

IN THE  
**Supreme Court of the United States**

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SUSAN BEALS, COMMISSIONER, *et al.*,

*Applicants,*

*v.*

VIRGINIA COALITION FOR IMMIGRANT RIGHTS, *et al.*,

*Respondents.*

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ON EMERGENCY APPLICATION FOR STAY PENDING APPEAL FROM  
THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**BRIEF FOR FORMER MEMBERS OF CONGRESS AS  
*AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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## INTEREST AND IDENTITY OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are former Republican Party Members of the United States House of Representatives. While serving in Congress, they crafted and supported numerous bipartisan efforts to safeguard the right to vote while protecting the integrity of voter rolls and the election process. Several of them voted for and supported the enactment of the National Voter Registration Act of 1993. As Members of Congress, *Amici* collectively spent decades working to ensure that eligible American citizens can exercise their right to vote, which they believe to be a cornerstone of our democratic system. *See Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (“[T]he right of suffrage is a fundamental matter in a free and democratic society.”). *Amici* are listed below:

- **Tom Coleman**, Republican, Representative of the 6th District of Missouri from 1976 to 1993.
- **Barbara Comstock**, Republican, Representative of the 10th Congressional District of Virginia from 2015 to 2019.
- **David Emery**, Republican, Representative of the 1st Congressional District of Maine from 1975 to 1983.
- **Wayne Gilchrest**, Republican, Representative of the 1st Congressional District of Maryland from 1991 to 2009.
- **Jim Greenwood**, Republican, Representative of the 8th Congressional District of Pennsylvania from 1993 to 2005.
- **Bob Inglis**, Republican, Representative of the 4th Congressional District of South Carolina from 1993 to 1999 and 2005 to 2011.
- **David Jolly**, Republican, Representative of the 13th Congressional District of Florida from 2014 to 2017.

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<sup>1</sup> This brief was not authored in whole or part by counsel for a party. No one other than *Amici* and their counsel made a monetary contribution to preparation or submission of the brief.

- **Adam Kinzinger**, Republican, Representative of the 11th Congressional District of Illinois from 2011 to 2013, and the 16th Congressional District of Illinois from 2013 to 2023.
- **Susan Molinari**, Republican, Representative of the 14th Congressional District of New York from 1990 to 1993, and the 13th Congressional District of New York from 1993 to 1997.
- **Denver Riggleman**, Republican, Representative of the 5th Congressional District of Virginia from 2019 to 2021.
- **Claudine Schneider**, Republican, Representative of the 2nd Congressional District of Rhode Island from 1981 to 1991.
- **Chris Shays**, Republican, Representative of the 4th Congressional District of Connecticut from 1987 to 2009.
- **Peter Smith**, Republican, Representative-at-Large of Vermont from 1989 to 1991.
- **Alan Steelman**, Republican, Representative of the 5th Congressional District of Texas from 1973 to 1977.
- **David Trott**, Republican, Representative of the 11th Congressional District of Michigan from 2015 to 2019.
- **James Walsh**, Republican, Representative of the 27th Congressional District of New York from 1989 to 1993, and the 25th Congressional District of New York from 1993 to 2009.
- **Joe Walsh**, Republican, Representative of the 8th Congressional District of Illinois from 2011 to 2013.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents effectively explain why this Court should deny the Emergency Application for Stay. As former Members of Congress—including several who voted for and supported the enactment of the National Voter Registration Act of 1993 (NVRA)—*Amici* respectfully submit this brief to emphasize two fundamental points.

*First*, on the merits, the rulings below against Applicants’ program are entirely consistent with *Amicis*’ own understanding of the legislative history and purpose of

the NVRA’s Quiet Period Provision. *See* 52 U.S.C. § 20507(c)(2)(A). The NVRA sought to balance important but sometimes competing purposes with respect to voting systems and the electoral process. *See* 52 U.S.C. § 20501(b). In striking that difficult balance, the bipartisan coalition that enacted the NVRA afforded states broad latitude under the statute to seek to remove ineligible voters from voter registration rolls—including through systematic programs. *See Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). It then went further and authorized truly individualized removals at any time. *See id.* But to protect the right to vote from the inherent errors, vagaries, and bureaucratic swamp of last-minute systematic removals, Congress imposed the Quiet Period Provision to protect voters in the immediate run-up to elections—at which point it might be impossible or impractical to correct a wrongfully terminated registration status. *See id.* (“In the final days before an election . . . the calculus changes.”); H.R. Rep. No. 103-9, at 15-16 (1993) (discussing the Quiet Period Provision after flagging the potential for abuse and accidental removal of eligible voters during systematic maintenance efforts).

The daily systematic removal program recently undertaken by Applicants is *precisely* what the NVRA’s Quiet Period Provision forbids. It is not a close case; it is instead a paradigmatic violation of Congress’s design. The fact that this last-minute systematic program has in fact disenfranchised eligible Virginia voters only confirms the wisdom of the NVRA’s plan and the illegality of this scheme. To hold otherwise would thwart the bipartisan congressional consensus underlying the NVRA.

*Second*, turning to the equities, Applicants err in asserting that *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*), precludes the relief entered below. *Purcell* does not counsel against the enforcement of longstanding federal statutory voting protections on the eve of an election—particularly where state officials unlawfully seek to change their own policies as Election Day approaches. Moreover, Congress itself struck the equitable balance otherwise contemplated by *Purcell* when it adopted the Quiet Period Provision and authorized litigants to enforce it. *See, e.g.*, 52 U.S.C. § 20510(b)(3). The very premise of the Quiet Period Provision is that courts must be open to enjoin states from systematic removal programs right before an election. That is what the statutory text provides, and it is absolutely what Congress itself intended.

For these reasons and those set forth by Respondents in greater detail, *Amici* respectfully submit that the Emergency Application for Stay should be denied.

## ARGUMENT

### **I. Congress Intended to Prevent Systematic Removal Programs Like Applicants' Program Within 90 Days of a Federal Election**

In adopting the NVRA, Congress sought to achieve four major purposes: “(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration

rolls are maintained.” 52 U.S.C. § 20501(b). Of course, these purposes can sometimes stand in tension with each other. Election systems design always requires tradeoffs.

One such tradeoff—ultimately endorsed by bipartisan majorities in Congress (including several *Amici*)—is reflected in the Quiet Period Provision. That part of the NVRA requires states to 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). This is a narrow limitation. Under the NVRA, states enjoy broad latitude to remove ineligible voters through systematic programs (outside the Quiet Period) and through individualized undertakings (at all times). *See, e.g., Arcia*, 772 F.3d at 1346 (correctly observing that “[a]t most times during the election cycle, the benefits of systematic programs outweigh the costs because eligible voters who are incorrectly removed have enough time to rectify any errors”).

But the narrowness of this limitation only highlights its importance: Congress bent over backwards to create a sanctuary from late-in-the-day systematic removal efforts in order to achieve important purposes. As a bipartisan majority of Congress appreciated, systematic voter roll maintenance efforts performed too soon before an election could pose a substantial risk of disenfranchising eligible voters. *See id.* (“For programs that systematically remove voters . . . Congress decided to be more cautious.”). Thus, even as Members were “mindful of the need to keep accurate and current voter rolls,” they were also “concerned that such programs can be abused.” H.R. Rep. No. 103-9, at 15. The House Committee Report on the NVRA therefore



acknowledged that states might need to engage in ongoing programs to “systematically remove the names of ineligible voters,” but emphasized that states must complete any such efforts prior to the Quiet Period. *Id.* at 16; *see also* S. Rep. No. 103-6, at 32 (1993). The Committee on House Administration was particularly concerned about the (not hypothetical) prospect that some generalized programs were susceptible to error and could lead to the removal of eligible voters “solely due to [a] failure to respond to a mailing.” H.R. Rep. No. 103-9, at 15. As such, Congress deliberately defined the Quiet Period in comprehensive terms, allowing only specific exceptions to that rule for tightly cabined and individualized circumstances. *See id.* at 16; *see also* 52 U.S.C. § 20507(c)(2)(B); 52 U.S.C. §§ 20507(a)(3)(A), (B), (4)(A).

An effort to remove non-citizens from the voting rolls—however legitimate that goal might otherwise be—is not an exception to the Quiet Period Provision’s clear prohibition on systematic removal programs. *See Arcia*, 772 F.3d at 1345 (“Noticeably absent from the list of exceptions to the 90 Day Provision is any exception for removal of non-citizens.”); *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1092-93 (D. Ariz. 2023) (same), *appeal on other grounds pending*, No. 24-3188 (9th Cir.). In advancing a contrary view, Applicants present a position that is “inconsistent with Congress’ intent” and “violates basic principles of statutory construction.” App. 3, 249.

To be clear, this does not reflect a lack of concern by Congress for maintaining accurate voter rolls. *See Arcia*, 772 F.3d at 1348 (a state can still investigate potential non-citizens on an individualized basis within the 90-day window). Rather, it reflects Congress’s sound policy judgment that any benefits to systematic removal efforts on

the eve of an election are outweighed by the threat of disenfranchising eligible voters. *See id.* at 1346 (“Eligible voters removed days or weeks before Election Day will likely not be able to correct the State’s errors in time to vote.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”); *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 16 Civ. 1274, 2016 WL 6581284, at \*5-6 (M.D.N.C. Nov. 4, 2016); App. 252 (“Virginians who had been removed from the rolls pursuant to this program will suffer irreparable harm without an injunction.”).

Accordingly, the program recently launched by Applicants is at odds with the NVRA and was properly enjoined. It is unquestionably systematic in character. Its new requirement that agencies exchange information daily was initiated within the 90-day shelter of the Quiet Period Provision. And it has already been found to risk the disenfranchisement of eligible voters. In form, purpose, and effect, this program is exactly what the NVRA aims to prohibit. Allowing this program to continue would upend the careful balance that the NVRA struck between ensuring the accuracy of voter rolls and protecting the right of eligible voters to cast their ballots.

## **II. The *Purcell* Principle Does Not Apply Here**

Applicants also err by invoking the *Purcell* principle to support their position. No court has applied *Purcell* to hold that violations of the Quiet Period Provision cannot be remedied—and any such holding would be unfounded for three reasons.

*First*, the *Purcell* principle principally teaches that “federal courts ordinarily *should not alter state election laws* in the period close to an election.” *DNC v.*

*Wisconsin State Legis.*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (emphasis added); *see also* App. 5. Here, Applicants ask this Court to thwart the enforcement of a longstanding federal election statute, which has been triggered only because state officials made a last-minute, unlawful change to their own voter roll maintenance activities. In this context, *Purcell*'s core concern about federal judicial interference with the stability of state election administration is not properly implicated, since it was state officials who disrupted the status quo through their new program, and it is federal law that seeks to preserve stability.

*Second*, in practice, the application of *Purcell* here would allow state officials to continue creating confusion about which eligible voters might not be able to cast their ballots in the upcoming election, which is exactly the dynamic that both *Purcell* and the NVRA exist to prevent. *See Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring in grant of applications for stays) (noting that the *Purcell* principle “reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled”). In that respect, *Purcell* and the NVRA's Quiet Period seek the same goal: to ensure stability for voters as elections approach, minimizing the possibility that eligible voters are unable to exercise their fundamental rights at the ballot box. *See, e.g., Reynolds*, 377 U.S. at 561-62.

*Finally*, as *Amici* well understand, the application of *Purcell* here would vitiate Congress's intent in creating the Quiet Period as part of the NVRA's scheme. That buffer period was meant to protect voters in situations just like this one: where a governor issues an executive order just 90 days before the election that could well

result in the systematic but erroneous removal of eligible voters from the voter rolls. Because Congress spoke directly to this circumstance and did so in a manner that addresses the same equitable considerations otherwise underlying *Purcell*, it is the congressional judgment about proper judicial relief that should structure this Court's analysis. *See, e.g., Virginian R. Co. v. Railway Employees*, 300 U.S. 515, 551 (1937).

At bottom, the Quiet Period Provision was built solely to address a time period (90 days before an election) also generally covered by the *Purcell* principle. To say that *Purcell* applies is to effectively rewrite the NVRA and undo Congress's careful balance as reflected in the Quiet Period Provision. That would be mistaken and would produce a self-defeating result. The invocations of *Purcell* here would thus transform the *Purcell* principle into the *Purcell* paradox. The Court should reject that request.

## CONCLUSION

For the reasons set forth above, and for those given by Respondents, *Amici* respectfully submit that the Court should deny the Emergency Application for Stay.

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