No. 24A407

In the Supreme Court of the United States

SUSAN BEALS, COMMISSIONER, ET AL., APPLICANTS

v.

VIRGINIA COALITION FOR IMMIGRANT RIGHTS, ET AL.

RESPONSE IN OPPOSITION TO APPLICATION FOR A STAY OF THE PRELIMINARY INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

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TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicants were defendants-appellants below. They are 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; the Commonwealth of Virginia; and the Virginia State Board of Elections.

Respondents were plaintiffs-appellees below. They are the United States of America, Virginia Coalition for Immigrant Rights, League of Women Voters of Virginia, League of Women Voters of Virginia Education Fund, and African Communities Together.

RELATED PROCEEDINGS

United States District Court (E.D. Va.):

Virginia Coalition for Immigrant Rights v. *Beals*, No. 24-cv-1778 (Oct. 25, 2024)

United States v. *Beals*, No. 24-cv-1807 (Oct. 25, 2024)

United States Court of Appeals (4th Cir.):

Virginia Coalition for Immigrant Rights v. *Beals*, No. 24-2071 (Oct. 27, 2024)

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The Solicitor General, on behalf of the United States, respectfully submits this response in opposition to the application for a stay of the preliminary injunction entered by the United States District Court for the Eastern District of Virginia.

Everyone agrees that States can and should remove ineligible voters, including noncitizens, from their voter rolls. The only question in this case is when and how they may do so. Congress provided the answer in Section 8(c)(2) of the National Voter Registration Act of 1993 (NVRA), which generally requires that "any program the purpose of which is to systematically remove the names of ineligible voters" must be "complete" by "not later than 90 days prior to the date of a primary or general election for Federal office." 52 U.S.C. 20507(c)(2)(A). That straightforward requirement, commonly called the Quiet Period Provision, strikes a careful balance: "At most times during the election cycle, the benefits of systematic programs" that rely on imperfect database matching outweigh the costs of the inevitable mistakes "because eligible voters who are incorrectly removed have enough time to rectify any errors." *Arcia* v.

Florida Sec'y of State, 772 F.3d 1335, 1346 (11th Cir. 2014). "In the final days before an election, however, the calculus changes." *Ibid.* States may continue to cancel registrations based on "individualized inquir[ies]." *Ibid.* But by barring "last-minute voter registration purges" based on cruder systematic methods, the Quiet Period Provision ensures that "people who are legally entitled to vote are not prevented from doing so by faulty databases or bureaucratic mistakes." Appl. App. 6.

This case involves a violation of the Quiet Period Provision that resulted in the conceded removal of eligible citizens from Virginia's voter rolls. Virginia law requires the Department of Motor Vehicles (DMV) to transmit lists of individuals who check a box indicating that they are noncitizens to the Department of Elections, which then must compare those lists with the State's voter rolls and initiate a removal in the event of an apparent match. See Va. Code §§ 24.2-410.1, 24.2-427(B). Like many state voter-registration laws, those statutes do not expressly address implementation during the Quiet Period. But on August 7, 2024—exactly 90 days before the upcoming election—Governor Youngkin issued an executive order directing that the DMV process continue through the Quiet Period and ordering the DMV to accelerate the process by transmitting lists to the Department of Elections each day rather than each month. Appl. App. 225-229. In addition—and in what applicants acknowledge (Appl. 6) was an "ad hoc" departure from their "general policy"—the DMV sent the Department of Elections a separate list of roughly 1250 potential noncitizens based on DMV records dating back more than a year. *Id.* at 88. In combination, those efforts resulted in the cancellation of more than 1600 registrations during the Quiet Period. *Id.* at 242-243.

After it became apparent that Virginia's program was resulting in large-scale cancellations during the Quiet Period, the United States and private plaintiffs sued

and sought a preliminary injunction. The district court granted relief, finding that Virginia's program is a "clear violation" of the Quiet Period Provision. Appl. App. 253. The court concluded that Virginia's program is "systematic" because it "involved just matching data fields"—indeed, the court found that the Department of Elections treated a voter as matching a potential noncitizen identified by the DMV based on as little as a shared "first and last name." *Id.* at 246-248. The court noted that within "less than two days" after applicants disclosed the list of affected voters in discovery, respondents had uncovered "evidence demonstrating that eligible citizens" have "had their registrations canceled" without their knowledge. *Id.* at 254. And the court found that applicants had failed to substantiate their assertion that the other individuals removed from the rolls "were, in fact, noncitizens." *Id.* at 255.

To remedy the State's violation of the Quiet Period Provision, the district court enjoined further implementation of Virginia's program, directed applicants to restore the registration records they had unlawfully cancelled, and ordered a remedial mailing to inform the affected voters that their registrations had been restored—while also reminding them that noncitizens are "ineligible to cast a ballot." Appl. App. 8-9. A unanimous panel of the Fourth Circuit denied a stay in relevant part, agreeing with the district court that Virginia's program was a cut-and-dried violation of the Quiet Period Provision and that applicants' "claims of irreparable injury" are "weak." *Id.* at 5. This Court should likewise deny a stay for at least three reasons.

First, applicants cannot make the required "threshold" showing that this case would "warrant this Court's review" if it "returned to the Court on the merits docket." *Labrador* v. *Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay). The district court and the Fourth Circuit specifically agreed with the Eleventh Circuit's decision in *Arcia*, which is the only other court of appeals decision ad-

dressing the issues applicants seek to raise. Applicants' assertion of a circuit conflict (Appl. 33-34) rests on a decision that did not even cite the Quiet Period Provision and instead discussed "a differently worded statutory provision that is not at issue here." Appl. App. 3; see *Bell* v. *Marinko*, 367 F.3d 588, 591-592 (6th Cir. 2004).

Second, applicants are unlikely to succeed on the merits. As four federal judges have agreed, Virginia's program falls squarely within the Quiet Period Provision because it is a "program" to "systematically remove" the names of "ineligible voters." 52 U.S.C. 20507(c)(2)(A). Virginia's database-matching program is a paradigmatic example of the sort of "systematic[]" program that must be completed before the Quiet Period. And applicants' assertion that a program to remove noncitizens is not a program to remove "'ineligible voters'" contradicts the plain terms of the statute and "violates basic principles of statutory construction." Appl. App. 2-3 (citation omitted).

Third, the equities counsel strongly against a stay. The district court's narrow injunction simply requires applicants to restore the status quo by unwinding their own unlawful actions, which were themselves undertaken in recent weeks. The injunction affects only a discrete set of identified voters. And nothing in the injunction prevents applicants from conducting individualized inquiries—including into the 1600 registration records at issue here—or taking other lawful steps to confirm that noncitizens are not voting in the upcoming election.

Applicants repeatedly assert (Appl. 1, 10, 27, 31) that the injunction will compel them to place more than 1600 "noncitizens" back onto the rolls. But the district court found that at least some of the voters removed were "eligible citizens" and that applicants had failed to establish that the others "were, in fact, noncitizens." Appl. App. 4 (citation omitted). As in the Fourth Circuit, applicants "do[] not acknowledge these factual findings (much less attempt[] to show they are clearly erroneous)." *Ibid.*

And the Fourth Circuit also explained why applicants' invocation of *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), misses the mark. The United States and the private respondents sued promptly once the scale of Virginia's program, including the novel "ad hoc" process, became apparent. Unlike the cases in which this Court has applied *Purcell* to stay injunctions entered just before elections, this is a suit to enforce a federal statute that itself applies "only within the immediate period before an election" and that "expressly contemplates suits filed 'within 30 days before the date of an election.'" Appl. App. 5 (quoting 52 U.S.C. 20510(b)(3)). Invoking *Purcell* to preclude enforcement of the Quiet Period Provision would improperly "ignore the judgment of Congress, deliberately expressed in legislation." *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (citation omitted).

STATEMENT

A. The NVRA's Quiet Period Provision

"For many years, Congress left it up to the States to maintain accurate lists of those eligible to vote in federal elections." *Husted* v. *A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). In 1993, however, Congress imposed minimum federal standards for voter registration and list maintenance by enacting the NVRA, 52 U.S.C. 20501 *et seq.* The NVRA balances "two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration rolls." *Husted*, 584 U.S. at 761; see 52 U.S.C. 20501(b). To achieve the first objective, Congress required covered States to allow citizens to register by mail, at designated state agencies, and when applying for a driver's license. 52 U.S.C. 20503-20506. In addition, to prevent the cancellation of valid registrations and avoid requiring unnecessary re-registrations, Congress limited the circumstances in which States may remove names from their voter rolls. See 52 U.S.C. 20507(a)(3), (b), (c), and (d). To achieve the

second objective, Congress required States to engage in general list maintenance programs to remove the names of voters who had died or moved away and permitted States to remove other ineligible individuals. 52 U.S.C. 20507(a)(3) and (4).

Most of the NVRA's requirements governing list maintenance apply at all times. See 52 U.S.C. 20507(a)(3), (b), (c)(1), and (d); see also *Husted*, 584 U.S. at 762-764. This case concerns the Quiet Period Provision, which imposes special limits during the 90 days before a federal election. Specifically, the Quiet Period Provision directs that 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." 52 U.S.C. 20507(c)(2)(A). The Quiet Period Provision thus mandates that "State outreach activity, such as the mailing of list verification notices or conducting a canvas, * * * be concluded not later than 90 days before an election." S. Rep. No. 6, 103d Cong., 1st Sess. 18-19 (1993) (Senate Report); see H.R. Rep. No. 9, 103d Cong., 1st Sess. 16 (1993) (similar).

The Quiet Period Provision applies only to a program that seeks "to systematically remove" names from the rolls. 52 U.S.C. 20507(c)(2). It thus does not prohibit a state from removing a person on the voter rolls after an *individualized* determination of voter ineligibility. See *Arcia* v. *Florida Sec'y of State*, 772 F.3d 1335, 1346, 1348 (11th Cir. 2014). Congress also provided that the Provision "shall not be construed to preclude" removals "at the request of the registrant," "by reason of criminal conviction or mental incapacity," or "by reason of the death of the registrant." 52 U.S.C. 20507(c)(2)(B); see 52 U.S.C. 20507(a)(3) and(4).

Congress provided both the United States and private parties with an express cause of action to seek "declaratory or injunctive relief" to halt violations of the

NVRA. 52 U.S.C. 20510(a) and (b)(2). And because such violations, by their nature, often occur just before an election, Congress provided special rules enabling suits during that time. In general, a private plaintiff must provide "written notice of the violation to the chief election official of the State" at least 90 days before filing suit. 52 U.S.C. 20510(b)(1) and (2). But if a violation occurs "within 120 days before the date of an election," the plaintiff may sue within 20 days after giving notice. 52 U.S.C. 20510(b)(2). And if the violation occurs "within 30 days" before an election, the plaintiff "need not provide" notice at all. 52 U.S.C. 20510(b)(3).

B. Virginia's August 2024 Removal Program

1. Under federal and Virginia law, it is a crime for a noncitizen to vote in a federal election. 18 U.S.C. 611; Va. Code § 24.2-1004(B)(iii). Any person seeking to register to vote in Virginia must affirm that "the applicant is presently a United States citizen." Va. Code § 24.2-418(A). Accordingly, all persons registered to vote in Virginia have stated "subject to felony penalties for making false statements," *ibid.*, that they are U.S. citizens. See Appl. App. 255.

Virginia law requires the DMV to include in the application for driver's licenses and other similar documents "a statement asking the applicant if he is a United States citizen." Va. Code § 24.2-410.1(A). The statute provides that the DMV "shall furnish monthly to the Department of Elections a complete list of all persons who have indicated a noncitizen status," and further requires the Department of Elections to forward that information to local registrars. *Ibid.* Another statute requires local registrars to "promptly cancel the registration of," among other categories of voters, "all persons known by [the registrars] not to be United States citizens by reason of reports from the [DMV]." *Id.* § 24.2-427(B). Specifically, the registrar must mail a notice to the suspected noncitizen and "allow the person to submit [a] sworn state-

ment that he is a United States citizen within 14 days." *Id.* § 24.2-427(C). If the suspected noncitizen fails to respond with such a statement, the registration is cancelled—an event that, in practice, occurs 21 days after the notice is sent. *Ibid.*; see Appl. App. 86. The relevant statutes do not expressly address their application during the Quiet Period, but Virginia asserts (Appl. 13) that it has implemented the monthly DMV process during the Quiet Period "since at least 2010."

2. This case arises from two changes to Virginia's procedures for removing suspected noncitizens that applicants implemented in August 2024, during the Quiet Period before the November 5, 2024, general election.

First, on August 7, 2024—just as the Quiet Period began—the Governor of Virginia issued an executive order requiring the Department of Elections to "certify" that procedures were in place to provide "Daily Updates" to Virginia's voter rolls, including updates based on the DMV's records. Appl. App. 227-228. The executive order thus accelerated the ordinary monthly DMV process into a daily process for the final 90 days before the general election. *Id.* at 228 (instructing the DMV to "expedite the interagency data sharing with the Department of Elections of non-citizens by generating a daily file"). Consistent with the order, "on August 19, 2024, [the Department of Elections] began receiving from the DMV information from the previous day's transactions on a daily basis." *Id.* at 87.

Under Virginia's new daily process, each day the DMV transmitted a datafile to the Department of Elections with a list of purported noncitizens. The list included any DMV customer who had checked a box indicating that they are a noncitizen—even if the customer also affirmed that they were a citizen during the same transaction or during previous transactions, and even if the DMV's records include documentation confirming citizenship. Appl. C.A. App. A253; see Appl. App. 85, 87-88. When

the Department of Elections received the data, it conducted an automated comparison to determine whether the DMV records matched the name of any individuals on the voter rolls. Appl. App. 85. The Department deemed a DMV record to match a voter registration if the two entries shared any one of the following: (1) a social security number, (2) first and last names, or (3) a last name and date of birth. *Id.* at 247. Thus, for example, the Department considered two records with the same first and last names to be a match even if they had different dates of birth and social security numbers. *Ibid.*

When the Department of Elections identified a match under those criteria, it sent names from the statewide rolls to local registrars who then determined whether the same names appeared on the local rolls. "Neither [the Department of Elections] nor the local registrars performed additional research or review to confirm whether the flagged voter was a citizen or not." Appl. App. 248. Local registrars then sent the affected voters a notice of intent to cancel their registration. *Id.* at 85-86. If the voters did not respond, they were automatically removed from the rolls 21 days later and sent a notice of cancellation. *Id.* at 86.

Second, the DMV and the Department of Elections engaged in an "one-time, *ad hoc*" process that resulted in an additional purge of names from the voter rolls within the Quiet Period. Appl. App. 88; see *id.* at 88-89, 96. The ad hoc process relied on a list generated based on "DMV transactions that occurred between July 1, 2023, and June 30, 2024, in which individuals indicated that they were U.S. citizens" but where the relevant individuals had at some earlier point provided the DMV with a green card or other documentation indicating noncitizen status. *Id.* at 88. The DMV queried "the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database" to determine whether the relevant individuals were

identified as noncitizens in SAVE, then sent a list of suspected noncitizens to the Department of Elections. *Ibid.* The Department of Elections, in turn, compared that list with the voter rolls—apparently using the same loose criteria for a match—and "identified 1,274 potential matches." *Ibid.* On August 28, 2024—three weeks into the Quiet Period—the Department of Elections forwarded those potential matches to local registrars for completion of the cancellation process. *Ibid.*; see *id.* at 96-97.

Applicants have not argued that the ad hoc process was required by state law or consistent with past practice. To the contrary, applicants and their own declarant described it as a "one-time" departure from the State's usual procedures. Appl. App. 69, 88. Nor have applicants explained why they waited until weeks into the Quiet Period to initiate a novel removal program based on data that was up to 13 months old. And although the ad hoc process appears to have been undertaken in response to the Governor's executive order, the order itself did not expressly describe the process or otherwise provide the public with notice that Virginia would be undertaking a new voter-removal program just before the 2024 election. See *id.* at 225-229.

3. During the Quiet Period, the Virigina program challenged here resulted in the removal of more than 1600 individuals from the Commonwealth's voter rolls. Appl. App. 242-243. Applicants state (Appl. 1) that roughly 600 of those removals are attributable to its "daily" DMV process, and that the remaining 1000 removals are due to the one-time, ad hoc process. Virginia has now halted removals based on its own practice of observing a 21-day pre-election quiet period, but individuals were removed from the voter rolls as recently as October 14, 2024. Appl. App. 256.

Although applicants' stated goal was to remove noncitizens, even the limited, expedited discovery undertaken in this case has already shown that their efforts resulted in the removal of many eligible citizens. See Appl. App. 254 (district court

finding). For example, applicants canceled the registration of two voters whose applications were prominently stamped "NEW CITIZEN." Private Resp. C.A. App. SA137, SA155. Applicants also canceled the registration of a member of the League of Women Voters of Virginia who was a naturalized citizen and had voted before. *Id.* at SA214. A lifelong citizen who recently renewed her driver's license discovered that her registration had been canceled when she attempted to vote earlier this month. *Id.* at SA225. She was not offered a provisional ballot and instead had to re-register to ensure that her vote would be counted. *Id.* at SA225-SA226. Another citizen who was born in Virginia was removed from the rolls and learned of her disenfranchisement only after one of the private respondents contacted her. *Id.* at SA226-SA227; see *id.* at SA218 (describing 14 additional "United States citizens," many of whom "have been registered for years and are frequent voters," whose registrations were cancelled).

Prior experience with Virginia's DMV process provides reason to think that many more citizens had their registrations erroneously cancelled. Earlier this year, for example, the General Registrar of Prince William County conducted an analysis of 162 registrations cancelled between May 2023 and February 2024 using the then-monthly DMV process for identifying purported noncitizens. Private Resp. C.A. App. SA89. He reported that roughly three-quarters of the affected individuals "ha[d] never cast a ballot," and did not analyze those records further. *Ibid.* But for each one of the remaining 43 voters, the Registrar found "ample and consistent evidence that these individuals are fully qualified U.S. citizens who have had their voter registration[s] cancelled due to an honest mistake and poor form design." *Ibid.*

C. Proceedings Below

1. Private respondents and the United States filed separate suits challeng-

ing Virginia's program in the Eastern District of Virginia. The district court consolidated the cases, then entered a preliminary injunction on October 25, 2024. Appl. App. 7-10; see *id.* at 233-271 (oral statement of findings and conclusions). The court concluded that respondents are likely to succeed on the merits of their claims because Virginia's program was clearly "a[] program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters," 52 U.S.C. 20507(c)(2)(A); see Appl. App. 244-251. The court found that Virginia's program is "systematic" because it "involved just matching data fields"—such as a DMV customer's name, social security number, or date of birth—that the DMV sends to the Department of Elections to "'electronically compare[]'" with information in a "statewide Voter Registration System." Appl. App. 247-248 (citation omitted). The court further concluded that applicants' program "left no room for individualized inquiry" because, as applicants "conceded," "the processes for matching the records by [the Department of Elections] and [local] registrars is limited to identification purposes," such that "[a] registrar may only confirm that the person identified by [the Department] matches the record." *Id.* at 248. And the court rejected applicants' assertion that the Quiet Period Provision is categorically inapplicable to programs seeking to remove noncitizens. *Id.* at 249-250.

The district court found that respondents would have suffered irreparable harm without a preliminary injunction and that the balance of the equities and the public interest favored relief. Appl. App. 251-258. Among other things, the court rejected applicants' view that the theoretical ability to "fill[] out a provisional ballot on election day" would "cure the harm to eligible voters who have had their registrations canceled." *Id.* at 252. The court explained that Virginia's program had "curtailed the right of eligible voters to cast their ballots in the same way as all other

eligible voters," including by preventing them from voting "absentee or by mail." *Ibid.*

The district court also rejected applicants' asserted harms, finding that "[t]he evidence does not show" that the persons removed from Virginia's voter rolls were actually noncitizens. Appl. App. 254-255. Rather, the court found that "neither the Court nor the parties * * * know" that the people "removed from" the voter rolls under the challenged program "were, in fact, noncitizens," and that at least some "eligible citizens * * * have had their registrations canceled and were unaware that this was even so." *Ibid.* The court concluded that the importance of ensuring that eligible voters can vote "strongly outweighs the burden to [applicants] of restoring those names to the rolls." *Id.* at 255. The court emphasized that its order would not prohibit applicants from removing any individuals "who they determine are ineligible through an individualized inquiry." *Id.* at 256.

Finally, the district court rejected applicants' assertions that *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), barred relief and that private respondents and the United States had unreasonably delayed in filing suit. Appl. App. 253. The court observed that the private respondents communicated with the Department of Elections "beginning in August of 2024 and continuing through September of 2024" and "sought records" that applicants did "not provide[]." *Ibid.* And the court noted that "[t]he United States also engaged in discussions with the Department of Elections" and performed appropriate "due diligence" to gather sufficient evidence to seek intervention by a federal court. *Ibid.* The court further concluded that *Purcell* does not bar relief because suits seeking to enforce the Quiet Period Provision "are always going to be close to elections." *Id.* at 243.

The district court entered a preliminary injunction prohibiting applicants "from continuing any systematic program intended to remove the names of ineligible

voters from registration lists less than 90 days before the November 5, 2024, federal General Election." Appl. App. 8. The court ordered applicants to "restore [the] voter registration of registrants cancelled pursuant to [applicants]' Program after August 7, 2024." *Ibid.* And the court also directed applicants to issue by October 30, 2024, a remedial mailing informing such voters that their registration has been restored and that the prior removal does not prevent them from voting—while also reminding them that "registrants who are not U.S. citizens" are "ineligible to cast a ballot." *Id.* at 9.

The preliminary injunction reiterates that it does not limit applicants' "authority or ability" to "investigate noncitizens who register to vote or who vote in Virginia's elections" or to "cancel the voter registration of noncitizens through individualized review." Appl. App. 10. Instead, "[t]he preliminary injunction applies only to [applicants]' *systematic* Program which occurred after August 7, 2024." *Ibid.* (emphasis added). The injunction "expires on the day after the 2024 General Election." *Ibid.*[1]

2. Applicants sought an emergency stay, which the Fourth Circuit denied in relevant part. Appl. App. 1-6; see n.1, *supra*. The Fourth Circuit concluded that applicants failed to show they are likely to prevail on appeal. The court observed that applicants again "ha[d] not denied that the challenged conduct constitutes a 'program'" under the NVRA. Appl. App. 2 (citation omitted). The court explained that applicants' program "'most certainly is' systematic" because it "does not require communication with or particularized investigation into any specific individual"; instead,

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[1] The district court also ordered applicants to "make all reasonable and practicable efforts to educate local officials, poll workers, and the general public on [applicants]' program, the restoration of the voter registrations of impacted voters, and the ability of impacted voters to cast a regular ballot without submitting supplemental paperwork or documentation." Appl. App. 10. The Fourth Circuit stayed that aspect of the preliminary injunction, which thus is not at issue here. *Id.* at 6.

it relies on lists generated by the DMV and "electronically compared to other agency databases." *Id.* at 2-3 (citation omitted). The court likewise rejected applicants' argument that the Quiet Period Provision does not cover programs to remove noncitizens, explaining that the argument contradicts the Provision's plain text and "violates basic principles of statutory construction." *Id.* at 3. Among other things, the court explained, applicants' argument was based not on the text of the Quiet Period Provision but instead on "a differently worded statutory provision that is not at issue here." *Ibid.*

In balancing the equities, the Fourth Circuit emphasized that applicants had forfeited any challenge to the district court's "factual findings" that (i) the record did not establish that individuals who had been removed from Virginia's voter rolls "under the challenged program 'were, in fact, noncitizens,'" and that (ii) "at least some" eligible citizens had their registrations canceled. Appl. App. 4 (citation omitted). The Fourth Circuit likewise agreed with the district court that there was no unreasonable delay in bringing suit. *Id.* at 4-5. The Fourth Circuit also rejected applicants' suggestion that the preliminary injunction violated *Purcell*. *Id.* at 5. The court explained that the NVRA "imposes limits that apply only within the immediate period before an election and expressly contemplates suits filed 'within 30 days before the date of an election for Federal office.'" *Ibid.* (quoting 52 U.S.C. 20510(b)(3)).

Finally, the Fourth Circuit concluded that the remaining equitable factors weighed against a stay. Appl. App. 5-6. The court found applicants' claims of irreparable injury "weak" because applicants "remain able to prevent noncitizens from voting by canceling registrations on an individualized basis or prosecuting any noncitizen who votes." *Id.* at 5. Nor did the court find any error in the district court's conclusion that the balance of the equities and the public interest favor interim relief.

In the Fourth Circuit's view, any harm to applicants is outweighed by the need to give "full force and effect to a federal law that functions to prevent last-minute voter registration purges and to ensure that people who are legally entitled to vote are not prevented from doing so by faulty databases or bureaucratic mistakes." *Id.* at 6.

ARGUMENT

An applicant seeking a stay pending appeal must show (1) a "reasonable probability" that this Court would grant certiorari if the court of appeals affirmed the district court's order, (2) a "fair prospect" that the Court would reverse, (3) a "likelihood that irreparable harm will result from the denial of a stay," and (4) that the equities otherwise justify relief. *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). Applicants have failed to satisfy any of those requirements.

I. THIS COURT WOULD BE UNLIKELY TO GRANT CERTIORARI IF THE FOURTH CIRCUIT AFFIRMED THE PRELIMINARY INJUNCTION

This Court's standard for granting "extraordinary relief" entails "not only an assessment of the underlying merits but also a discretionary judgment about whether the Court should grant review." *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take." *Ibid.* An applicant seeking a stay pending appeal thus must make a "threshold" showing that "the underlying merits issue" will "warrant this Court's review when the case return[s] to the Court on the merits docket." *Labrador* v. *Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay). Absent a showing that the case satisfies the Court's traditional certiorari standards, the Court "should deny the application and leave the question of interim relief to the court of appeals." *Ibid.*

That threshold requirement is dispositive here because a Fourth Circuit decision affirming the district court's preliminary injunction would neither conflict with any decision of another court of appeals nor otherwise warrant this Court's review. The only other court of appeals that has considered the application of the Quiet Period Provision to a program like Virginia's is the Eleventh Circuit, which squarely rejected the arguments applicants advance here. See *Arcia* v. *Florida Sec'y of State*, 772 F.3d 1335, 1343-1348 (2014). Consistent with the Fourth Circuit's order in this case, *Arcia* held that a program that relied on database matching to remove suspected noncitizens from voter rolls within 90 days of a federal election violated the Quiet Period Provision. *Id.* at 1339; see Appl. App. 3-4. Applicants cite (Appl. 34) a district court in the Eleventh Circuit that previously took a different view, but every district court to consider the issue since *Arcia* has reached the same conclusion. Indeed, a district court in Alabama recently enjoined a similar program in that State and issued an injunction compelling the restoration of affected voters; Alabama has not appealed and is instead complying with the injunction. See *Alabama Coal. for Immigrant Justice* v. *Allen*, No. 24-cv-1254, 2024 WL 4510476, at *1-*2 (N.D. Ala. Oct. 16, 2024); see also *Mi Familia Vota* v. *Fontes*, 691 F. Supp. 3d 1077, 1092-1093 (D. Ariz. 2023) (agreeing with *Arcia*), appeal pending, Nos. 24-3188, 24-3559, 24-4029 (9th Cir.).

Lacking any plausible claim of a circuit conflict on the meaning of the Quiet Period Provision, applicants assert (Appl. 33-34) that the Fourth Circuit's analysis is inconsistent with the Sixth Circuit's discussion of a different provision of the NVRA in *Bell* v. *Marinko*, 367 F.3d 588 (2004). *Bell* involved Section 8(a)(3) of the Act, 52 U.S.C. 20507(a)(3), which applicants call the "General Removal Provision" because it applies at all times, not just during the Quiet Period. The General Removal Provision specifies that the name of a "registrant" who has submitted a valid application "may

not be removed from the official list of eligible voters" except "at the request of the registrant," "by reason of criminal conviction or mental incapacity," or by reason of death or a change in residence. 52 U.S.C. 20507(a)(3) and (4). In *Bell*, the Sixth Circuit held that the General Removal Provision did not prevent a state elections board from removing nonresident registrants from the rolls following an "investigat[ion]," "examin[ation]," and "challenge hearing[]" regarding each individual's place of residence. 367 F.3d at 592.

Applicants assert (Appl. 33-34) that *Bell* held that the General Removal Provision does not restrict a State's ability to remove a name from the rolls if the relevant voter was never validly registered to begin with; that the same interpretation should apply to the Quiet Period Provision; and that the Sixth Circuit thus would deem the Quiet Period Provision inapplicable to the removal of suspected noncitizens. That logic fails several times over. *Bell* did not address, or even cite, the Quiet Period Provision; it also did not discuss the removal of suspected noncitizens or systematic removals of any sort. And in this case, the Fourth Circuit emphasized that its interpretation of the Quiet Period Provision does not speak to the "differently worded" General Removal Provision, which the court left "for another day." Appl. App. 3-4.[2]

Finally, this case would not be an appropriate vehicle in which to consider applicants' arguments about the Quiet Period Provision even if those arguments other-

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[2] Applicants note (Appl. 34) that this Court granted review despite the absence of a circuit conflict in two prior NVRA cases, *Arizona* v. *Inter-Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), and *Husted* v. *A. Philip Randolph Institute*, 584 U.S. 756 (2018). But those cases involved court of appeals decisions broadly invalidating state laws. Here, in contrast, Virginia's novel ad hoc process—to which applicants attribute most of the relevant removals (Appl. 1)—is not required by any statute. And as to the DMV process, the district court's injunction at most limits the manner in which applicants implement certain general Virginia laws during the discrete period covered by the Quiet Period Provision. Particularly given the unanimity in the lower courts, that narrow question about an idiosyncratic state process does not warrant this Court's review.

wise warranted review. This case involves a limited record compiled through rushed discovery. As a result, the district court emphasized that the record contains little information about the names removed from the rolls. Appl. App. 255. Applicants' description of the challenged program has also evolved as this case has progressed: In seeking a stay, for example, applicants have placed much greater emphasis on the novel "ad hoc" process and its use of the SAVE database, but the record contains comparatively limited information about how that process worked. Similarly, applicants now tout (Appl. 7, 24) a purported "manual" review by local registrars, but those assertions contradict the district court's factual findings and applicants do not cite anything in the record to substantiate their claims about what that review actually entailed. Those gaps and uncertainties would make this case in this preliminary posture a poor vehicle in which to consider the Quiet Period Provision.

II. APPLICANTS ARE UNLIKELY TO SUCCEED ON THE MERITS

Even if applicants could establish that this Court would likely grant certiorari if the Fourth Circuit affirmed the preliminary injunction, their request for a stay should be denied because they have not shown that they are likely to succeed on the merits. As four judges have already concluded, Virginia's program clearly violated the Quiet Period Provision. Applicants' contrary arguments contradict the statute's text and structure.

A. Virginia's Program Violated The Quiet Period Provision

The Quiet Period Provision speaks in clear, simple terms: "A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, [1] any program [2] the purpose of which is to systematically remove [3] the names of ineligible voters." 52 U.S.C. 20507(c)(2)(A). A straightforward application of each element confirms that Virginia's program violated that direction.

1. As an initial matter, applicants "have not denied that the challenged conduct"—*i.e.*, both the daily DMV process required by the Governor's executive order and the "ad hoc" process—"constitute[d] a 'program'" within the meaning of the Quiet Period Provision. Appl. App. 2. Nor could they: Applicants engaged in a structured process of "comparing lists of names and flagging registrations for cancellation," which "clearly constitutes a program." *Id.* at 246.

2. Virginia's removal program was also "systematic[]." 52 U.S.C. 20507(c)(2)(A). As the Fourth Circuit explained, "[a] process is systematic if it uses a 'mass computerized data-matching process' to identify and confirm names for removal without 'individualized information or investigation.'" Appl. App. 2 (quoting *Arcia*, 772 F.3d at 1344). In *Arcia*, for example, the Eleventh Circuit held that a process was systematic because it "did not rely upon individualized information or investigation to determine which names from the voter registry to remove." 772 F.3d at 1344. Instead, the State "used a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices." *Ibid.* So too here: Both the daily DMV process and the "ad hoc" process were computerized data-matching efforts that did not "require communication with or particularized investigation into any specific individual." Appl. App. 2. The processes involved the DMV's creation of lists of suspected noncitizens, which were then "electronically compared to other agency databases," *id.* at 3, by "checking data fields, matching in mass," *id.* at 248.

Under applicants' daily DMV process, the DMV simply sent the Department of Elections a list of individuals who selected "No" in response to questions about United States citizenship status on certain forms. See Appl. App. 165. Before sending that information, the DMV made no effort to "validate customer answers to determine if,"

for example, the customer had offered a "conflicting" answer suggesting that person was indeed a citizen. *Ibid.* The Department of Elections, in turn, determined whether the potential noncitizen was on a voter roll by comparing the DMV's data to its own database, and found a match if the entries shared any one of the following: (1) social-security numbers, (2) first and last names, or (3) a last name and date of birth. *Id.* at 247-248. When the Department of Elections identified a match under those loose criteria (for example, if two records had the same first and last names but different dates of birth and social security numbers), it would send the name to the relevant local voting registrar. The registrar would then check only whether the same name appeared on the local rolls and, if so, would send a notice of intent to cancel. *Ibid.*

The "ad hoc" process was similarly systematic. The only salient difference applicants have identified between the daily DMV process and the ad hoc process is that, for the latter, the DMV gathered a year's worth of transaction data at once and then checked the names against the federal SAVE database before sharing them with the Department of Elections. See Appl. 25. But that is just another systematic element—another layer of electronic matching. Indeed, as the Eleventh Circuit explained in rejecting materially identical arguments, "it is telling that the database that [the State] used before the general election—SAVE—stands for *Systematic* Alien Verification for Entitlements." *Arcia*, 772 F.3d at 1344.

Applicants assert (Appl. 24) that their program is not systematic because the local registrar "conducts a *manual*, person-by-person verification that the two people are the same" after being sent a list of names by the Department of Elections. But the district court found that local registrars would "simply confirm that the person identified" by the Department of Elections "is the same individual listed on their voter

rolls," without "perform[ing] additional research or review to confirm whether the flagged voter was a citizen or not." Appl. App. 248. The court thus found that the system "left no room for individualized inquiry" because, as applicants "conceded," "the processes for matching the records by [the Department of Elections] and [local] registrars [are] limited to identification purposes," such that "[a] registrar may only confirm that the person identified by [the Department] matches the record on the registrar's rolls." *Id.* at 248-249. Indeed, one local registrar indicated that he was compelled to cancel registrations even when his files contained "ample evidence of their citizenship." Private Resp. C.A. App. SA90. Applicants have neither challenged the district court's findings as clearly erroneous nor cited any nonconclusory evidence to substantiate their assertion that local registrars actually engaged in the sort of rigorous individualized inquiries they now posit.

Applicants also invoke (Appl. 24-25) the mailings sent by local registrars to voters subject to cancellation, analogizing those notices to the ones this Court considered in *Husted* v. *A. Philip Randolph Institute*, 584 U.S. 756 (2018). But that analogy refutes applicants' argument: The mailed notices that the Court discussed in *Husted* were part of the minimum process the NVRA requires in *any* program to remove voters based on a change in residence. *Id.* at 764-766. If applicants were correct that such a mailed notice renders a program nonsystematic, then *no* NVRA-compliant program for removing voters based on a change of residence would be subject to the Quiet Period Provision. But as applicants elsewhere acknowledge (Appl. 16) those address-verification programs—including the "mailing" of "verification notices"—are the quintessential example of the sort of systematic programs that must be "concluded not later than 90 days before an election." Senate Report 18-19.

For similar reasons, applicants err in asserting (Appl. 25) that their program

is not systematic because it "begins" with individuals checking a DMV box indicating that they are noncitizens (or, for the ad hoc process, indicating that they are citizens but having previously provided a document consistent with noncitizen status). The information contained in virtually any database originates with *some* individual actions, such as checking a box or submitting a form. The NVRA's model of a systematic program to remove voters who have changed residence, for example, contemplates that States will compare their voter rolls with "change-of-address information supplied by the Postal Service," 52 U.S.C. 20507(c)(1). See *Husted*, 584 U.S. at 762-763. Like Virginia's program, that model of a systematic list-maintenance process begins with an individual taking action that may be relevant to the validity of a voter registration—there, notifying the Postal Service of a change of address; here, providing information to the DMV. But the model process is still systematic because it relies on database-matching rather than individualized investigation to determine that the person who submitted the change-of-address request is the same person registered to vote—and because there is no individualized inquiry into whether the change-of-address form actually reflects a permanent move that renders the voter ineligible.

Those are the features of a systematic program that introduce the risk of error that the Quiet Period Provision deems intolerable in the period just before an election. See *Arcia*, 772 F.3d at 1346. And Virginia's program shares the same features: Here, too, applicants relied on crude database matching to determine whether the individuals who provided information to the DMV were the same persons who were registered to vote. And here, too, applicants did not engage in any individualized investigation to determine whether any of the relevant voters were actually noncitizens, or had instead checked the wrong box or had recently been naturalized. That lack of individualized process explains why applicants' program ensnared many voting-eli-

gible citizens. See pp. 10-11, *supra*.

3. Finally, the challenged program has the "purpose" of "remov[ing] the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. 20507(c)(2)(A). It is undisputed that the program seeks to remove noncitizens from Virginia's lists of eligible voters. Appl. App. 249. It is likewise undisputed that noncitizens are ineligible to vote. *Ibid.*; see 18 U.S.C. 611; Va. Code § 24.2-1004(B)(iii). A program to remove noncitizens from the voter rolls is thus a program to remove "ineligible voters." And a systematic program to remove noncitizens does not fit within any of the Quest Period Provision's exceptions, which are limited to removals based on death, criminal convictions, mental incapacity, or voter request. 52 U.S.C. 20507(c)(2)(B); see 52 U.S.C. 20507(a)(3) and (4)(A). Virginia thus violated the NVRA by implementing a systematic program to remove suspected noncitizens within 90 days of the upcoming election.

B. Applicants' Arguments Based On The General Removal Provision Lack Merit

In resisting that straightforward conclusion, applicants principally assert (Appl. 14-23) that the Quiet Period Provision simply has no application to programs that seek to remove noncitizens—which would mean that "even the most systematic efforts to remove noncitizens" are "immune from judicial scrutiny" under the Quiet Period Provision. Appl. App. 3. As the Fourth Circuit explained, that interpretation contradicts the plain text of the statute and "violates basic principles of statutory construction." *Ibid.*

1. In interpreting a statute, this Court "start[s], of course, with the statutory text." *Sebelius* v. *Cloer*, 569 U.S. 369, 376 (2013) (citation omitted). Applicants, however, do not start with the text of the Quiet Period Provision—indeed, they do not

get there until page 19 of the application. Instead, applicants stake their case on a complicated structural argument that appears to proceed as follows: (i) a different provision of the NVRA, the General Removal Provision, specifies that "the name of a registrant may not be removed from the official list of eligible voters" except at the request of the registrant or because of death, criminal conviction, mental incapacity, or change of residence, 52 U.S.C. 20507(a)(3); (ii) the General Removal Provision does not include exceptions authorizing States to remove the names of "noncitizens," "minors," or "fictitious persons" (Appl. 20), but no one would suggest the NVRA compels the States to maintain such names on their rolls; (iii) noncitizens, minors, fictitious persons, and others who were never eligible to register thus are not "registrants" covered by the General Removal Provision in the first place; and (iv) by extension, noncitizens, minors, and fictitious persons also are not "ineligible voters" within the meaning of the Quiet Period Provision. See Appl. 14-23. That strained argument fails at multiple steps.

First, applicants' interpretation contradicts the plain meaning of the term "ineligible voters." "[U]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *Cloer*, 569 U.S. at 376 (citation omitted). The ordinary meaning of "voter" is "[o]ne who votes," and the ordinary meaning of "ineligible" voter is someone who is "[n]ot eligible" or "not qualified" to vote. *Webster's New International Dictionary for the English Language* 1271, 2859 (2d ed. 1958). That perfectly describes a noncitizen listed on a voter roll. And no ordinary speaker of English would use the term "ineligible voter" in the way that applicants assert that Congress did—that is, to describe only the subset of ineligible voters who *were* eligible to vote at some point in the past. In arguing otherwise, applicants invoke an alternative definition of "voter" to mean an *eligible* voter—some-

one who "has the legal right to vote." Appl. 19 (citation omitted). But that obviously is not what the word "voter" means in the context of the phrase "ineligible voter"; a voter cannot be both "eligible" and "ineligible" at the same time.[3]

Second, applicants' interpretation would make a hash of the Quiet Period Provision. Congress broadly prohibited "*any* program" that seeks to systematically remove the names of "ineligible voters," but specifically carved out programs to remove voters based on the request of the registrant, death, criminal conviction, or mental capacity. 52 U.S.C. 20507(c)(2) (emphasis added). Under applicants' reading, however, the only *other* basis for removing an "ineligible voter[]" is a change in residence—and thus the only effect of the Quiet Period Provision is to prohibit systematic removals based on changes of residence within 90 days of an election. Appl. 16 (citation omitted); see *Arcia*, 772 F.3d at 1348 (explaining that the upshot of the interpretation applicants embrace is that the Quiet Period Provision "only prohibits the removal of registrants who become ineligible to vote after moving to a different state").

If that were all Congress had wanted to accomplish, it would have simply written the Quiet Period Provision to cover any systematic program to remove names from the rolls "based on a change in residence"—saving dozens of words and three cross-references. The rejection of that "ready alternative" is strong evidence that "Congress did not in fact want what [applicants] claim." *Advocate Health Care Network* v. *Stapleton*, 581 U.S. 468, 477 (2017). And that is especially true because other

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[3] Applicants assert (Appl. 20) that "a person can be eligible to vote in one jurisdiction, and thus a 'voter,' while being 'ineligible' in other jurisdictions," and thus an "ineligible voter" for purposes of the Quiet Period Provision. But no ordinary speaker of English would use the phrase "ineligible voter" to describe someone who is eligible in one jurisdiction but not in others. And applicants cannot seriously maintain that the term carries that meaning here—a voter who is dead, for example, is clearly an "ineligible voter" within the meaning of the Quiet Period Provision even though she is not eligible to vote anywhere.

provisions of Section 20507 show that Congress knew how to limit a provision to removals based on "changed residence" when it wished to do so. 52 U.S.C. 20507(d); see 52 U.S.C. 20507(a)(4)(B) and (c)(1).

Third, the essential premise of applicants' argument is that the meaning of the term "ineligible voters" in the Quiet Period Provision is dictated by the meaning of the term "registrant" in the General Removal Provision. But "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Roberts* v. *Sea-Land Servs., Inc.*, 566 U.S. 93, 102 n.5 (2012) (citation omitted); see *Pulsifer* v. *United States*, 601 U.S. 124, 149 (2024) ("In a given statute, the same term usually has the same meaning and different terms usually have different meanings."). Applicants' argument contradicts that familiar principle of statutory interpretation.[4]

Nor do the considerations that inform the interpretation of the term "registrant" in the General Removal Provision carry over to the term "ineligible voters" in the Quiet Period Provision. As applicants themselves explain (Appl. 14-15), a provision adjacent to the General Removal Provision requires States to "ensure that any *eligible* applicant is registered to vote" upon the submission of a "*valid* voter registration form." 52 U.S.C. 20507(a)(1) (emphases added). That provides a strong contextual indication that a "registrant" is someone who *validly* registered. And that understanding explains why the General Removal Provision limits removals to grounds that can arise after a valid registration, such as death, criminal conviction, mental incapacity, or a change of residence. It also explains why those limited exceptions do

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[4] Applicants assert (Appl. 19 n.1) that Congress used the terms "'voter'" and "'registrant'" "interchangeably." But the examples they cite show only that a voter *can* be a registrant, and a registrant *can* be a voter—not that the two different terms have exactly the same meaning.

not yield the implausible result that the General Removal Provision prohibits States from removing noncitizens, minors, or others who were never validly registered to begin with. But there is no similar contextual indication that the term "ineligible voters" in the Quiet Period Provision is limited to individuals who were validly registered and previously eligible to vote. And Congress has elsewhere recognized that voting rolls may erroneously include "*voters* who are not registered or who are not eligible to vote." 52 U.S.C. 21083(a)(2)(B)(ii) (emphasis added).

2. Because the General Removal Provision is "a differently worded statutory provision that is not at issue here," Appl. App.3, the Fourth Circuit's order does not resolve its meaning—and certainly does not construe it to mean that "no State can *ever* remove noncitizens from their voter rolls because of their noncitizen status" (Appl. 17). In insisting otherwise, applicants rely (*ibid.*) on the Fourth Circuit's passing observation that the term "registrant," by itself, often refers to one who is registered, rather than one who is validly registered. See Appl. App. 3. But the Fourth Circuit specifically declined to interpret the General Removal Provision or its reference to "registrant"; instead, the court focused on the language of the provision that was actually before it and "le[ft] questions about other provisions for another day." *Id.* at 4. And no one—not the private respondents, not the United States, and not the courts below—has argued that the NVRA categorically bars States from removing noncitizens. Instead, the Quiet Period Provision simply prohibits States from implementing systematic programs aimed at achieving that goal during the period just before an election.

Finally, applicants betray a serious misunderstanding of the Quiet Period Provision when they assert (Appl. 21) that interpreting that provision according to its plain terms would contradict the NVRA's purpose by "protect[ing] noncitizens" or en-

couraging them to vote. By definition, *every* program prohibited by the Quiet Period Provision seeks to remove "ineligible voters" who cannot cast a lawful ballot. 52 U.S.C. 20507(c)(2)(A). But the purpose of the provision is not to protect those individuals or allow them to vote; instead, it is to protect *eligible* voters who are at risk of having their registrations erroneously cancelled because of "faulty databases or bureaucratic mistakes." Appl. App. 6. States are free to remove noncitizens through individualized investigations at any time, and to rely on systematic removal programs "at any time *except* for the 90 days before an election." *Arcia*, 772 F.3d at 1346. But during that brief period, Congress was unwilling to tolerate the "the risk of disenfranchising eligible voters," *ibid.*—which is precisely what occurred here.[5]

III. THE EQUITIES DO NOT WARRANT A STAY

A. Applicants assert that a stay is warranted because "[e]njoining a State from enforcing its 'duly enacted' laws" inflicts an irreparable injury. Appl. 26 (citation omitted). But that principle carries little weight here, where a State's chosen manner of implementing its laws is a "clear violation," Appl. App. 253, of a federal statute enacted to prevent the very type of eleventh-hour disenfranchisement and confusion that applicants have caused here. Applicants have no legitimate interest in continuing practices that plainly violated federal law.

Applicants also pervasively invoke alleged harms that they have failed to prove

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[5] For similar reasons, applicants badly err in asserting (Appl. 23 & n.4) that the Fourth Circuit's view of the Quiet Period Provision creates constitutional concerns by dictating to States "'*who*' may participate" in an election. None of the parties disputes that applicants may remove noncitizens from voter rolls under appropriate procedures. Applicants may do so systematically if they complete such a program before the 90-day window, or they may do so on an individualized basis at any time. The Quiet Period Provision's narrow restriction on a particular method of list maintenance during a discrete period of time is a valid exercise of Congress's authority under the Elections Clause "to regulate *how* federal elections are held" rather than "*who* may vote in them." *Inter-Tribal Council*, 570 U.S. at 16.

at every stage of this case. Applicants assert without citation (Appl. 27) that the 1600 individuals affected by their program are "self-identified noncitizens" and that the "vast majority" of them "are in fact noncitizens who cannot vote without committing a felony." But the district court specifically rejected that claim because it was unsupported by the factual record. Appl. App. 254-255 ("The evidence does not show that."). The Fourth Circuit, in turn, emphasized that applicants had forfeited any challenge to that factual finding. *Id.* at 4. And in this Court, applicants do not even acknowledge the Fourth Circuit's square holding that they "forfeited those arguments," much less offer any "basis to disagree." *Navarro* v. *United States*, 144 S. Ct. 771, 771 (2024) (Roberts, C.J., in chambers). This Court thus should not credit applicants' unsubstantiated assertions about placing noncitizens back on the voting rolls.

The courts below had good reason to be skeptical of those assertions. Just a few weeks ago, for example, the United States District Court for the Northern District of Alabama found that a "similar program" had "led to more than 2,000 eligible voters mistakenly being declared ineligible to vote." Appl. App. 4 (discussing oral findings in *Alabama Coal. for Immigrant Justice*, 2024 WL 4510476). Such on-the-ground realities reinforce Congress's judgment that systematic voter purges that rely on imperfect database matching are prone to error and unduly risk disenfranchising eligible voters in the period immediately preceding an election.

Notably, applicants have provided no reason to believe that any noncitizens have voted in past Virginia elections, or that any are likely to do so in the upcoming election. To the extent that applicants are concerned about that prospect, however, the preliminary injunction leaves them free to investigate and remove names from the voter rolls—including the 1600 names at issue here—"on an individualized basis." Appl. App. 5; see *id.* at 10. The remedial mailing ordered by the district court includes

a reminder that noncitizens are ineligible to vote. *Id.* at 9. More fundamentally, applicants could have avoided the problem altogether by simply completing their systematic program—the bulk of which relied on data collected between July 2023 and June 2024—before the Quiet Period began.

Finally, applicants object (Appl. 31-33) that "reopen[ing]" and "reenroll[ing]" the voters they unlawfully removed from the rolls will cause administrative "burdens" and "confusion" because the election is "just days" away. But those alleged harms derive from Virginia's own decision to conduct a systematic voter purge on the eve of a federal election. Adopting applicants' arguments would countenance violations of the Quiet Period Provision, especially the most egregious violations that occur closest to election day. In any case, applicants overstate the alleged burdens because the injunction simply requires applicants to restore the status quo by undoing their own last-minute changes, which affected a discrete and identifiable set of voters.

B. On the other side of the ledger, granting a stay would irreparably harm the United States and eligible voters. See *Nken* v. *Holder*, 556 U.S. 418, 435 (2009) (recognizing that the United States' interest and the public interest "merge"). The United States suffers injury whenever its laws are violated. See *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 771 (2000). And without injunctive relief to remedy applicants' violation of the Quiet Period Provision, eligible citizens will suffer unjustified burdens on their right to vote—potentially including disenfranchisement.

Applicants err in suggesting (Appl. 28) that "cast[ing] a provisional ballot" and "same-day registration" would be adequate remedies for an unlawful removal of an eligible citizen from the rolls. Those possibilities are insufficient because applicants' unlawful program still would have "curtailed the right of eligible voters to cast their

ballots in the same way as all other eligible voters," including "vot[ing] absentee or by mail." Appl. App. 252; see *Dunn* v. *Blumstein*, 405 U.S. 330, 336 (1972) ("[T]his Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."). And without a preliminary injunction, citizens whose registrations were cancelled would be ineligible for emergency absentee ballots, which "[a]ny person registered and otherwise qualified to vote may request at any time prior to 2:00 p.m. on the day preceding the election." Va. Code § 24.2-705(A).

C. Applicants renew their assertion (Appl. 29-30) that the United States and private respondents unreasonably delayed in filing these suits. On applicants' telling, the United States should have sued earlier because Virginia was simply applying state statutes that had been on the books since 2006 and because the United States "could have become informed" of the NVRA violations as soon as the Governor issued his executive order on August 7. Both courts below rejected those arguments, and rightly so.

To begin with, Virginia's program was not simply continuing a long-extant program or carrying out obligations clearly imposed by statute. To the contrary, the Governor's executive order made clear for the first time that the DMV process would continue through the Quiet Period—and accelerated that process by directing the DMV to transmit lists of names for potential removal every day rather than once a month. Appl. App. 227-228. Even then, the executive order did not disclose Virginia's "one-time, *ad hoc*" process—which was responsible for most of the cancellations. *Id.* at 88. That process was undertaken without public announcement when the Department of Elections sent 1274 names to local registrars on August 28, 2024—weeks into the Quiet Period. *Ibid.* And the resulting cancellations did not occur until several

weeks after that. See *id.* at 89 (explaining that cancellation occurs 21 days after a local registrar sends a notice).

The effect of Virginia's accelerated DMV process and the novel ad hoc process did not become apparent until local registrars began reporting abnormally large numbers of cancellations. In Loudoun County, for example, the registrar reported 8 cancellations in August, but 90 in September. Appl. App. 243; see Private Resp. C.A. App. SA99. Similarly, Fairfax County reported only 28 cancellations in August, but 254 in September. Compare Fairfax County Office of Elections, *General Registrar's Report* 1 (Sept. 12, 2024), https://perma.cc/FD5V-38RF, with Fairfax County Office of Elections, *General Registrar's Report* 1 (Oct. 18, 2024), https://perma.cc/7ZN5-LSGR. Once the United States' investigation established a violation of the Quiet Period Provision, the United States notified Virginia on October 8, conferred with applicants' counsel and officials on October 10, and filed suit October 11. See Appl. C.A. App. A1, A101. Applicants cannot evade remedies addressing their last-minute changes to the election rules simply because the United States conducted "due diligence" and "engaged in discussions" with Virginia officials before filing suit. Appl. App. 253.[6]

D. Finally, the equitable principles set forth in *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), do not support a stay—in fact, just the opposite. This Court's decision in *Purcell* stands for the important principle that courts should usually be cautious about granting injunctive relief just before an election because "[w]hen an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm.* v. *Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J.,

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[6] In arguing that the United States should have acted sooner, applicants cite a news article (Appl. 30 n.5) that discusses applicants' removal of voters *before* the Governor issued the executive order at issue in this case. That article does not reveal applicants' statutory violations during the 90-day period relevant here.

concurring in denial of application to vacate stay). But "[h]ow close to an election is too close may depend in part on the nature of the election law at issue." *Merrill* v. *Milligan*, 142 S. Ct. 879, 881 n.1 (2022) (Kavanaugh, J., concurring in grant of applications for stays). And because the Quiet Period Provision itself aims to maintain the status quo in the weeks before the election, remedying violations that occur during that time is entirely consistent with *Purcell*.

Indeed, it appears that no court has invoked *Purcell* to deny relief when faced with a violation of the Quiet Period Provision. Applying *Purcell* in those circumstances would contradict the settled rule that courts cannot apply judge-made principles of equitable discretion to "ignore the judgment of Congress, deliberately expressed in legislation." *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497-498 (2001) (citation omitted). Congress barred States from engaging in systematic list-maintenance efforts on the eve of an election and specifically provided for suits seeking "declaratory or injunctive relief" to enforce the provisions of the NVRA "within 30 days before the date of an election." 52 U.S.C. 20510(b)(3). Declining to remedy a violation of the Quiet Period Provision merely based on the imminence of an election would contradict that judgment—and preclude meaningful enforcement of the statute in many of its core applications.[7]

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[7] Even if this Court concluded that *Purcell* applied and required a heightened justification for preliminary injunctive relief, the United States made that showing here. The courts below correctly held that "the underlying merits are entirely clear-cut" in the United States' favor; the United States and the public "would suffer irreparable harm absent the injunction"; the United States "has not unduly delayed bringing the complaint to court"; and the narrow remedy ordered by the district court to restore the status quo is "feasible before the election without significant cost, confusion, or hardship." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays).

CONCLUSION

The application for a stay should be denied.

Respectfully submitted.

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