misconstrues HAVA.

Contrary to the District Court's order, HAVA directly supports the plain language reading of the NVRA and undermines the district court's analysis. The full text of 52 U.S.C. § 21083(a)(4)(A) states:

> The State election system **shall** include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:
>
> (A) A system of file maintenance that **makes a reasonable effort to remove registrants who are ineligible** to vote from the official list of eligible voters. Under such system, **consistent with the [NVRA]**, registrants who have not responded to a notice and who have not voted in 2 consecutive

---

[2] At a minimum, the statute cannot possibly be read to unambiguously gut all of its own requirements other than subsection (d). *See, e.g.*, *Yates v. United States*, 574 U.S. ___, ___, 135 S. Ct. 1074, 1081–82 (2015) ("Whether a statutory term is unambiguous . . . does not turn solely on dictionary definitions of its component words. Rather, the plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole.") (internal citations and punctuation omitted).

In that context, the legislative history makes clear that the District Court's conclusion violates Congress's intent. *See* H.R. REP. 103-9, at 18 (noting that "an underlying purpose of the Act [is] that once registered, a voter should remain on the list of voters so long as the individual remains eligible to vote in that jurisdiction")

> general elections for Federal office **shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.**

(Emphasis added.)

First, in language that the District Court omits from its block quote, *see* Order, RE66, PageID# 23016, HAVA reaffirms that any state program must make a "reasonable effort" to remove "ineligible" voters. Any analysis that ignores this requirement is erroneous.

Second, contrary to the District Court's order, HAVA does not repeal any of the requirements of the NVRA. Instead, it does the exact opposite: it requires that any voter removal program must be "consistent with the NVRA."

Third, this provision repeats that "no registrant may be removed ***solely*** by reason of a failure to vote." According to the District Court, so long as a State sends a confirmation notice to "voters who have not voted for a certain period of time" and then removes them when they fail to respond to that notice, the removal is not "***solely*** by reason of a failure to vote." Order, RE66, PageID# 23016. But this analysis renders the exception entirely meaningless.

The statute provides that voters may be removed if they "have not responded to a notice and . . . have not voted in 2 consecutive general elections for Federal office." If compliance with these two provisions alone were enough to satisfy the statute, then the language in (a)(4)(A)'s final clause, which prohibits removing

voters solely for failing to vote, would be meaningless. But that cannot be. That final clause—"except that no registrant may be removed solely by reason of a failure to vote"—is an *exception* to a State's ability to remove "registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office." § 21083(a)(4)(A). Satisfying those two conditions is not sufficient; the statute requires more: States must also comply with the exception. If complying with both conditions were enough, then the exception would have no meaning. HAVA supports the conclusion that the requirements of the NVRA must be met.

CONCLUSION

The relevant provisions of the NVRA are straightforward. Pursuant to subsection (a)(4), States must make a reasonable effort to remove ineligible voters. Pursuant to subsection (b), they cannot remove voters based on failure to vote. And before a State removes any voter, it must provide the notice required by subsection (d). These requirements can be met by showing a reasonable effort, targeted at ineligible voters, that does not result in their removal for not voting. Or, if a state wants a safe harbor, it may simply comply with subsection (c), while still providing the notice required by subsection (d). And that will suffice as a matter of law. But a State's compliance with subsection (d)'s notice requirement alone is not sufficient to satisfy the NVRA or HAVA. The District Court's order

concluding otherwise upsets the balance struck by Congress and violates the statutory scheme at issue.

Respectfully submitted this 20th day of July, 2016.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,210 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Times New Roman 14-point type) using Microsoft Word 2010.

This 20th day of July, 2016.

/s/ Emmet J. Bondurant
Emmet J. Bondurant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Amici Curiae Common Cause, League of Women Voters of the United States and Project Vote, Inc. in Support of Appellants was filed this 20th day of July, 2016 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

This 20th day of July, 2016.

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