

No. 16-3746

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

OHIO A. PHILLIP RANDOLPH INSTITUTE, *et al.*,  
*Plaintiffs – Appellants,*

v.

JON HUSTED,  
*Defendant – Appellee.*

---

On Appeal from the U.S. District Court for the Southern District of Ohio,  
Eastern Division, Case No. 2:16-cv-303

---

**AMICUS CURIAE BRIEF OF JUDICIAL WATCH, INC. IN  
SUPPORT OF DEFENDANT-APPELLANT AND AFFIRMANCE**

---

Robert D. Popper  
Chris Fedeli  
Lauren M. Burke  
**JUDICIAL WATCH, INC.**  
425 Third Street SW, Suite 800  
Washington, DC 20024  
(202) 646-5172

Date: July 27, 2016

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

## Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 16-3746

Case Name: Ohio A. Phillip Randolph Inst. v. Husted

Name of counsel: Lauren M. Burke

Pursuant to 6th Cir. R. 26.1, Judicial Watch, Inc.

*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 27, 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.

s/ Lauren M. Burke

Judicial Watch, Inc.

lburke@judicialwatch.org

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.

## TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iii
INTERESTS AND AUTHORITY OF <i>AMICUS CURIAE</i> .....	1
ARGUMENT .....	2
A. Ohio’s Supplemental Process Falls Squarely Within the Unambiguous Language of Section 8 of the NVRA .....	3
B. The NVRA Does not Contain a “Trigger” Requirement for the Process set Forth in Subsection (d) .....	6
C. DOJ’s Arguments About the NVRA’s Requirements are not Entitled to any Special Weight or Deference .....	9
D. Ohio and Other States Must Maintain Accurate Voter Rolls to Protect the Integrity of the Electoral Process as Well as Citizens’ Confidence in Elections .....	13
CONCLUSION .....	16
CERTIFICATE OF COMPLIANCE .....	17
CERTIFICATE OF SERVICE AND ELECTRONIC FILING .....	18

## TABLE OF AUTHORITIES

CASES	PAGE
<i>Caminetti v. United States</i> , 242 U.S. 470 (1917) .....	9
<i>Chevron v. Natural Resources Defense Council</i> , 467 U.S. 837 (1984) .....	12
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008) .....	15
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001) .....	8
<i>Judicial Watch, Inc. v. King</i> , 993 F. Supp. 2d 919 (S.D. Ind. 2012) .....	15
<i>Landreth Timber Co. v. Landreth</i> , 471 U.S. 681 (1985) .....	9
<i>Public Employees Retirement System of Ohio v. Betts</i> , 492 U.S. 158 (1989) .....	9
<i>Skidmore v. Swift &amp; Co.</i> , 323 U.S. 134 (1944) .....	12
<i>United States v. Gonzales</i> , 520 U.S. 1 (1997) .....	9
<i>United States v. Mead Corp.</i> , 121 S.Ct. 2164 (2001) .....	12
<i>United States v. Philip Morris USA, Inc.</i> , 310 F. Supp.2d 68 (D.D.C. 2004) .....	10
<i>United States v. Ron Pair Enterprises, Inc.</i> , 489 U.S. 235 (1989) .....	9
<i>Watt v. Energy Action Ed. Foundation</i> , 454 U.S. 151 (1981) .....	9
<i>Welker v. Clarke</i> , 239 F.3d 596 (3 <sup>rd</sup> Cir. 2001) .....	13
<i>Williams v. Taylor</i> , 529 U.S. 420 (2000) .....	9
<i>Young v. United Parcel Service</i> , 135 S. Ct. 1338 (2015) .....	12

## **STATUTES**

52 U.S.C. § 20501 .....	2
52 U.S.C. § 20507(a)(4).....	3
52 U.S.C. § 20507(b) .....	14
52 U.S.C. § 20507(b)(2) .....	4, 5
52 U.S.C. § 20507(d) .....	4, 5
52 U.S.C. § 21083 .....	13
52 U.S.C. § 21083(a)(4) .....	14

## **OTHER AUTHORITIES**

147 Cong. Rec. H9290 (daily ed. Dec. 12, 2001) (statement of Rep. Terry) .....	14
Press Release, “Secretary of State Husted Reminds Ohioans: One Vote Matters,” Ohio Secretary of State’s Office (Jan. 13, 2013) .....	14
REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, Jimmy Carter and James A. Baker, III (Co-Chairs), “Building Confidence in U.S. Elections,” American University’s Center for Democracy and Election Management, (Sept. 2005) .....	14
S. Rep. 103-6 at 17-18, 103 <sup>rd</sup> Cong., 1 <sup>st</sup> Sess. ....	14

## INTERESTS AND AUTHORITY OF *AMICUS CURIAE*<sup>1</sup>

Judicial Watch, Inc. (“Judicial Watch” or “*amicus*”) files this *amicus curiae* brief under authority of Federal Rule of Appellate Procedure 29(a) in support of Jon Husted, Ohio Secretary of State, and urges this Court to affirm the judgment of the district court. The parties have extended blanket consent to the filing of *amicus* briefs, and pursuant to the parties’ request Judicial Watch states that it is filing this *amicus curiae* brief after the completion of the parties’ briefing cycle.

Judicial Watch is a non-partisan foundation that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. In furtherance of these goals, Judicial Watch regularly files *amicus curiae* briefs and prosecutes lawsuits relating to election integrity and voting. In 2012, Judicial Watch filed a federal lawsuit under Section 8 of the NVRA against Ohio Secretary of State Jon Husted, in which it alleged that Ohio had failed to make a reasonable effort to maintain the accuracy and currency of its voter rolls in violation of the NVRA. *See Judicial Watch v. Husted*, Civil Action No. 12-792 (S.D. Ohio 2012) (Complaint attached hereto as Exh. A). The parties settled the lawsuit, and agreed that Ohio would perform certain list maintenance practices

---

<sup>1</sup> No party’s counsel authored the brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the *amicus curiae* or their counsel contributed money that was intended to fund preparing or submitting the brief.

through November 2018. *See* Settlement Agreement (attached hereto as Exh. B). A key provision of the Settlement Agreement is that Ohio will continue to perform an annual list maintenance “Supplemental Mailing” to voters who have had no contact with Ohio’s election offices for two years. *See* Exh. B, Settlement Agreement at 3, Section 2.i. Thus, Judicial Watch has a particular interest in the issues at stake here. If the decision of the district court is reversed, and Ohio’s list maintenance process is invalidated, Ohio will be forced to violate the terms of its settlement agreement with Judicial Watch.

### **ARGUMENT**

The district court determined correctly that Ohio’s voter list maintenance practices do not violate the National Voter Registration Act of 1993, 52 U.S.C. § 20501, *et seq.* (“NVRA”). Plaintiffs-Appellants claim that Ohio’s “Supplemental Process” – in which confirmation notices are mailed to persons who have not engaged in any voter activity for two years, and those voters are asked to confirm their registration status – violates the NVRA. As the district court concluded, this Supplemental Process is lawful under the plain language of the NVRA. In their arguments to the district court and on appeal, the plaintiffs-appellants have mischaracterized the NVRA to include requirements that do not exist in the text of the statute. They are essentially asking the federal courts to force Ohio to comply with the statute they want the NVRA to be, not the statute that it is. The district

court refused to read requirements and language into the NVRA that Congress declined to include, and this Court should do the same.

**A. Ohio’s Supplemental Process Falls Squarely Within the Unambiguous Language of Section 8 of the NVRA.**

The NVRA requires all states to conduct a program to remove from their registration lists the names of voters who become ineligible due to death or a change of residence. 52 U.S.C. § 20507(a)(4). Ohio uses its Supplemental Process, which is one part of its overall list maintenance procedures, to comply with that federal mandate.<sup>2</sup> Under this process, Ohio’s boards of elections send a confirmation notice, by forwardable mail, to a person who has not participated in any voter activity for two years, and ask that he or she confirm, either online or by pre-paid postage, that he or she should still be listed on the voter rolls. Those voters who do not respond to the confirmation notice are placed on an inactive list, but their ability to vote does not change at that time. If those voters who did not respond to the confirmation notice *then* fail to vote in the next two general federal elections, one of which is necessarily a presidential election, those voters are dropped from the rolls. Thus, it is only when that person **both** (1) fails to respond

---

<sup>2</sup> Ohio also uses an additional procedure to maintain accurate rolls, which cross-references the United States Postal Service’s national change of address database for voters who may have changed residence (the “NCOA” process). Plaintiffs do not challenge this aspect of Ohio’s list maintenance system, and therefore Judicial Watch does not address it. Ohio’s NCOA process follows the so-called “safe harbor” set forth in Subsection (c) of Section 8.



to the confirmation notice **and** (2) subsequently fails to vote in the following two general federal elections that he or she is removed from the rolls. *See* 52 U.S.C. § 20507(d).

Subsections (b) and (d) of Section 8 of the NVRA specifically permit Ohio's Supplemental Process. Subsection (b) provides in relevant part:

**(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 . . .

(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.

52 U.S.C. § 20507(b)(2) (emphasis added). Subsection (d), referenced in Subsection (b)(2) as an exception to that provision, provides as follows:

**(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—

. . . .

(B)(i) has failed to respond to a notice described in paragraph (2); and (ii) has not voted or appeared 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.

52 U.S.C. § 20507(d).

Ohio's Supplemental Process matches the process provided in Subsection (d). As set forth above, the NVRA specifically excepts the procedure set forth in Subsection (d) from the language in Subsection (b) that prohibits "the removal of the name of any person from the official list of voters . . . by reason of the person's failure to vote." *See* § 20507(b)(2) ("nothing in this paragraph may be construed to prohibit a State from using the procedures described in Subsection[] . . . (d)"). As the district court concluded, "the unambiguous text of the NVRA specifically permits the Ohio Supplemental Process." (Order, Doc. 66, Page ID #: 23017.)

Plaintiffs-Appellants argue that Ohio's process unlawfully removes voters from the rolls because they failed to vote. There is no dispute that the NVRA precludes the removal of voters from the rolls on the sole basis of their failure to

vote. But despite the plaintiffs-appellants' arguments to the contrary, Ohio's Supplemental Process does not remove a person's name from its lists because the person failed to vote. As set forth above, registrants are removed *because they failed to respond to the confirmation notice*, coupled with the fact that they did not participate in the two federal general elections following the confirmation notice. As the district court found, registrants are *queried* on the basis of their failure to vote, but not *removed* on that basis. (Order, Doc. 66, Page ID # 23016). Those voters who do not respond to the confirmation notice remain eligible to vote without restriction *for another four years*. They are not turned away from the polls or asked to cast a provisional ballot. The confirmation notice only affects the recipient's ability to vote if that person fails to respond *and* fails to vote in the next two federal general elections, one of which is a presidential election. This process takes six years to complete. Voters are not being summarily removed from the rolls because they failed to vote; rather, Ohio is following the very procedure specifically permitted in Subsection (d), as set forth above.

**B. The NVRA Does not Contain a “Trigger” Requirement for the Process set Forth in Subsection (d).**

Plaintiffs-Appellants, as well as the Department of Justice as *amicus curiae*, insist that Ohio's Supplemental Process violates the NVRA because it uses a period of voter inactivity as the “trigger” to send voters a confirmation notice. As the district court pointed out, however, the NVRA does not place any

preconditions on the mailing of a confirmation notice, and does not contain any “trigger” requirement. “The NVRA does not mention—explicitly or implicitly—the events that need or need not happen before a state may initiate its confirmation process.” (Order, Doc. 66, Page ID # 23016).

Nothing in the text of the NVRA prohibits Ohio from sending confirmation notices to persons who have not engaged in voter activity for a period of two years. While Plaintiffs-Appellants assert that this violates the NVRA, their argument is not based on the text of the statute, but rather on their ideas about what the NVRA *should* require. Plaintiffs-Appellants claim over and over throughout their brief on appeal that the state must have “independent evidence” that a voter has moved before it can send her a confirmation notice under Subsection (d), and that such evidence must be “objective” and “reliable.” (Appellants Principal Brief 3, 19, 24, 28, 32). But nowhere does the text of the NVRA use the term “independent evidence,” or reference such a requirement. Likewise, DOJ argues that “Section 8(d) requires some *initial* evidence that a voter has moved,” and that the evidence must be “reliable.” (DOJ Amicus Brief 8-9, 12-13, 17). The statute itself, however, says nothing about “triggering,” or anything about “independent” or “initial” or “reliable evidence.” Plaintiffs-Appellants and the DOJ may believe that the NVRA *should* contain such qualifications, but it does not.

Plaintiffs-Appellants – as well as DOJ—ask this Court to determine judicially that the NVRA contains obligations that are found nowhere in text of the statute. If Congress intended to require that states always obtain “independent” or “reliable” evidence that a voter has moved before mailing a confirmation notice, it should have included that in the statute. Even if Congress intended to require a lower standard, the NVRA could have simply stated that “a confirmation notice under subsection (d) may be sent to a voter after the State has received information that the voter has changed residence.” But the NVRA contains no such language. The word “evidence” does not even appear in the text of the statute with respect to the confirmation process. DOJ and Plaintiffs-Appellants assume that the “safe harbor” process described in Subsection (c), which relies on information supplied by the United States Postal Service, must be matched in some way before any confirmation notice may be sent to a voter. The NVRA simply does not require this. Again, the statute *could have* included a provision requiring that a state must have information indicating a change of residence before it sends a confirmation notice, but it does not. To the contrary, the statute expressly permits the Subsection (d) process that Ohio is using.

This Court’s task is “to construe what Congress has enacted,” not what the plaintiffs—or any party—believe the statute should say. *See Duncan v. Walker*, 533 U.S. 167, 172 (2001) (“Our task is to construe what Congress has enacted. We

begin, as always, with the language of the statute”) (citing *Williams v. Taylor*, 529 U.S. 420, 431 (2000); *Public Employees Retirement System of Ohio v. Betts*, 492 U.S. 158, 175 (1989); *Watt v. Energy Action Ed. Foundation*, 454 U.S. 151, 162 (1981)). The United States Supreme Court has repeatedly emphasized that analysis of a statute begins with the text of that statute. *United States v. Gonzales*, 520 U.S. 1, 4 (1997) (“Our analysis begins, as always, with the statutory text.”); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (“The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself.”) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)). “In this case it is also where the inquiry should end, for where, as here, the statute’s language is plain, ‘the sole function of the courts is to **enforce it according to its terms.**’” *Ron Pair Enterprises*, 489 U.S. at 241 (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)) (emphasis added). Section 8 simply does not place these requirements, or preconditions, on the process set forth in Subsection (d).

This Court should decline to read these non-existent requirements into the statute.

**C. DOJ’s Arguments About the NVRA’s Requirements are not Entitled to any Special Weight or Deference.**

As it explains in its *amicus curiae* brief, the Department of Justice has authority to enforce the NVRA. In that capacity, DOJ has published guidance for complying with the NVRA on its website. In its *amicus* brief, DOJ relies on this

guidance in support of its argument that Ohio's list maintenance procedure violates the NVRA. (DOJ Amicus Brief 19-20). To be clear, this guidance, which is issued by the same office that submitted the *amicus* brief, is not independent authority for the position it takes here. It is simply another statement of the Department's current opinion about what is required to comply with the NVRA. This Court is not required to give the guidance any special weight.

Nor is DOJ entitled to the same type of deference this Court would give to an agency with actual rule-making authority. As an executive agency, DOJ is entitled to make enforcement decisions based on its interpretation of the NVRA. It makes its position known through individual cases brought in the federal courts, which succeed or fail on their merits. DOJ is not, however, entitled to revise the words of a statute to impose its own obligations on the states. It does not have the authority to rewrite the NVRA to conform to its current policy views. Given that DOJ does not have any administrative rule-making or other quasi-legislative authority under the NVRA, it is not entitled to *Chevron*-type deference by this Court. *See United States v. Philip Morris USA, Inc.*, 310 F. Supp.2d 68, 72 n.5 (D.D.C. 2004).

Additionally, as Judicial Watch pointed out in its *amicus* brief to the district court, DOJ's position on the NVRA in this case is inconsistent with an enforcement action it brought against the City of Philadelphia under the NVRA in

2007. *See United States v. City of Philadelphia, et al.*, Civil Action No. 06-4592 (E.D. Penn. 2007). In the settlement agreement resolving DOJ's claims, DOJ *required* Philadelphia to do what it now says Ohio may not. *See* DOJ Settlement Agreement with Philadelphia at 10-11, ¶ 16, Attachment 11 to DOJ Amicus Brief (requiring the City to mail a confirmation notice to voters if they failed to participate in an election).<sup>3</sup>

In its *amicus* brief to this Court, DOJ submits that the Philadelphia settlement was based on “unique circumstances,” and that it had agreed that “Philadelphia would essentially comply with Pennsylvania law, which permits the use of non-voting to trigger the Section 8(d) process.” (DOJ Amicus Brief 26). But that is also the case here: Secretary of State Husted is following Ohio law, which uses this process in an effort to maintain accurate voter rolls. DOJ does not explain why Philadelphia was permitted to conduct voter list maintenance pursuant to a state law that, in DOJ's view, violated the very federal statute it had sued Philadelphia to enforce. DOJ further asserts that it “has never stated that Pennsylvania law complies with Section 8 of the NVRA.” *Id.* Then why did DOJ enter into a settlement agreement that required Philadelphia to follow that process? The fact that DOJ agreed to resolve its enforcement action against Philadelphia

---

<sup>3</sup> Indeed, under the agreement, Philadelphia was required to send voters a confirmation notice on the basis of a failure to vote in *any* election, which is a stricter standard than Ohio's two-year period.



under those terms is a strong indicator that, at least at that time, DOJ considered the process lawful. Ohio should likewise be permitted to follow its own state law, which complies with the express language of Subsections (b) and (d).

Regardless of whether and how DOJ's position on Section 8 may have changed in recent years, its interpretation of the NVRA as *amicus* in this action is not necessary because the statute is unambiguous. *See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–843 (1984). This Court should not base its decision upon DOJ's changing interpretation of the NVRA. *See Young v. United Parcel Service*, 135 S. Ct. 1338, 1352 (2015) (holding that the Court could not rely significantly on agency's determination because its position was contrary to or inconsistent with previous government statements on the issue).<sup>4</sup> Rather, the courts, as well as the states, should take the only approach that will result in a consistent application of the NVRA's requirements: **apply the plain language of the NVRA as it is written.** Under the unambiguous language of the NVRA, there is no specific evidentiary requirement or precondition to sending a confirmation notice under Subsection (d). While the DOJ's current policy may be that a state should have "independent" or "reliable"

---

<sup>4</sup> The United States Supreme Court has held that the amount of weight given to an agency's statutory interpretation depends upon, amongst other things, "its consistency with earlier and later pronouncements[.]" *Young*, 135 S.Ct. at 1351-52 (discussing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). *See also United States v. Mead Corp.*, 121 S.Ct. 2164, 2171-74 (2001).

evidence that the voter has changed residence before it sends the voter a mailing asking her to confirm her status, that requirement simply does not exist in the statute.<sup>5</sup> This Court should decline to read such an obligation into the NVRA where Congress did not include it. Ohio's efforts to maintain accurate voter registration lists should not be invalidated based on DOJ's current interpretation of the NVRA, which is unsupported by the plain language of the statute.<sup>6</sup>

**D. Ohio and Other States Must Maintain Accurate Voter Rolls to Protect the Integrity of the Electoral Process as Well as Citizens' Confidence in Elections.**

The NVRA, as well as the Help America Vote Act of 2002, 52 U.S.C. § 21083 *et seq.*, require that states maintain accurate voter rolls “to protect the

---

<sup>5</sup> DOJ's current view of the NVRA is set forth in the Statement of Interest it filed in *Common Cause v. Kemp*, Civil Action No. 1:16-cv-452-TCB (N.D. Ga. 2016) (Attachment 1 to DOJ's Amicus Brief). Judicial Watch addressed DOJ's Statement of Interest in detail in its brief to the district court in this action. (Brief of *Amicus Curiae* Judicial Watch, Doc. 61, Page ID # 22921-22). There, DOJ sought to impose on Georgia the non-existent obligation to “[f]irst . . . gather reliable evidence that the voter has become ineligible based on a change of residence” before sending a confirmation notice. (Stmnt. of Interest, DOJ Amicus Brief Attachment 1 at 7). As Judicial Watch pointed out at the trial level, no such requirement is found in the text of the NVRA.

<sup>6</sup> The case law DOJ relies on to support its position consists of *dicta* in a Third Circuit case decided in 2001 (prior to the passage of HAVA), in which the plaintiff did not even state a claim under the NVRA. *See Welker v. Clarke*, 239 F.3d 596, 598-99 (3<sup>rd</sup> Cir. 2001). The *dicta* in *Welker* has no bearing on this action. DOJ also cites a district court decision holding that California's voter list maintenance process, which is not the same as Ohio's process, did not violate the NVRA. *See Wilson v. United States*, Nos. 95-20042, 94-20860 (N. D. Cal. Nov. 2, 1995). The fact that California's process satisfied the NVRA does not mean that Ohio's process is illegal. *Wilson* has no precedential value in this case.

integrity of the electoral process.” 52 U.S.C. § 20507(b); *see also* 52 U.S.C. § 21083(a)(4). The purpose of these provisions is to prevent voter fraud. *See* S. Rep. 103-6 at 17-18, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. (“The maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud”); 147 Cong. Rec. H9290 (daily ed. Dec. 12, 2001) (statement of Rep. Terry) (HAVA’s reforms would help states “clean up voter rolls, and thus clean-up elections”). Voter fraud undoubtedly occurs, and “[i]n close or disputed elections . . . a small amount of fraud could make the margin of difference.” *See* REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, Jimmy Carter and James A. Baker, III (Co-Chairs), “Building Confidence in U.S. Elections,” American University’s Center for Democracy and Election Management, (Sept. 2005).<sup>7</sup> Indeed, just recently in the state of Ohio, numerous elections have been decided by *one* vote.<sup>8</sup> Thus, even a small amount of voter fraud could change the outcome of an election. It is essential that Ohio and other states ensure that

---

<sup>7</sup> The Carter-Baker Report is available at: <http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF>.

<sup>8</sup> Secretary of State Husted has released statistics showing that, in 2013, 35 local races and eight local ballot issues in Ohio were decided either by *one* vote, or by a coin toss following an electoral *tie*. *See* Press Release, “Secretary of State Husted Reminds Ohioans: One Vote Matters,” Ohio Secretary of State’s Office (Jan. 13, 2013), available at <http://www.sos.state.oh.us/sos/mediaCenter/2014/2014-01-13.aspx>.

only eligible voters are casting ballots to protect the integrity of the election process.

Moreover, the federal list maintenance requirements also protect citizens' *confidence* that elections are conducted fairly and honestly. Citizens' confidence in the electoral process is of "independent significance." *Crawford v. Marion County Election Bd.*, 553, U.S. 181, 197 (2008) ("public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process"). *See also Judicial Watch, Inc. v. King*, 993 F. Supp. 2d 919, 924 (S.D. Ind. 2012) (explaining that voters were injured by the state's failure to comply with the list maintenance provisions of the NVRA "because that failure undermin[es] their confidence in the legitimacy of elections . . . and thereby burden[s] their right to vote").

Plaintiffs-Appellants' arguments in this case imply that Ohio has gone out of its way to purge thousands of voters from its rolls. This is simply not the case. Ohio's Supplemental Process is one method through which the State is complying with the federal *mandate* to maintain accurate voter registration lists. As noted above, Judicial Watch engages in efforts across the country to encourage states to comply with the NVRA and other voting statutes. Its consistent experience has been that states do not voluntarily conduct these types of list maintenance programs without prompting because the programs are burdensome and expensive.

It is easier for a state *not* to maintain accurate voting rolls. However, the cost of not doing so could be an election decided by fraud, or a loss of voter confidence in the electoral system that is the lifeblood of our democracy. Ohio is making laudable efforts to comply with the list maintenance provisions of the NVRA through its Supplemental Process, in addition to its other procedures. Federal law requires it, and the integrity of our electoral system depends on it.

Plaintiffs-Appellants have not demonstrated that the NVRA prohibits Ohio's Supplemental Process. To the contrary, it falls squarely within the plain language of the statute. The Court should find that Ohio's Supplemental Process complies with the NVRA and affirm the judgment of the district court.

### **CONCLUSION**

For the foregoing reason, *amicus* Judicial Watch respectfully request this Court affirm the lower court's decision.

Dated: July 27, 2016

Respectfully submitted,

*s/ Lauren M. Burke*

Robert D. Popper

Chris Fedeli

Lauren M. Burke

**JUDICIAL WATCH, INC.**

425 Third Street SW, Suite 800

Washington, DC 20024

(202) 646-5172

[lburke@judicialwatch.org](mailto:lburke@judicialwatch.org)

*Attorneys for Judicial Watch, Inc.*

### **CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), I hereby certify that this brief is proportionally spaced, 14-point Times New Roman font. Per Microsoft Word count, the brief contains 4,126 words excluding tables and certificates.

Dated: July 27, 2016

*s/ Lauren M. Burke*

**CERTIFICATE OF SERVICE AND ELECTRONIC FILING**

I hereby certify, pursuant to Fed. R. App. P. 25(d)(2), that I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. I certify that the parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF service.

Dated: July 27, 2016

*s/ Lauren M. Burke*

Exh. A



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JUDICIAL WATCH, INC., on behalf	:	
of certain of its members; and	:	Case No.: 2:12-cv-792
TRUE THE VOTE, in its corporate	:	
capacity,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
OHIO SECRETARY OF STATE	:	
JON HUSTED, in his official capacity,	:	
	:	
Defendant.	:	

---

**COMPLAINT**

---

Plaintiffs Judicial Watch, Inc. and True the Vote, by their attorneys, bring this action for declaratory and injunctive relief and allege as follows:

**INTRODUCTION**

1. Plaintiffs Judicial Watch, Inc. and True the Vote seek declaratory and injunctive relief to compel the State of Ohio to comply with its voter list maintenance obligations under Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-6.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the action arises under the laws of the United States, and under 42 U.S.C. § 1973gg-9(b)(2), as the action seeks injunctive and declaratory relief under the NVRA.

3. Venue in this Court is proper under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

### **PARTIES**

4. Plaintiff Judicial Watch, Inc. (“Judicial Watch”) is a non-profit organization that seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. Judicial Watch brings this action on behalf of its members who are registered to vote in the State of Ohio.

5. Plaintiff True the Vote (“True the Vote”) is a non-profit organization that seeks to restore truth, faith, and integrity to local, state, and federal elections. True the Vote brings this action in its corporate capacity.

6. Defendant Jon Husted is the Secretary of State of the State of Ohio (“the Secretary”) and has served in this capacity since January 9, 2011. Because the State of Ohio has designated the Secretary as the “chief State election official” responsible for coordination of its responsibilities under the NVRA (*see* 42 U.S.C. § 1973gg-8, Plaintiffs Judicial Watch, Inc. and True the Vote bring this action against the Secretary in his official capacity.

### **FACTUAL BACKGROUND**

7. Section 8 of the NVRA requires that “[i]n the administration of voter registration for elections for Federal office, each State shall ... 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 ...” 42 U.S.C. § 1973gg-6(a)(4). Section 8 of the NVRA also mandates that any such voter list maintenance programs or activities “shall be uniform, nondiscriminatory, and in compliance with

the Voting Rights Act of 1965 (42 U.S.C. § 1973 *et seq.*),” among other important protections. 42 U.S.C. § 1973gg-6(b)(1).

8. Section 8 of the NVRA also 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. ...” 42 U.S.C. § 1973gg-6(i).

9. The most recent and reliable, publicly-available data regarding voting age population and voting registration, by county, for the State of Ohio is the 2010 Decennial U.S. Census (“2010 U.S. Census”), released by the U.S. Government beginning in February of 2011, and the voter registration data provided by the State of Ohio to the U.S. Election Assistance Commission (“EAC Report”) for the general election held in November of 2010, published on June 30, 2011. The 2010 U.S. Census contains data on voting age population in 2010, by county, for the State of Ohio. The EAC report contains data on the number of persons on the voter registration rolls in 2010, by county, in the State of Ohio.

10. Based on an examination of the data in the 2010 U.S. Census and the EAC Report, the number of individuals listed on voter registration rolls in the following three counties in the State of Ohio exceeds 100% of the total voting age population in these counties: Auglaize, Wood, and Morrow. (And in both Auglaize and Wood, the voter registration rolls exceed 105% of total voting age population.) This data demonstrating the discrepancy in voter registration rolls to total voting age population in each of these counties constitutes *prima facie* evidence that the State of Ohio has failed to comply with its voter list maintenance obligations under Section 8 of the NVRA.

11. The data in the 2010 U.S. Census and the EAC Report also shows that the following thirty-one counties in the State of Ohio (in order of highest to lowest percentage) have voter registration rolls that contain between 90% and 100% of total voting age population: Lawrence, Cuyahoga, Henry, Medina, Mahoning, Delaware, Putnam, Hancock, Fairfield, Geauga, Van Wert, Lucas, Montgomery, Jackson, Ottawa, Stark, Hamilton, Miami, Franklin, Gallia, Greene, Jefferson, Trumbull, Lorain, Wyandot, Athens, Harrison, Clermont, Licking, Logan, and Erie Counties. This data further demonstrates that the State of Ohio has failed to satisfy its voter list maintenance obligations under Section 8 of the NVRA.

12. According to the U.S. Census Bureau, the average rate of voter registration to total voting age population during the presidential election year of 2008 was 71%, yet in Ohio, 34 of its 88 counties have a rate that exceeds 90%.

13. The failure of the State of Ohio to satisfy its voter list maintenance obligations is contributing to a larger, nationwide problem. According to a February 2012 study published by the non-partisan Pew Center for the States entitled “Inaccurate, Costly, and Inefficient,” inaccurate voter registration lists are rampant across the United States. The Pew study found that approximately 24 million active voter registrations throughout the United States—or one out of every eight registrations—are either no longer valid or are significantly inaccurate. The Pew study also found that more than 1.8 million deceased individuals are listed as active voters nationwide, and that approximately 2.75 million people have active registrations in more than one state.

14. On February 6, 2012, Judicial Watch sent a letter to the Secretary notifying him that the State of Ohio was in violation of Section 8 of the NVRA and that, as the chief State election official in the State of Ohio, he is responsible for compliance with Section 8 of the

NVRA. The letter explained that, according to 2010 U.S. Census data and publicly available voter registration data, the number of individuals registered to vote in three counties in the State of Ohio exceeds those counties' total voting age population. The letter identified each of the three counties by name and informed the Secretary that a lawsuit may be brought against him if the State of Ohio did not comply with its voter list maintenance obligations under Section 8 of the NVRA.

15. The letter also requested that the Secretary 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 in the State of Ohio during the past two years, explaining that Section 8 of the NVRA required such records to be made available.

16. The Secretary, through his Chief Legal Counsel, responded in writing to Judicial Watch's letter on March 2, 2012, stating "We share your concerns about the accuracy of our voting lists" and identifying a Directive, issued on April 18, 2011, instructing the county boards of elections on procedures for conducting programs to remove ineligible voters from the voter rolls due to changes in a registrant's residence. The Secretary's letter did not identify any efforts by the State of Ohio to ensure that the county boards of election were following the procedures described in the nearly one-year old directive. Nor did it identify any other programs or activities undertaken by the State of Ohio to remove ineligible voters from the voter rolls due to changes in a registrant's residence. A copy of the Directive was included with the letter.

17. The Secretary's letter also did not identify any programs and activities undertaken by the State of Ohio to remove ineligible voters from the voter rolls due to the death of the registrant, or any efforts to instruct county boards of election on procedures for removing

deceased registrants from the voter rolls. Nor did it identify any other voter list maintenance programs or activities undertaken by the State of Ohio.

18. In the letter, the Secretary asserted that the State of Ohio's efforts to maintain accurate voter rolls "have been hampered ... by the restrictions and seemingly inconsistent provisions of the NVRA" and noted that he had written a letter to U.S. Attorney General Eric Holder "to discuss possible solutions," but had not received a response.

19. The only other document produced by the Secretary with his letter was a copy of the letter he had sent to Attorney General Holder, dated February 10, 2012. In this letter to Attorney General Holder, the Secretary admitted that the State of Ohio has not fulfilled its duty under Section 8 of the NVRA to make a reasonable effort to remove ineligible voters from its voter rolls. The letter from the Secretary also acknowledged that the voter rolls for two counties in the State of Ohio contained more registered voters than the total voting age population in those counties.

20. As of the date of this Complaint, no further response from the Secretary or his office has been received by the Plaintiffs. Nor has the Secretary produced any additional documents regarding any other voter list maintenance programs or activities undertaken by the State of Ohio.

21. In light of the Secretary's letter and the lack of any further response from the Secretary, any further efforts to secure compliance with Section 8 of the NVRA would be futile.

#### **PLAINTIFF JUDICIAL WATCH**

22. Judicial Watch has approximately 9,480 members in the State of Ohio. As a membership organization, Judicial Watch represents the interests of these members, at least some

of whom are lawfully registered to vote and have the right to vote in the State of Ohio, including the right to vote in elections for federal office.

23. A person becomes a member of Judicial Watch by making a financial contribution, in any amount, to the organization. The financial contributions of members 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. Each of Judicial Watch's 9,480 members in the State of Ohio has made at least one financial contribution to Judicial Watch over the past two years and thus helped to finance the activities of the organization during this time period.

24. Judicial Watch also solicits the views of its members in carrying out its activities in support of its mission, including the views of its members in the State of Ohio. The views of Judicial Watch's members exert a significant influence over how Judicial Watch chooses the activities in which it engages in support of its mission.

25. Over 100 members of Judicial Watch who are lawfully registered to vote in the State of Ohio have informed Judicial Watch that they are concerned about the State of Ohio's failure to satisfy its voter list maintenance obligations under Section 8 of the NVRA and wish Judicial Watch to take action on their behalf to protect their right to vote. The views of these members were a substantial factor weighing in favor of the initiation of this lawsuit.

26. Protecting the rights of members of Judicial Watch who are lawfully registered to vote in the State of Ohio is directly germane to Judicial Watch's mission of promoting integrity, transparency, and accountability in government and fidelity to the rule of law, as is ensuring compliance with the voter list maintenance obligations of Section 8 of the NVRA and protecting

the integrity of the election process in general. It also is well within the scope of the reasons why members of Judicial Watch join the organization and continue to support its mission.

27. Members of Judicial Watch who are lawfully registered to vote in the State of Ohio not only have the constitutional right to vote in elections held in the State of Ohio, including elections for federal office, but they also have a statutory right to the safeguards and protections set forth in the NVRA, including the voter list maintenance obligations of Section 8 of the NVRA.

28. The failure of the State of Ohio to satisfy its voter list maintenance obligations under Section 8 of the NVRA is injuring the right to vote of members of Judicial Watch who are lawfully registered to vote in the State of Ohio. More specifically, it is burdening members' constitutional right to vote by undermining their confidence in the integrity of the electoral process and discouraging them from voting. Because the State of Ohio has failed and is failing to satisfy its list maintenance obligations under Section 8 of the NVRA, lawfully registered voters, including members of Judicial Watch, are being deprived of any certainty that their votes will be given due weight and will not be cancelled out by the votes of persons who are not entitled to vote and therefore are being injured.

29. The failure of the State of Ohio to satisfy its voter list maintenance obligations under Section 8 of the NVRA also is harming the statutory rights of members of Judicial Watch who are lawfully registered to vote in the State of Ohio. Specifically, because these members have registered to vote in the State of Ohio, they have a statutory right to vote in elections for federal office that comply with the procedures and protections required by the NVRA, including the voter list maintenance obligations set forth in Section 8 of the NVRA. The State of Ohio's failure to satisfy its voter list maintenance obligations under Section 8 of the NVRA therefore is



injuring the statutory rights of members of Judicial Watch who are lawfully registered to vote in the State of Ohio.

30. Absent action by Judicial Watch, it is unlikely that any individual member of Judicial Watch who is lawfully registered to vote in the State of Ohio would have the ability or the resources to take action to protect his or her rights or redress his or her injuries with respect to the State of Ohio's failure to satisfy its voter list maintenance obligations under Section 8 of the NVRA.

### **PLAINTIFF TRUE THE VOTE**

31. True the Vote regularly obtains official lists of registered voters from States across the nation, including the State of Ohio, and uses these lists to conduct programs in furtherance of True the Vote's mission of restoring truth, faith, and integrity to local, state, and federal elections. Because True the Vote makes use of these lists in conducting its various programs, it relies on States, including the State of Ohio, to provide lists that are reasonably accurate and current and reasonably maintained.

32. One such program of True the Vote seeks to analyze and verify official lists of registered voters and detect errors in those lists. More specifically, True the Vote trains volunteers to review voter lists and to compare those lists to other publically available data. When a volunteer identifies registrations that appear to be duplicates or registrations of persons who are deceased, have relocated, or otherwise are ineligible to vote in a particular jurisdiction, those registrations are flagged and complaints are filed with appropriate elections officials. The goal of this particular program is to improve the accuracy and currency of voter lists above and beyond the minimum requirements of the law. This program is among the largest, if not the

largest, of all of True the Vote's various programs and is an essential, integral part of True the Vote's mission.

33. As part of its voter list verification program, True the Vote obtained voter lists from the State of Ohio, recruited and trained volunteers to analyze and verify these lists, and began the process of analyzing and verifying them.

34. The failure of the State of Ohio to satisfy its voter list maintenance obligations under Section 8 of the NVRA has injured and is injuring True the Vote. Because the State of Ohio has failed to satisfy its voter list maintenance obligations, the voter lists that True the Vote obtained from the State of Ohio are inaccurate and out of date, making it more difficult for True the Vote to use these lists in furtherance of its mission than it would have been if the State of Ohio had satisfied its voter list maintenance obligations under Section 8 of the NVRA. True the Vote has suffered an injury as a result.

35. In addition, the failure of the State of Ohio to satisfy its voter list maintenance obligations under Section 8 of the NVRA has injured and is injuring True the Vote by impairing True the Vote's ability to achieve an essential, integral part of its mission, namely, its voter list verification program. True the Vote's voter list verification program relies on the States to conduct the reasonable voter list maintenance programs and activities required by Section 8 of the NVRA. The goal of True the Vote's voter list verification program is to improve the accuracy and currency of voter lists above and beyond the minimum requirements of the law. True the Vote's non-for-profit, volunteer efforts supplement the voter list maintenance programs and activities required of the States under Section 8 of the NVRA, but cannot duplicate or replace the States' taxpayer-funded voter list maintenance programs and activities. Because the State of Ohio has failed to satisfy its voter list maintenance obligations under Section 8 of the

NVRA, True the Vote is impaired in its ability to carry out its voter list verification program successfully in the State of Ohio and is injured as a result.

36. Moreover, the State of Ohio's failure to satisfy its voter list maintenance obligations under Section 8 of the NVRA also has injured and is injuring True the Vote by causing it to divert resources away from other programs in order to devote those same resources to its voter list verification program. For example, among its various programs to restore election integrity, True the Vote trains and mobilizes volunteers to work as election monitors. As part of this program, True the Vote creates instructional videos to recruit election monitors, holds training sessions and produces reference guides to educate election monitors, and directs volunteers who wish to serve as election monitors to appropriate channels. Because the State of Ohio failed to satisfy its voter list maintenance obligations under Section 8 of the NVRA, True the Vote has had to expend less of its scarce resources on programs such as its election monitoring program in order to expend more resources on its voter list verification program.

37. As of August 10, 2012, True the Vote has expended over 150 hours of organizational time training volunteers to analyze and verify the voter lists that True the Vote obtained from the State of Ohio for True the Vote's voter list verification program. As of this same date, True the Vote has only expended approximately 50 hours in support of its election monitoring program in the State of Ohio. True the Vote estimates that, due to the failure of the State of Ohio to satisfy its voter list maintenance obligations under Section 8 of the NVRA, it has diverted approximately 100 hours of organizational time away from its election monitoring program in order to devote those same scarce resources to its voter list verification program, causing injury to True the Vote as a result.

## **CLAIM FOR RELIEF**

### **(Violation of the NVRA: Failure to Conduct List Maintenance)**

38. Plaintiffs reallege paragraphs 1 through 37 as if fully stated herein.

39. Defendant has failed to fulfill the State's obligation to make reasonable efforts to remove the names of ineligible voters from Ohio's voter registration rolls, in violation of Section 8 of NVRA (42 U.S.C. § 1973gg-6).

40. Plaintiff True the Vote and members of Plaintiff Judicial Watch have suffered irreparable injury as a direct result of Defendant's failure to fulfill the State of Ohio's obligation to make reasonable efforts to remove the names of ineligible voters from Ohio's voter registration rolls in violation of Section 8 of the NVRA.

41. Plaintiff True the Vote and members of Plaintiff Judicial Watch will continue to suffer irreparable injury by Defendant's failure to fulfill the State of Ohio's obligation to make reasonable efforts to remove the names of ineligible voters from Ohio's voter registration rolls in violation of Section 8 of the NVRA unless and until Defendant is enjoined from continuing to violate the law.

42. Plaintiff True the Vote and members of Plaintiff Judicial Watch have no adequate remedy at law.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of a judgment:

1. Declaring Defendant to be in violation of Section 8 of the NVRA;
2. Enjoining Defendant from failing or refusing to comply with the voter list maintenance obligations of Section 8 of the NVRA in the future;
3. Ordering Defendant to pay Plaintiffs' reasonable attorney's fees, including litigation expenses and costs, pursuant to 42 U.S.C. § 1973gg-9(c); and
4. Granting Plaintiffs any and all further relief that this Court deems just and proper.

Dated: August 30, 2012

Respectfully submitted,

Paul J. Orfanedes\*  
Chris Fedeli\*  
JUDICIAL WATCH, INC.  
425 Third Street S.W., Ste. 800  
Washington, DC 20024  
Tel: (202) 646-5172  
Fax: (202) 646-5199  
Email: porfanedes@judicialwatch.org  
cfedeli@judicialwatch.org

/s/ David R. Langdon  
David R. Langdon (OH Bar No. 0067046)  
*Trial Attorney*  
Joshua B. Bolinger (OH Bar No. 0079594)  
LANGDON LAW LLC  
8913 Cincinnati-Dayton Rd.  
West Chester, Ohio 45069  
Tel: (513) 577-7380  
Fax: (513) 577-7383  
Email: dlangdon@langdonlaw.com  
jbolinger@langdonlaw.com

*Of Counsel:*  
J. Christian Adams  
ELECTION LAW CENTER, PLLC  
300 N. Washington Street, Ste. 405  
Alexandria, VA 22314

*Attorneys for Plaintiffs*

\*pending admission *pro vac vice*

Exh. B

### **SETTLEMENT AGREEMENT**

This settlement agreement (the "Agreement") is entered into as of January 10, 2014 (the "Effective Date") by and between Judicial Watch, Inc. and True the Vote (collectively, "Plaintiffs") and Ohio Secretary of State Jon Husted, in his official capacity ("Defendant"). Plaintiffs and Defendant (together, the "Parties") are parties to a litigation captioned *Judicial Watch, Inc. and True the Vote v. Husted*, Case 2:12-cv-00792, which was filed in the United States District Court for the Southern District of Ohio on August 30, 2012 (the "Litigation").

### **RECITALS**

WHEREAS, the claims in the Litigation arise under the National Voter Registration Act of 1993 (the "NVRA");

WHEREAS, Ohio Secretary of State Jon Husted, in his official capacity, is designated the "chief State election official," pursuant to 42 U.S.C. § 1973gg-8, and is responsible for coordination of the State's responsibilities under the NVRA;

WHEREAS, Plaintiffs maintain that a judgment in their favor, including the items contained in the complaint's Prayer for Relief, is appropriate;

WHEREAS, Defendant disputes the allegations contained in the complaint and denies any and all liability thereunder;

WHEREAS, notwithstanding the foregoing, both Parties desire to settle the Litigation;

NOW THEREFORE, in the spirit of cooperation and comity and to avoid the expense and time and the inherent risks associated with further proceedings related to the Litigation, both the Plaintiffs and the Defendant, by and through the undersigned counsel, hereby agree, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to abide by the following terms and conditions.

1. Within 30 days of the execution of the Agreement, the Parties shall execute and file a stipulation of dismissal containing the following substantive language:

"Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, plaintiffs Judicial Watch, Inc. and True the Vote and defendant Jon Husted, in his official capacity as Secretary of State of Ohio, hereby stipulate to the dismissal of this action with prejudice, and without costs or fees to either party."

In the event that the Court (including the Clerk) rejects such filing for any reason, the Parties shall both use their best efforts to accomplish the same result by another stipulation amending that language as little as possible, or by filing an unopposed motion for voluntary dismissal upon the same terms, or by taking such other steps as may be reasonably necessary. If a filing seeking dismissal on the terms set forth above is not executed by the Parties and filed with the Court within 30 days of the Effective Date, or if such dismissal is not granted by the Court within 6 months, this agreement shall be cancelled.

- a. During the pendency of the filing or granting of such stipulation or other comparable motion, neither party shall file any other motion or seek any other court relief, or fulfill, or seek to have fulfilled, any discovery or other obligation related to the Litigation, except as set forth in paragraph 1.b.
  - b. In the event that the Court, prior to the dismissal of this action, requests any action by Plaintiffs or Defendant, the Parties agree to notify the Court that a settlement has been reached and to jointly request that such action be cancelled. The Parties agree to file any ancillary stipulations or motions required by the Court or by circumstances in order to ensure that no further obligations related to the Litigation are imposed on the Parties.
2. Defendant agrees, for the duration of the term of the Agreement, to undertake, or, where appropriate, to continue to undertake, the following actions:
  - a. To participate in the State and Territorial Exchange of Vital Events (STEVE) administered by the National Association for Public Health Statistics and Information Systems (NAPHSIS) to obtain out-of-state death information for list maintenance purposes under the NVRA, with monthly updates to local officials for death removals in the Statewide Voter Registration Database (SWVRD).
  - b. To participate in the Interstate Voter Registration Cross-Check program administered by the Kansas Secretary of State to identify registered voters who move out-of-state for list maintenance purposes under the NVRA.
  - c. To use Ohio Bureau of Motor Vehicles data to identify registered voters who move within Ohio for list maintenance purposes in compliance with Section 5 of the NVRA, with updates to local officials for removals or address-changes in the SWVRD no less frequently than permitted by state law.
  - d. To use online voter registration change of address to encourage voters to keep their registration information current.
  - e. To conduct its monthly duplicate registration elimination program using SWVRD, including minimal monthly duplicate thresholds of no greater than .030% for all Ohio County Boards of Election voter lists.
  - f. To keep online, and available for public access, a current voter registration list.
  - g. To require the county boards of election to send accurate survey information to the Secretary of State's Office to be compiled and forwarded to the Election Assistance Commission for its NVRA-related surveys.
  - h. To use reasonable efforts to promote the expanded use of Ohio's voter registration online change of address system to recent college graduates, including education



to remind recent college graduates to keep their voter registration address and information current and to request necessary updates, and to endeavor to coordinate these activities in conjunction with Ohio colleges and universities.

- i. To direct boards of elections to send confirmation notices annually to voters who: (a) did not vote in an election during a two year period beginning and ending May 1 and (b) did not engage in any other voter-initiated activity (e.g., filing a voter registration form) during that same time period; and also to query boards of elections on a reasonably regular basis as to whether this direction is being followed.
3. Plaintiffs may ask Defendant for reasonable, non-burdensome assurances that any one or more of the terms of the Agreement are being performed, by means of a letter, sent by email or fax. Defendant shall not unreasonably refuse to provide such assurances. Plaintiffs shall not send more than one such letter in any three-month period of the Agreement. Ongoing negotiations concerning how a particular request for an assurance shall be provided, or whether it has been provided, shall not count as separate requests for assurances.
4. In the event that either party believes that the Agreement has been breached by the other party, the party asserting breach shall send a letter, by email or fax, to the other party describing the alleged breach. Neither party shall commence a lawsuit alleging breach of this Agreement until 30 days has elapsed from the time that the party seeking to commence such a lawsuit has sent such a letter.
5. This agreement shall expire on November 10, 2018.
6. Both the Plaintiffs and Defendant, including any successor to the office of Secretary of State, or any successor as chief State election official under the NVRA and State law, shall be bound by the terms of this agreement during that time.
7. The Agreement shall contain the entire agreement between the parties and shall supersede all prior written and oral agreements, representations, negotiations, promises, and understandings between them.
8. The Agreement may be amended only by a writing signed by both of the Parties. The Parties agree to receive and discuss all possible amendments to the Agreement proposed in good faith by either party, and to negotiate concerning such possible amendments in good faith. The Parties further agree not to unreasonably withhold their consent to a proposed amendment addressing an unanticipated change in circumstances that has rendered one or more of the terms of the Agreement unduly burdensome.
9. The Parties each agree not to publicly disparage the other with respect to the Parties' conduct or decisions regarding the commencement of the Litigation, the prosecution or defense of the Litigation, or the termination and settlement of the Litigation.

10. The Agreement may be executed in counterparts, and a faxed or emailed signature shall be deemed as valid as an original.
11. Nothing in this Agreement shall be deemed an admission regarding the merits of the Litigation.

BY:



Paul J. Orfanedes  
Robert Popper  
Chris Fedeli  
JUDICIAL WATCH, INC.  
425 Third Street S.W., Ste. 800  
Washington, DC 20024

J. Christian Adams  
ELECTION LAW CENTER, PLLC  
300 N. Washington Street, Ste. 405  
Alexandria, VA 22314

David R. Langdon  
Joshua B. Bolinger  
LANGDON LAW LLC  
8913 Cincinnati-Dayton Rd.  
West Chester, Ohio 45069

*On Behalf of Plaintiffs Judicial Watch, Inc.,  
and True the Vote*

OHIO SECRETARY OF STATE JON  
HUSTED

By:   
\_\_\_\_\_

Jack Christopher  
Deputy Secretary of State and  
Chief Legal Counsel  
180 E. Broad Street, 15th Floor  
Columbus, Ohio 43215

*On behalf of Defendant Ohio Secretary of  
State Jon Husted*

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

This agreement (the "First Amendment") amends the settlement agreement (the "Settlement Agreement") of January 10, 2014 by and between Judicial Watch, Inc. and True the Vote (collectively, "Plaintiffs") and Ohio Secretary of State Jon Husted, in his official capacity ("Defendant"), which resolved the litigation captioned *Judicial Watch, Inc. and True the Vote v. Husted*, United States District Court for the Southern District of Ohio Case 2:12-cv-00792.

**AGREEMENT**


Pursuant to Section 8 of the Settlement Agreement, by mutual agreement and for good and valuable consideration, the parties to the Settlement Agreement hereby agree that:

- A. Section 2(i) of the Settlement Agreement is stricken in its entirety and replaced with the following provision:

To direct boards of elections to send confirmation notices annually to voters who: (a) did not vote in an election during the period beginning with the regular primary election held in the second calendar year preceding the current calendar year and ending with the regular primary election held in the current calendar year, and (b) did not engage in any other voter-initiated activity (e.g., filing a voter registration form) during that same time period; and also to query boards of elections on a reasonably regular basis as to whether this direction is being followed. For purposes of this section, "regular primary election" means the primary election held pursuant to R.C. 3501.01(E)(1) and/or (2), or any successor section, or the date said primary would have been held pursuant to that section if no primary is actually held.

- B. This First Amendment shall be effective upon the date it is executed by the Plaintiffs.
- C. This First Amendment is incorporated into the Settlement Agreement and they are made one and the same document, subject to all remaining terms of the Settlement Agreement.
- D. This First Amendment may be executed in multiple counterparts, and a faxed or emailed signature shall be deemed as valid as an original.

AGREED TO AND ACCEPTED:

 - 4/28/2014  
Paul J. Orfanedes  
Robert Popper  
Chris Fedeli  
JUDICIAL WATCH, INC.  
425 Third Street S.W., Ste. 800  
Washington, DC 20024

[signatures continue on following page]

J. Christian Adams  
ELECTION LAW CENTER, PLLC  
300 N. Washington Street, Ste. 405  
Alexandria, VA 22314

David R. Langdon  
Joshua B. Bolinger  
LANGDON LAW LLC  
8913 Cincinnati-Dayton Rd.  
West Chester, Ohio 45069

*On Behalf of Plaintiffs Judicial Watch, Inc.,  
and True the Vote*

OHIO SECRETARY OF STATE JON  
HUSTED

By: Jack Christopher 4.28.14  
Jack Christopher  
Deputy Secretary of State and  
Chief Legal Counsel  
180 E. Broad Street, 15th Floor  
Columbus, Ohio 43215

*On behalf of Defendant Ohio Secretary of  
State Jon Husted*