

IN THE  
*Supreme Court of the United States*

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SUSAN BEALS, IN HER OFFICIAL CAPACITY AS VIRGINIA COMMISSIONER OF ELECTIONS; JOHN O'BANNON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE STATE BOARD OF ELECTIONS; ROSALYN R. DANCE, IN HER OFFICIAL CAPACITY AS VICE -CHAIRMAN OF THE STATE BOARD OF ELECTIONS; GEORGIA ALVIS-LONG, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE STATE BOARD OF ELECTIONS; DONALD W. MERRICKS, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; MATTHEW WEINSTEIN, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF ELECTIONS; JASON MIYARES, IN HIS OFFICIAL CAPACITY AS VIRGINIA ATTORNEY GENERAL; COMMONWEALTH OF VIRGINIA; VIRGINIA STATE BOARD OF ELECTIONS

*Applicants,*

v.

VIRGINIA COALITION FOR IMMIGRANT RIGHTS; LEAGUE OF WOMEN VOTERS OF VIRGINIA; LEAGUE OF WOMEN VOTERS OF VIRGINIA EDUCATION FUND; AFRICAN COMMUNITIES TOGETHER; UNITED STATES OF AMERICA

*Respondents.*

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**BRIEF FOR NATIONAL ELECTION INTEGRITY ASSOCIATION AS  
AMICUS CURIAE IN SUPPORT OF APPLICANTS'  
EMERGENCY APPLICATION FOR STAY**

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To the Honorable John G. Roberts, Jr.  
Chief Justice of the Supreme Court of the United States and  
Circuit Justice for the Fourth Circuit

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## INTEREST OF AMICUS CURIAE

The National Election Integrity Association (“NEIA”) is a 501(c)(3) non-profit organization with a mission which includes protection of the integrity of federal and state elections. This incorporates ensuring that the rule of law is followed in application of the processes and procedures of elections. NEIA, therefore, has an interest in the outcome of this matter as it affects its activity and interests. In addition, NEIA writes to express its perspective on voting rights, election law, and election administration, which will assist the Court in reaching a decision consistent with the Constitution and the rule of law.<sup>1</sup>

## SUMMARY OF ARGUMENT

The National Voter Registration Act (“NVRA”) protects the fundamental right of United States citizens to vote. To that end, the NVRA created restrictions on the ability to remove individuals from voter rolls. These restrictions can be subdivided into two categories: (1) restrictions that apply when seeking to remove a voter at any time, and (2) restrictions that apply when seeking to remove a voter within 90 days of an election. The latter is often referred to as the “Quiet Period Provision”.

In this case, the United States, along with several organizational plaintiffs, have sought an injunction preventing the Commonwealth of Virginia from implementing an executive order that would remove noncitizens from the voter rolls. More specifically, *inter alia*, the injunction would require returning approximately

1600 individuals to the voter rolls that were removed during the 90 days preceding the upcoming election as violative of the Quiet Period Provision.

The NVRA's Quiet Period Provision, however, does not apply to the removal of noncitizens because they are outside of the NVRA's statutory construction. In fact, a noncitizen, who is inherently ineligible to vote in United States elections, cannot obtain protections under the NVRA at all since a noncitizen cannot legally become an eligible applicant or a registrant under the NVRA. Therefore, Virginia's removal of noncitizens within 90 days of the election could not violate the NVRA or other federal law. Accordingly, the injunction granted by the Eastern District of Virginia, and affirmed by the Fourth Circuit Court of Appeals, should be vacated as Plaintiffs were not likely to succeed on the merits of their case, among other reasons.

## ARGUMENT

### **I. This Court should stay the district court's order because it is subject to reversal and will cause irreparable harm.**

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Based on finding "the right of citizens of the United States to vote is a fundamental right" which "Federal, State, and local governments" have a "duty" "to promote the exercise of that right[,]" Congress enacted the National Voter Registration Act, 52 U.S.C. §§ 20501 et seq. 52 U.S.C. §§ 20501. The purposes of the NVRA include seeking to offer additional opportunities for *citizens* to register to vote, including when obtaining a license to operate a motor vehicle. *Id.* §§ 20503(a)(1) and 20504. In addition, the NVRA restricts the removal of registrants from the voter rolls. *See* 52 U.S.C. §§ 20507(a)(3)–(4) and (c)(2).

Under 52 U.S.C. §§ 20507(a)(3)–(4), which may be referred to as the “General Removal Provisions” as they are applicable at any time, any person who is an “eligible applicant” or “registrant” and has submitted a “valid” registration form to vote “may not be removed from the official list of eligible voters except” in four enumerated circumstances: (1) by the voter’s request, (2) by death of the voter, (3) by voter felony conviction or mental incapacity, and (4) by change in the voter’s residence (if certain procedures are followed). *Id.* § 20507(a)(3)–(4). Under 52 U.S.C. §§ 20507(c)(2), which may be referred to as the “Quiet Period Provision”, the restrictions for removing an eligible voter are heightened. The Quiet Period Provision prohibits State programs from “systematic[ally]” removing “ineligible voters” from the rolls within 90 days of a federal election unless: (1) the voter requests removal, (2) the death of the voter, or (3) felony convictions or mental incapacity of the voter. Thus, the Quiet Period Provision narrows the ability of a state program to remove voters from its rolls within 90 days of an election.

Nothing in the NVRA specifically addresses the issue of noncitizens registering to vote or being removed from the voter rolls. In short, to obtain protection as a registrant under the NVRA, it would require a noncitizen to attempt to register to vote as a citizen of the United States. Regardless of whether such an attempt was willful or inadvertent, a noncitizen is *always* ineligible to register to vote or to cast a ballot in a federal election in the United States. Therefore, the removal of a noncitizen could not be the removal of an “eligible applicant,” or “registrant,” because a

noncitizen cannot legally be either, nor can a noncitizen submit a “valid” registration to vote.

The enumerated exceptions to the NVRA therefore do not even apply here, and this case boils down to a more general question: whether a noncitizen can submit a legally valid registration to vote or are all noncitizen registrations inherently void *ab initio*. The Commonwealth of Virginia ably argues the substantive qualifications for a “valid application,” such as citizenship status, is a question for the States. *See Arizona v. Intertribal Council of Ariz.*, 570 U.S. 1, 16 (2013) (explaining that States determine and oversee who is eligible to vote). In Virginia, noncitizens are ineligible to vote. VA. CONST. art. II, § 1 (“In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States . . .”); *see also* Va. Code Ann. § 24.2-404.4; 18 U.S.C. § 611. Therefore, the question of whether a noncitizen can be removed from the voter rolls is not a question of whether the exceptions to removal apply, but instead, whether the registration is legally “valid” at all. When considered in this light, it becomes clear that the NVRA simply does not apply to such a registration and cannot prevent the removal of someone who is, and always was, ineligible to register to vote under Virginia law at all.

To avoid any issues with removing any person that is eligible to vote erroneously, Virginia law requires “general registrars to delete . . . the name of any voter who . . . is known not to be a United States citizen by reason of” that person’s self-declaration of noncitizen status or from information ELECT receives from a search on the United States’ own Systematic Alien Verification for Entitlements



(“SAVE”) database. Va. Code Ann. § 24.2-404(A)(4); *see id.* § 24.2-427(C). To avoid improperly removing individuals who had subsequently become naturalized citizens, Virginia DMV offices run their information through the Department of Homeland Security’s SAVE database. *See* Va. Code Ann. § 24.2-404(E) (requiring ELECT to use SAVE “for the purposes of verifying that voters listed in the Virginia voter registration system are United States citizens”); App. 96 ¶ 22; App. 88 ¶ 23. The SAVE database shows whether a legal alien resident has subsequently obtained citizenship, which would provide the ability to register to vote. Therefore, individuals removed under these procedures are not United States citizens and cannot be legally valid registrants or eligible applicants under the NVRA.

This error alone is sufficiently important for this Court to grant the requested stay. It would be absurd for federal courts to find that a noncitizen is a legally valid registrant or an eligible applicant when the law of the Commonwealth plainly forbids such an individual from voting. It would render the requirements for a “valid” registration superfluous and undermine the key purpose of the NVRA—to ensure that *citizens of the United States* have opportunities to utilize their fundamental right to vote.

In a typical case, this Court generally looks to three factors to determine if it will stay a district court’s order: “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*,

558 U.S. 183, 190 (2010). In election-related cases near an election, this Court has applied a heightened review. *See, e.g., Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays); *see also id.* at 883 (Kagan, J., dissenting) (acknowledging that the Supreme Court has “given less attention to the merits in cases involving eleventh-hour election changes.”); *Purcell v. Gonzales*, 549 U.S. 1 (2006). In short, in such cases, this Court has intervened to prevent election-eve alterations to law unless the moving party has demonstrated “at least the following”: “(i) the underlying merits are entirely clearcut in favor of the moving party; (ii) the moving party would suffer irreparable harm absent the injunction; (iii) the moving party has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.” *Merrill*, 142 S. Ct. at 881 (opinion of Kavanaugh, J.).

The lower courts based their opinions on the *Winters* factors, which require a moving party seeking an injunction to demonstrate: (1) it is likely to succeed on the merits of its claim; (2) it is likely to suffer irreparable harm in the absence of a preliminary injunction; (3) the balance of equities tips in its favor; and (4) that the injunction is in the public interest. *See Sprint Spectrum L.P. v. Shenandoah Pers. Commc'ns LLC*, No. 1:20-CV-01053, 2020 WL 5846482, at \*2 (E.D. Va. Sept. 22, 2020) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). When properly considered, there is no statutory support for the requested injunction

preventing the removal of noncitizens from the voter rolls as they are not within the protections of the NVRA.

## CONCLUSION

For the foregoing reasons, this Court should vacate the decisions of the lower courts and remand for proceedings consistent with this finding.

October 28, 2024

Respectfully submitted,

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