No. 16-3746
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OHIO A. PHILIP RANDOLPH INSTITUTE, *et al.*	:	
Plaintiffs-Appellants,	:	**On Appeal from the United States District Court for the Southern District of Ohio, Eastern Division**
v.	:	
SECRETARY OF STATE, JON HUSTED,	:	**District Court Case No. 2:16-cv-303**
Defendant-Appellee.	:	

BRIEF OF APPELLEE SECRETARY OF STATE JON HUSTED

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STATEMENT REGARDING ORAL ARGUMENT

The Secretary believes that oral argument would further assist this Court in deciding the issues, including the actions the Secretary will take for the 2016 Supplemental Process in the near future.

STATEMENT OF THE ISSUES

Congress passed the National Voter Registration Act in 1993 *not just* "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office," *but also* "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1)-(4). "These purposes counterpose two general, sometimes conflicting, mandates: To expand and simplify voter registration processes so that more individuals register and participate in federal elections, while simultaneously ensuring that voter lists include only eligible, current voters." *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1274 (D. Colo. 2010). The second purpose is the focal point here. Towards that end, Congress has *required* States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from registration lists, 52 U.S.C. § 20507(a)(4), including by sending address-confirmation notices to voters who may have moved, *id.* § 20507(d). The issues are:

1. Does the National Voter Registration Act bar Ohio from sending those address-confirmation notices to voters who have not voted for two years?

2. Do any of Plaintiffs' objections to the content of Ohio's confirmation form, which were mooted by the most current version of the form, leave a live controversy?

3. Does the Act require additional content in Ohio's confirmations forms?

INTRODUCTION

Ohio follows two general processes to satisfy its duties under the National Voter Registration Act to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from registration lists, 52 U.S.C. § 20507(a)(4), and under the Help America Vote Act to "ensure that [its] voter registration records" are "accurate and are updated regularly," 52 U.S.C. § 21083(a)(4). One process, explicitly referenced in the National Voter Registration Act, uses Postal Service data to query those voters who may have changed addresses. *See* 52 U.S.C. § 20507(c)(1). The second—the "Supplemental Process"—queries registrants who have not voted for two years and asks them to confirm their addresses. It then cancels those registrations if the registrant both does not respond to the query and does not vote (or update a registration) for four years. This process complies with the National Voter Registration Act, which requires both of those non-actions (not just non-voting alone) before any cancellation. *Id*. § 20507(d).

The district court agreed, concluding that Ohio's Supplemental Process "does not violate the [Act]," and "that in fact, the unambiguous text of the [Act] specifically permits" it. Order, R.66, PageID#23017. As the court elaborated, "the [Act] does not prohibit a state from sending a confirmation notice to voters who have not voted for a certain period of time." *Id*. PageID#23016. Its holding is

amply supported by the plain language and overarching structure of the National Voter Registration Act. The court's conclusion is also validated by the Help America Vote Act's language, which authorizes Ohio's processes, and reiterates that States may cancel voter registration records so long as they do not do so "*solely*" for not voting. 52 U.S.C. § 21083(a)(4)(A) (emphasis added).

Despite this plain statutory language, the Plaintiffs here (two advocacy groups and one Ohioan) themselves claim the mantle of plain text without bearing the corresponding burden to give that text its ordinary meaning. They say that, under the National Voter Registration Act, "[f]ailure to vote may not be considered as the basis for initiating the confirmation-and-cancellation process." Appellants' Br. 28. That limitation is nowhere to be found in the Act. As the district court said, Plaintiffs' argument "read[s] requirements and language into the [Act] that simply are not there." Or., R.66, PageID#23015.

In this straightforward statutory-interpretation case, the words of a statute "are unambiguous," so the "first canon is also the last," and "'judicial inquiry is complete'" after assigning the words their plain meaning. *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (citation omitted). The district court judgment declining to enjoin Ohio's process or further interfere with it should be affirmed.

STATEMENT OF THE CASE

A. In 1993, Congress passed the National Voter Registration Act to increase voter registration and improve the accuracy of registration lists; in 2002 it updated those goals in the Help America Vote Act

Article V, Section 1 of the Ohio Constitution provides that "[a]ny elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote." This language was added in 1977 by popular vote of Ohio's citizens. *See Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Electors* 17 (updated May 23, 2016) http://www.sos.state.oh.us/sos/ upload/elections/historical/issuehist.pdf. Guided by that provision, Ohio directed local boards of elections to "cancel the registration" of voters who had "not voted at least once in the four next preceding calendar years or ha[d] not registered a change of name or change of address or otherwise updated [their] registration during that period." 144 Ohio Laws (Part IV) 5517, 5526 (1992). Under that statute, 30 days before cancelling a registration, the local board would send a notice to the elector warning of the impending cancellation absent an updated registration. *Id*.

In the early 1990s, Congress turned its attention to state voter rolls. Its original bill in this area contained compromise provisions, expressing concern both about low voter turnout and about inaccurate voter rolls. *See* Proposed S. 250,

102d Congress § 2(b) (1992). In its report on that proposed bill, the Congressional Budget Office stressed that that States could continue to use "*non-voting as an indication that a voter has changed addresses*," and that the bill would only invalidate the practices of five States that had been removing voters from the registration rolls solely for their lack of voting *without* sending any type of notice. 138 Cong. Rec. S11689 (daily ed. May 19, 1992) (emphasis added). The President, however, ultimately vetoed this bill.

Congress tried again. In 1993, it passed the National Voter Registration Act (referred to as the "Act" in this brief). The Act uses the identical language as the failed earlier bill. Like its forbearer, it has two core goals: (1) to "increase the number of eligible citizens who register to vote" and "participat[e]" in elections and (2) to "protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). The Act therefore contains provisions that *compel* States generally to maintain accurate voter-registration records. *See* 52 U.S.C. § 20507. The Act's legislative history acknowledges that the "maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud." *See* S. Rep. No. 103-6, at 17-18 (1993). A House Report observed that, toward that end, the Act "suggests, but does not require," using Postal Service data to clean up registration records, and that "election officials" could "decide to use" this

approach or "choose their current or other method for list cleaning." *See* H.R. Rep. No. 103-9, at 30-31 (1993). As one representative explained to assuage concerns, the Act "stipulates that a registrant who fails to return an address confirmation notice may be removed from the rolls if that person does not vote within a period of two Federal elections." 139 Cong. Rec. H510 (daily ed. Feb. 4, 1993) (statement of Rep. Kleckza).

The Senate Report explained the consequences of these details for the States. It specified that only those States that cancel registration for non-voting *without notice* must end that practice under the Act. At the time, "[a]lmost all states . . . employ[ed] some procedure for updating lists at least once every two years." S. Rep. No. 103-6, at 46. "About one-fifth of the states canvass[ed] all voters on the list," while the rest "target[ed] only those who did not vote in the most recent election." *Id*. The Report specified that only the "handful of [those] states" that "simply drop[ped] the non-voters from the list without notice" would be required to end their practices under the Act. *Id*. By contrast, those whose "uniform and nondiscriminatory" procedures merely used "not voting as an indication that an individual might have moved" would not be affected. *Id*.

Consistent with these sentiments, the relevant text of the Act appears in four subsections now codified in 52 U.S.C. § 20507. Subsection (a)(4) contains the directive to the States to update registration lists—hereinafter referred to as the

"Registration-Maintenance Duty." That Registration-Maintenance Duty requires States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from their registration lists. 52 U.S.C. § 20507(a)(4). The following subsections expound on that duty and on its limits.

Subsection (b) contains general limits on these efforts to remove registrants, and a proviso authorizing a certain procedure. It reads:

> (b) Confirmation of voter registration
>
> Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office-
>
> > (1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act . . . ; and
> >
> > (2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the *procedures described in subsections (c) and (d)* to remove an individual from the official list of eligible voters if the individual—
> >
> > > (A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then
> > >
> > > (B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

52 U.S.C. § 20507(b) (emphasis added).

Subsection (c) contains a *specific* safe harbor for the States on how they may comply with the *general* Registration-Maintenance Duty, and a specific time limit on certain programs to cancel registrations. It reads:

> (c) Voter removal programs
>
> > (1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—
> >
> > > (A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and
> > >
> > > (B) if it appears from information provided by the Postal Service that—
> > >
> > > > (i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or
> > > >
> > > > (ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

52 U.S.C. § 20507(c).

Finally, subsection (d) details how States may cancel registrations of those who may have changed addresses, whatever programs the State implements.

> (d) Removal of names from voting rolls
>
> > (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—
> >
> > > (A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or
> > >
> > > (B) (i) has failed to respond to a notice described in paragraph (2); and
> > >
> > > (ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice . . .

52 U.S.C. § 20507(d)(1). Subsection (d)(2) then details the form of the "notice" sent to registrants to confirm their addresses.

The Act's goals got a refresher in 2002 when Congress passed the Help America Vote Act. The Help America Vote Act was motivated in part by the 2000 election, but also by the still-underwhelming performance of the States in maintaining accurate voter-registration records. "The authors of [the] bill found that voter rolls across the country [were] inaccurate or in very poor order, the

condition in many jurisdictions, particularly the large jurisdictions, [were] in a state of crisis. Voter lists [were] swollen with the names of people who [were] no longer eligible to vote in that jurisdiction, [were] deceased or [were] disqualified from voting for another reason. It [had] been found that 650,000 in this country [were] registered in more than one State." 148 Cong. Rec. S10490 (daily ed. Oct. 16, 2002) (statement of Sen. Bond). In the House, a representative remarked that "bad voter lists" make the system "vulnerable to fraud." 147 Cong. Rec. H9290 (daily ed. Dec. 12, 2001) (statement of Rep. Terry). One Senator commented that he believed the "meaningful reforms" in the new law would "go a long way to helping states clean up voter rolls, and thus clean-up elections." 148 Cong. Rec. S10489 (daily ed. Oct. 16, 2002) (statement of Sen. Bond).

One section of the 2002 law deals with state "voter registration lists." 52 U.S.C. § 21083. As explained by one Senator, it "provide[s] that any name that is removed from the list must be removed in accordance with . . . the National Voter Registration Act." 148 Cong. Rec. S10509 (daily ed. Oct. 16, 2002) (statement of Sen. Dodd). In other words, "voters cannot be purged from the list unless they have not responded to a notice mailed by the appropriate election official and then have not voted in the subsequent two Federal general elections." *Id.* He further confirmed that the new law "parallels language in the [National Voter Registration Act] that requires States to make a reasonable effort to remove registrants who are

ineligible to vote, . . . specifically the requirement [that States remove] such voters [who] fail to respond to a notice and then fail to vote in the subsequent two general Federal elections." *Id.*

B. Ohio responded to the Act with new procedures

In 1994, in response to the National Voter Registration Act, Ohio changed its procedures. Those changes have served the Act's twin goals of increased registration and increased scrutiny of registration records.

As for the goal of increased registration, Ohio was one of five States with the largest registration increases between the 2008 and the 2012 general election. U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2011-2012*, 1 (2013), R.38-9, PageID#413.

As for the obligation to clear inaccurate registration records, Ohio implemented procedures in 1994 that continue to this day. A Secretary of State Directive from that year outlined the processes, and described its rationale: "My goal in adopting these programs and procedures is to provide all boards of elections with workable, cost effective methods to remove ineligible persons from the voter registration rolls in accordance with the new requirements of state and federal law." Directive 94-36, R.38-1, PageID#286 (Sec'y of State Bob Taft). These processes have been in place ever since, spanning the terms of both

Democratic and Republican Secretaries of State. Damschroder Decl., R.38-2, PageID#294; Wolfe Decl., R.38-3, PageID#362.

Since 1994, Ohio has used two main procedures to fulfill its obligation to meet its Registration-Maintenance Duty. 52 U.S.C. § 20507(a)(4); *id.* § 21083(a)(4). One process, the one contemplated in 52 U.S.C. § 20507(c), uses the Postal Service's national change-of-address information. This process, because federal law designates it as a safe-harbor for meeting the State's Registration-Maintenance Duty under the Act, is called the "Safe-Harbor Process" in the rest of this brief. *See* 52 U.S.C. § 20507(c). The other process uses a combination of two periods of voter inactivity plus the failure to respond to a notice telling voters to confirm their current addresses so that their registrations are "not subject to cancellation." *See* Confirmation Notice, R.56-2, PageID#22821-24. A voter receiving one of these notices may respond by prepaid postcard or through the Internet. *Id.* The balance of the brief terms this process, which is also further designed to meet Ohio's general Registration-Maintenance Duty, the "Supplemental Process."

Ohio now conducts the Safe-Harbor Process and Supplemental Process annually. Until 2014, Ohio conducted them biennially. But both a federal lawsuit filed against Ohio and a subsequent legislative response shifted these processes to every year. *See* Ohio Rev. Code § 3503.21(D); Settlement Agreement in *Judicial*

Watch v. Husted, No. 2:12-cv-792 (S.D. Ohio) (Sargus, J.), R.38-4, PageID#368-73.

Under the Safe-Harbor Process, the Secretary of State's Office compares "the records in the Statewide Voter Registration Database" to the Postal Service's national change-of-address database. Damschroder Decl., ¶ 11, R.38-2, PageID#294. The postal database "contains the names and addresses of individuals who have filed changes of address with the United States Postal Service." *Id*. During the Safe-Harbor Process, the Secretary "provides the boards with a file listing the possible matches" to the database. *Id*. The boards of elections then "send a confirmation notice" to "each individual identified." *Id.* ¶¶ 11, 17, PageID#294-295. The confirmation notice is a postage pre-paid forwardable form that a registrant can return to indicate whether the registrant still resides at the same location. *Id*. ¶ 20, PageID#295-96; Confirmation Notice, R.56-2, PageID#22821.

If a voter receives one of these notices, but then fails to engage in any voter activity for four consecutive years, including two federal general elections, from the date that the confirmation card is mailed, the voter's registration is cancelled. Ohio Rev. Code § 3503.21(A)(7), (B).

In Ohio, the Safe-Harbor Process misses any person who moves without informing the Postal Service. Damschroder Decl., ¶ 13, R.38-2, PageID#294. In

2006, the Postal Service found that "40 percent" of "undeliverable as addressed" mail is caused by "customers [who] do not notify the Postal Service of address changes." U.S. Postal Serv., Office of the Inspector Gen., *Strategies for Reducing Undeliverable as Addressed Mail* 1 (2015), R.38-6, PageID#381. Because the Safe-Harbor Process omits so many Ohioans who move, Ohio uses the Supplemental Process to further meet its Registration-Maintenance Duty.

The Supplemental Process begins at the end of the Safe Harbor Process and "seeks to identify electors whose lack of voter activity indicates they may have moved, even though their names did not appear" in the change-of-address database. Directive 2009-05, R.38-7, PageID#401 (Sec'y of State Jennifer Brunner); *see also* Damschroder Decl., ¶ 14, R.38-2, PageID#295; Settlement in *Judicial Watch*, R.38-4, PageID#368.

As with the Safe-Harbor Process, Ohio made its Supplemental Process annual in 2014. Damschroder Decl. ¶ 9, R.38-2, PageID#294. Each of Ohio's 88 boards of elections compiles its own list of individuals who, according to the board's records, have not cast a ballot in any election or updated a registration for two years. *Id*. ¶ 15, R.38-2, PageID#295. The boards send each such individual a confirmation notice just like that used in the Safe Harbor Process. *Id*. If the recipient returns the confirmation notice—either through prepaid mail or by

responding through the Internet—the appropriate board of elections updates the registration information. *Id*. ¶¶ 19-20, PageID#295-96.

If the notice is ignored, the recipient will be marked "inactive" in the registration database. *Id*. ¶ 20, PageID#296. An "inactive" voter has all the rights of an otherwise qualified elector, including the ability to cast a *regular ballot* at any election. *Id*. If, however, four years (including two federal general elections) pass without voting (or a registration update), the registration record is cancelled. *Id*. ¶ 22, PageID#296. All told, the Supplemental Process removes those who both ignore the cancellation notice and engage in no voting activity for six years. But any voting activity during those four years returns the registrant to active status.

C. Plaintiffs sued the Secretary in April 2016, challenging both the Supplemental Process and the form of Ohio's notice used in that process

Plaintiffs Ohio A. Philip Randolph Institute and the Northeast Ohio Coalition for the Homeless sued Ohio's Secretary of State in April 2016, and amended their Complaint in May to add Plaintiff Larry Harmon (collectively "Plaintiffs"). Compl., R.1, PageID#1-17; Am. Compl., R.37, PageID#222-41. The Amended Complaint contains two counts: (1) that Ohio's Supplemental Process cancels registrations in a way barred by the Act, and (2) that Ohio's confirmation notices do not contain information required by the Act. Am. Compl., R.37, PageID#236-238.

Count 1 alleged that the Supplemental Process violated Section 8 of the Act because it canceled registrations when voters failed to "vote after being sent an address-confirmation notice where the notice was sent because of a failure to vote in a prior time period." *Id*. PageID#238.

Count 2 alleged violations in the content of the confirmation notices. Specifically, Plaintiffs challenged that those notices did not "provide a date" by which they must be returned, omitted "information about how to re-register," and required the voter to fill in information "not authorized by federal law." *Id*. PageID#237-38.

Recognizing that the case turns on statutory interpretation, the parties entered into a short stipulation of facts and admissibility. Joint Stip., R.41, PageID#1505-24. As the case moved along, the Secretary updated the confirmation notice and the associated website that allows registrants to confirm or change a registration address. Confirmation Notice, R.56-2, PageID#22821-24. Plaintiffs moved for summary judgment and a permanent injunction, or, "in the alternative," a preliminary injunction. Mot., R.39, PageID#1366.

The district court rejected both claims on the merits. Or., R.66, PageID#23003-026. It also turned aside Plaintiffs' suggestion that the court enter a preliminary injunction while it conducted "'an expeditious trial.'" *Id*. at

PageID#23017 n.1 (quoting Plaintiffs' brief). According to the district court, the questions in this case were "purely legal." *Id.* No trial was needed.

On Count 1, the district court concluded that "the unambiguous text" of the Act "specifically permits the Ohio Supplemental Process." *Id*. PageID#23017. The district court rejected each building block of Plaintiffs' argument. It held first that Plaintiffs' textual argument "ignore[d]" the whole clause when it cited the prohibition on cancelling registration for failure to vote, but not the *permission* to cancel if the failure to vote (or update a registration) is coupled with a notice prompting an address confirmation. *Id*. PageID#23014. Plaintiffs' approach, reasoned the court, erroneously "focus[ed] on a single clause." *Id*. PageID#23015. That, the court continued, would require the court to "write [words] into the" Act. *Id*.

The district court also rebuffed Plaintiffs' invitation to add a general reasonableness requirement into the Act. As the court said, "there is no reasonableness requirement" for the Supplemental Process, and, even if there were, "Plaintiffs' argument that the Ohio Supplemental Process is unreasonable is without merit." *Id*. PageID#23019-020.

The district court further ruled that the Count 2 claims about the content of the confirmation notice were either moot or meritless. *Id.* PageID#23022-025. As to the mooted allegations, the court refused to doubt the Secretary's good-faith that

he will use the revised forms rather than revert to the old version as soon as this case ends. *Id*. PageID#23024. According to the court, Plaintiffs offered "no evidence to suggest that the [Secretary] does not plan to use this Revised Notice in 2016 or at any other point in the future." *Id*. As to the claim that the Act requires Ohio's forms to include information about registering in other States, the court held that the Act does not impose on Ohio an obligation to coach "out-of-state residents through" the process in their new homes. *Id*. PageID#23025. Finally, the district court held that all other injunction factors weighed against relief as "the public interest is being served by Ohio's voter maintenance procedures." *Id*. PageID#23025-026.

D. The Secretary plans to instruct local boards of elections to conduct the Supplemental Process by issuing a directive on July 29, 2016

The Secretary plans to issue a directive on July 29, 2016, instructing county boards to send out notifications pursuant to the Supplemental Process. *This will not result in any names being removed from the registration list in 2016*. Rather, the boards will issue confirmation notices this year for disposition in 2020. The Secretary will also direct boards to track which individuals are sent confirmation notices. This litigation has delayed the State from implementing its list maintenance procedures as contemplated in a settlement agreement from an earlier case. In elections administration, timing is everything. The date on which boards

of elections must conduct the Supplemental Process for 2016 is as much based on the 2020 calendar as the current one. Cancellations under the 2016 Supplemental Process (in 2020) must take place, at the earliest, four years from the date of the mailing, R.C. 3503.21(E), but not closer than 90 days before the 2020 federal general election. 52 U.S.C. § 20507(c)(2)(A). Issuing the 2016 Supplemental Process Directive on July 29, 2016 will leave sufficient—but diminishing—time for the boards to perform the federally required list maintenance in 2020, and diminishing time for voters who receive a confirmation notice and need to update their information before the voter registration deadline for the 2016 presidential general election.

SUMMARY OF THE ARGUMENT

The district court correctly held that the Ohio Supplemental Process complies with the plain language of the National Voter Registration Act and the Help America Vote Act.

I. The Supplemental Process flows naturally from the text and structure of the National Voter Registration Act (the "Act"). The Supplemental Process helps fulfill Ohio's obligations to "conduct a general program that makes a reasonable effort" to "remove the names of ineligible voters" from registration lists, 52 U.S.C. § 20507(a)(4), and "ensure that [its] voter registration records" are "accurate and updated regularly," 52 U.S.C. § 21083(a)(4). The Supplemental

Process strictly follows the prohibition against cancelling a registration absent both a failure to respond to an address-confirmation inquiry and a failure to vote (or otherwise update a registration) for four years after that inquiry. 52 U.S.C. § 20507(d). The Supplemental Process also matches the Act's structure, which imposes a general obligation on the States to cancel registrations, does not specify the manner of satisfying that obligation, and then places certain restrictions on the programs that the State selects.

This reading of the Act also matches the practices of other States and of consent decrees to enforce the Act. In both categories, some programs mail confirmation cards *more broadly* than Ohio by querying *all* registrants, not just those who have failed to vote in recent elections. Finally, any doubt should be resolved in Ohio's favor because a reading of the Act that forecloses it from querying all voters would interfere with its constitutional authority to set and enforce voter qualifications. *See* U.S. Const. art. I, § 2, cl. 1; *id.* amend. XVII.

Plaintiffs' contrary arguments all rely on adding words or phrases to the Act. Their claims that a State may not use the failure to vote to "initiate" an address-confirmation inquiry or that a State program must identify those who have moved with "reasonable accuracy" are simply not based on the Act. *See* Appellants' Br. 35-36.

II. The Act also prescribes the content of an address-confirmation mailing. *See* 52 U.S.C. § 20507(d)(2). Plaintiffs' Amended Complaint challenged various elements of Ohio's now-superseded confirmation card. Those claims are now largely moot. Plaintiffs do still dispute whether Ohio's confirmation mailing must instruct those who move out of Ohio about how they can "continue to be eligible to vote" even if they move to a new State. 52 U.S.C. § 20507(d)(2)(B). That requirement does not compel state election officials to monitor procedures in 49 sister States and then instruct potential state emigrants about those procedures. Instead, the Act deals only with those who move *intrastate*.

Plaintiffs' respond that the district court should have enjoined the Secretary to make sure that he does not revert back to the old form and that the Secretary does in fact have a duty to teach former Ohioans about how to register in other States. The district court did not commit clear error in finding that the Secretary will continue to use the new forms. And the district court was on solid textual and common-sense footing to reject a 49-state survey requirement.

III. Even if the merits cut in favor of the Plaintiffs here, there are reasons to reject their suggested injunction. For one thing, it asks for the impossible in restoring registrations long since cancelled. For another, it requires using addresses in a way that is inconsistent with one plaintiff's request for an injunction in another federal lawsuit against Ohio voting practices. Finally, an injunction is

unnecessary because avoiding the possible harm here is easy: registration in Ohio is simple, and will get simpler still going forward as a result of a new Secretary of State initiative and a new law.

ARGUMENT

The district court rightly rejected a permanent injunction because the plain text of the National Voter Registration Act (the "Act") permits Ohio to cancel the registrations of voters who *both* do not vote (or update a registration) for six years *and* do not respond to an address-confirmation mailing. The court also correctly held that Plaintiffs' allegations about the content of these mailings were either moot or meritless. The district court did not abuse its discretion in declining to impose a permanent injunction.

I. The Ohio Supplemental Process complies with the plain language of the Act; Plaintiffs seek an injunction that violates that plain language

The Act embraces "two general, sometimes conflicting, mandates." *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1274 (D. Colo. 2010). One, to increase voter registration. Two, to promote confidence in elections by requiring accurate voter-registration records. *See* 52 U.S.C. § 20501.

The benefits of both goals are obvious. Registration is a prerequisite to voting. Better registration procedures "reinforce the right" to vote. *Ass'n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833, 835 (6th Cir. 1997). Equally obvious, "public confidence in the integrity of the electoral process" is vital to the

right "because it encourages citizen participation in the democratic process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (Stevens, J., op.); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."). Accurate voter lists promote this confidence because they "curb voter fraud," *Hoffman v. Maryland*, 928 F.2d 646, 649 (4th Cir. 1991), especially vote fraud through absentee ballots, *see Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004); *Crawford*, 553 U.S. at 195-96 (Stevens, J., op.) (fraud "perpetrated using absentee ballots" "demonstrate[s] that not only is the risk of voter fraud real but that it could affect the outcome of a close election").

Balancing the competing goals of more registration and accurate registration means that registering to vote (and remaining registered) cannot be costless. *Cf. Serv. Emp's. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 344 (6th Cir. 2012) (neither the Constitution, nor federal voting statutes "absolve[] voters of all responsibility," especially where information about voting is "easily accessible by calling county boards of elections or accessing the Secretary's webpage"); *Crawford*, 553 U.S. at 199 (Stevens, J., op.) ("travel to the circuit court clerk's office within 10 days" of voting to fill out an affidavit was not likely a burden on voting).

A. The plain text of the Act, along with other aids to construction, allows Ohio's Supplemental Process

Text, structure, the practice in other jurisdictions, and the canon of constitutional avoidance all point in the same direction here. All show that Ohio's Supplemental Process is consistent with the Act.

1. The plain text of the Act allows Ohio's Supplemental Process

As in any statutory-construction case, the starting point, "'of course,'" is the "'text.'" *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013) (citation omitted). When that text is clear, the analysis can "end there as well." *Tapia v. United States*, 564 U.S. 319, 326 (2011). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The text is the beginning and the end of this case. It compels affirmance.

The Act's text directs States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" death or relocation. 52 U.S.C. § 20507 (a)(4). This "plain language" requires that States "actively oversee a general program" to remove ineligible voters from the registration rolls. *United States v. Missouri*, 535 F.3d 844, 849-50 (8th Cir. 2008); *cf. Buescher*, 750 F.Supp.2d at 1274 (one goal of the Act is "ensuring that voter lists include only eligible, current voters").

The Act does not detail exactly *how* States carry out this mandate, but it does offer them a safe harbor and it does place certain limits on fulfilling the obligation to "remove" registrants from the rolls. 52 U.S.C. § 20507(a)(4). The command to remove certain registrants in subsection (a) is followed, in subsection (b), by two general restrictions on these programs. First, they may not discriminate, lack uniformity, or violate the Voting Rights Act. *Id.* § 20507(b)(1). Second, they may only remove registrants "by reason" of the "failure to vote" if the registrant both fails to respond to an address-confirmation notice and fails to vote in two consecutive federal elections following that notice. *Id*. § 20507(b)(2).

Moving to subsection (c), the Act includes a specific allowance and a specific prohibition on State programs to cancel registrations. First, it offers States a safe harbor to comply with the Registration-Maintenance Duty. They may fulfill their obligations to "remove" registrants by "establishing a program" that uses Postal Service data to trigger inquiries about registrants who have moved. *Id.* § 20507(c)(1). Second, the Act requires that any "systematic[]" cancellation program based on change of address be completed at least 90 days before a federal primary or general election. *Id*. § 20507(c)(2); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014) (describing prohibition).

Finally, as relevant here, the Act in subsection (d) details the process for cancelling registrations "on the ground that the registrant has changed residence."

52 U.S.C. § 20507(d)(1). Tracking the language of subsection (b), this subsection authorizes those removals only if the registrant has "failed to respond" to a change-of-address confirmation and failed to vote for four years following that notice. *Id*.

Nothing in these subsections prescribes a specific process that a State must follow to meet its obligation to remove registrants "by reason of" a "change" of "residence." *Id*. § 20507(a)(4) & (a)(4)(B). Instead, at every turn, the language leaves discretion with the States.

Start with the language establishing the safe harbor. It tells States that they "may meet" their obligations to remove registrants who may have moved or died by using Postal Service data. 52 U.S.C. § 20507(c)(1). It does not say that States "must meet" the obligation by establishing such a program. And it certainly does not bar a State from establishing *additional programs* to meet that obligation. The very meaning of a safe harbor is that it guarantees compliance. But the opposite is not true. One outside a safe harbor is not automatically sunk. *See, e.g.*, *City of Omaha Police & Fire Ret. Sys. v. Timberland Co*., No. 11-cv-277, 2013 WL 1314426, at *18 (D.N.H. Mar. 28, 2013) (securities-related statements not actionable even though they fell "outside" of statutory safe harbor). The Act tells States how they may avoid liability coming from the other side for *not* conducting an adequate program cancelling voter registrations. It does not, however, list the *only* way to avoid that liability.

Next consider the rule-of-construction clause in subsection (b)—"nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove" a voter from the roll—which *authorizes* removals that follow the procedures in subsections (c) and (d). 52 U.S.C. § 20507(b)(2). The language that a cancellation "shall not result" from a "failure to vote" "*except*" when coupled with the failure to "respond[]" to an address-confirmation inquiry authorizes the Ohio Supplemental Process. 52 U.S.C. § 20507(b)(2) & (b)(2)(A) (emphasis added). A statutory proviso "except[ing]" conduct from a general prohibition authorizing that conduct. *See, e.g.*, *Andrus v. Allard*, 444 U.S. 51, 56 (1979). To read the Act otherwise would be to "construe[]" it to ban exactly what it says it authorizes. 52 U.S.C. § 20507(b)(2).

Finally, consider the explicit authorization for change-of-address removals in subsection (d). The language there says that a registration shall not be cancelled "*unless*" the registrant fails to both respond to an address-confirmation card and fails to vote for four years. 52 U.S.C. § 20507(d)(1)(B) (emphasis added). This "shall not . . . unless" construction, though phrased in the negative, is permissive. *See Goonsuwan v. Ashcroft*, 252 F.3d 383, 387-88 (5th Cir. 2001) (law phrased in the negative with "shall not . . . unless" "*permits*, but does not require" certain action) (emphasis added); *see In re Udell*, 454 F.3d 180, 185 (3d Cir. 2006)

(absence of "unless" in "shall not" clause meant statute prohibited, but did not permit, certain action). The word "unless" does no work, and the specific directions for cancelling registrations for the combined failure to respond and vote serve no purpose, if the failure to vote cannot be *part* of a program of cancelling registrations.

All told, the Act tells States that they must make a reasonable effort to remove registrants from the list so as to maintain an accurate voter roll. It tells them that one program is a safe harbor from liability for failing to take these reasonable steps. It tells them what steps to take when removing a registrant who may have changed addresses. But nowhere does it tell States that they may not conduct a general or limited mailing of confirmation notices to confirm registrants' addresses. While the Act's language makes it "inescapable" that States have duties for list maintenance, the Act contains "no command—either explicit or implicit—that" they "must" do so in any "specific" way. *T-Mobile S., LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 816 (2015) (Telecommunications Act); *cf. Suter v. Artist M.*, 503 U.S. 347, 362 (1992) (statute that "required reasonable efforts [to] be made by the States, . . . also . . . left a great deal of discretion to them"). Or, as the Eighth Circuit said in interpreting the Act, courts "should refrain from micromanaging the state and its agencies." *Missouri*, 535 F.3d at 851.

2. The structure of the Act corroborates the plain-text meaning

The structure of the Act confirms what the plain text says. "Just as Congress' choice of words is presumed to be deliberate, so too are its structural choices." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2529 (2013); *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936) (Cardozo, J.) (courts must "keep in view also the structure of the statute, and the relation, physical and logical, between its several parts"). That is, the "'words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Mwasaru v. Napolitano*, 619 F.3d 545, 549 (6th Cir. 2010) (citation omitted).

Three structural elements of the Act show that Ohio's Supplemental Process complies. *First*, all of the Act's subsections about cancelling registration serve the statutory command to the States to "*conduct*" a "program that makes a reasonable effort to remove" registrations because of a change in residence. 52 U.S.C. § 20507(a)(4) (emphasis added). That directive points to all of the subsections about cancelling registrations. Those subsections *serve* the overarching goal of creating more accurate voter rolls. Any reading that views those subsections as stand-alone prohibitions on a State's decisionmaking about who is an eligible voter improperly divorces them from the congressional command to cancel inaccurate registrations. These subsections are, instead, specific limitations on the general

"requirement," 52 U.S.C. § 20507(c)(1), that the States maintain accurate voter rolls. *Cf. Nassar*, 133 S. Ct. at 2529 (placement of relevant language informs meaning). This structure shows that the *general* maintenance obligation permits removals *except* for certain *specific* removals, such as those based "solely" on a registrant's consistent non-voting activity. 52 U.S.C. § 21083(a)(4)(A).

Second, subsection (b)'s *limits* on the obligation to remove names shows that the obligation is general and that the Act does not comprehensively dictate how States satisfy that duty. Subsection (b) describes some conditions for "[a]ny State program or activity" designed to ensure "accurate" registration rolls. 52 U.S.C. § 20507(b). It then specifically authorizes the "procedures" in subsections (c) and (d), including that a registration may be cancelled if the registrant both fails to respond to a confirmation notice and fails to vote in two consecutive federal elections. *Id.* § 20507(b)(2). Because *any* uniform, non-discriminatory program to ensure accurate voter rolls is compatible with the Act, so long as it does not cancel registrations absent both non-voting and nonresponse to a confirmation request, the procedures described in subsections (c) and (d) are *part of*, not the *limit of*, procedures the State may use to comply with the Act's maintenance obligations.

Third, the limit in subsection (c)(2) shows that subsection (c) involves discrete limits, not comprehensive authorizations. Subsection (c)(2) controls the timing of certain "systematic[]" programs to cancel registrations and thus implies

that systematic programs outside the 90 days before an election are permitted. As the Eleventh Circuit has explained: "At 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. In the final days before an election, however, the calculus changes." *Arcia*, 772 F.3d 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." *Id*. "This is why the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest." *Id*. That prohibition shows that subsection (c) as a whole enacts discrete limits on removal programs, not widespread bans on them. Subsection (c) deals with two specific topics, but does not limit the overall obligation to "conduct a general program" to cancel registrations. 52 U.S.C. § 20507(a)(4). The safe harbor in (c)(1) and the ban on certain cancellations within 90 days of an election in (c)(2) serve "narrow, specific function[s]," *Erlenbaugh v. United States*, 409 U.S. 239, 246 (1972) (describing Travel Act), not general ones. Neither subsection deals with *all* state programs, as does subsection (b).

3. The Help America Vote Act confirms this meaning and imposes an independent duty on Ohio to maintain an accurate registration list

Further confirmation of the lessons of text and structure is found in the Help America Vote Act. Passed in 2002, the Help America Vote Act imposes on States an "independent . . . requirement to maintain an accurate list of eligible voters." *Colón-Marrero v. Vélez*, 813 F.3d 1, 13 (1st Cir. 2016). It imposes that requirement by "piggyback[ing]" on the "methodology" of the National Voter Registration Act, although it also "affirmatively sets out" cancellation "prerequisites" and "labels those requirements as elements of the '[m]inimum standard for accuracy.'" *Id*. (quoting statute).

One aspect of the minimum standard of the Help America Vote Act is the directive that a State "shall perform list maintenance . . . on a regular basis," 52 U.S.C. § 21083(a)(2)(A), including that the State "shall" remove from the list "registrants who have not responded to a notice and who have not voted" in two subsequent federal elections. *Id*. at 21083(a)(4)(A). The statute then reiterates a prohibition from the National Voter Registration Act in slightly different words, explaining that no registration should be cancelled "*solely* by reason of a failure to vote." *Id*. (emphasis added).

Two other passages in this portion of the Help America Vote Act bear on these "minimum standard[s]." In one, Congress said that the "specific choices on

the methods of complying with the requirements of this subchapter shall be left to the discretion of the State." 52 U.S.C. § 21085. In another, it cautions courts that "nothing in this subchapter [*id.* §§ 21081-21102] shall be construed to prevent a state from establishing . . . administration requirements that are more strict than the requirements established under this subchapter." *Id.* § 21084. Together, those provisions further confirm that the language of both the National Voter Registration Act and the Help America Vote Act mean what they say—States may cancel registrations where a registrant fails to respond to an address-confirmation card and then fails to vote for four years.

Under Ohio's Supplemental Process, registrations are not cancelled *solely* for failure to vote. They are cancelled for absence of voting activity on both sides of a request that the registrant confirm an address. That process is explicitly endorsed in the Help America Vote Act.

4. Other States' practices and federal consent decrees buttress the plain meaning of the Act

Ohio is no outlier; many other States read the Act the same way and use processes like, or more expansive than, Ohio's. By way of example, in Indiana, counties have the choice of procedures, one of which is mailing confirmation cards to *all* registered voters in the county. Ind. Code § 3-7-38.2-2.

And many States, like Ohio, use non-voting to *begin* their list-maintenance processes. Missouri conducts a canvass every two years "house-to-house, through

the United States Postal Service, or by both methods" of either all voters or "[a]t the discretion of the election authority . . . only those voters who did not vote at the last general election." Mo. Ann. Stat. § 115.181. Tennessee relies on two years of inactivity. Tenn. Code. Ann. § 2-2-106(c). Georgia uses three years. Ga. Code Ann. § 21-2-234(a)(2). Montana may send "a targeted mailing to electors who failed to vote in the preceding federal general election." Mont. Code Ann. § 13-2-220 (1)(c).

In Ohio, as elsewhere, non-voting is used to *query* registrants to confirm their addresses, not to remove them from the list. That process does not cancel a registration "solely" for non-voting. 52 U.S.C. § 21083(a)(4)(A).

Beyond these sister-state comparators, settled litigation accords with the plain text. At least three district courts have retained jurisdiction to enforce consent decrees that mandate list-maintenance programs that begin with identifying individuals based on voter inactivity. One of these followed a lawsuit against a Mississippi county after the discovery that the county had "more people registered to vote than there were citizens of voting age population." Consent Decree in *ACRU v. Jefferson Davis Cnty. Election Comm'n*, No. 2:13-cv-87-KS-MTP (S.D. Miss. 2013), R.50-2, PageID#22563. The consent decree includes a list-maintenance procedure that requires the county to remove from the voter list any individual who is inactive "in two consecutive federal election cycles," does

not respond to a notice, and then does not vote or appear to vote in the two subsequent federal general elections. *Id*. PageID#22567.

The Southern District of Mississippi approved a consent decree requiring another Mississippi county to use a procedure that begins by identifying individuals who have "not vot[ed] in two consecutive federal election cycles." Consent Decree in *ACRU v. Clarke Cnty., Miss. Election Comm'n*, No. 2:15-cv-101-KS-MTP (S.D. Miss. 2015), R.50-4, PageID#22586.

Finally, the consent decree in another Mississippi county includes the obligation to initiate registration clean-up with a countywide mailing "to all registered voters." Consent Decree in *ACRU v. Walthall Cnty., Miss. Election Comm'n*, Case No. 2:13cv-86-KS-MTP (S.D. Miss. 2013), R.50-3, PageID#22577.

These agreements are remedies for violating the Act. If jurisdictions outside Ohio can be ordered to use voter inactivity to *satisfy* the Act, Ohio is not *violating* the Act by doing the same thing.

5. Any lingering doubt about the meaning of the Act must be resolved in favor of the Secretary to avoid constitutional questions

Any doubt that the Act permits Ohio's Supplemental Process evaporates in light of the canon of constitutional avoidance. "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly

contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). The canon does work here because "the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247, 2257 (2013). The latter is the province of the States. *See* U.S. Const., art. I, § 2, cl. 1; *id.* amdt. XVII (the "Qualifications Clauses"). Any reading of the Act that would "preclude[] a State from obtaining information necessary to enforce its voter qualifications" would raise "serious constitutional doubts." *Inter Tribal*, 133 S. Ct. at 2258–59. That is, congressional power over process may not swallow State power over qualifications.

Reading the Act broadly to prohibit Ohio from soliciting information to ensure that those persons on its voter roll in fact meet the qualifications to vote would exceed congressional power under the Elections Clause and invade the States' powers under the Qualifications Clauses. Ohio's Safe-Harbor Process only identifies registrants who notify the Postal Service when they move. But hundreds of thousands of others move without filing a notice. Voters who no longer live in Ohio are not qualified to vote here. *See* Ohio Const. Art. V, § 1; Ohio Rev. Code § 3503.01(A). Reading the Act to block Ohio's Supplemental Process interferes with Ohio's ability to determine if certain voters on its rolls are ineligible to vote. That raises a serious constitutional question. *Cf. Bell v. Marinko*, 367 F.3d 588,

592 (6th Cir. 2004) ("the Act does not bar the Board's *continuing* consideration of a voter's residence, and instead encourages the Board to maintain accurate and reliable voting rolls" (emphasis added)); *Buescher*, 750 F. Supp. 2d at 1263-64 (court refused to read the Act to "interfere[] with Colorado's ability to confirm a registration applicant's initial residential eligibility").

A broad reading of the Act also raises a separate constitutional problem. In Ohio, not voting for more than four years disqualifies a voter absent reregistration. Ohio Const. Art. V, § 1. Reading the Act as blocking any effort to cancel registrations tied to non-voting raises a serious constitutional question because the "power to establish voting requirements is of little value without the power to enforce those requirements." *Inter Tribal*, 133 S. Ct. at 2258. "Certainly an interpretation of the [Act] . . . that prevents [a State] from removing [non-qualified voters] would raise constitutional concerns regarding Congress's power to determine the qualifications of eligible voters in federal elections." *Arcia*, 772 F.3d at 1346. To be sure, Ohio does not currently cancel registrations solely for non-voting. But reading the Act to block *any use* of non-voting in maintaining Ohio's voting rolls trenches deeply on its right to set voter qualifications.

B. Plaintiffs' (and the United States') attacks on the district court opinion come up short

Plaintiffs and the United States ("U.S.") as amicus provide no reason to disrupt the district court's order refusing to impose a permanent injunction. Many

of these arguments overlap (*see* Part I.B.1), but the U.S. offers a few unique (though unpersuasive) new arguments as well (*see* Part I.B.2).

1. Plaintiffs and the U.S. run from the natural meaning of the text by arguing that the Act bars Ohio's Supplemental Process

Plaintiffs' core argument requires adding words or phrases to the Act. They say that a State must "identify with reasonable accuracy those voters who have changed residence"; "obtain[] objective and reliable evidence, *independent of the voter's failure to vote*, that indicates the voter may have moved"; and consider "failure to vote only after independent information indicates a voter may have changed residence" Appellants' Br. 28, 30. Or, as they say elsewhere, the Act "requires [use of] government information reliably indicating that a voter *has moved*." *Id*. at 40. In a slight variation on this point, the U.S. believes that the Safe-Harbor provision "strongly suggests" that States must have "comparably reliable evidence" for any other process the States might choose. U.S. Br. 19.

None of these phrases is in the Act, meaning that Plaintiffs cut against the established grain that courts "refrain from reading a phrase into the statute when Congress has left it out," *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993), and "resist reading words or elements into a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997). Plaintiffs nowhere explain how any purported "alternatives" to the Ohio Supplemental Process satisfy their own

insistence that failure to vote may not "result[] in" a cancelled registration. Appellants' Br. 23. Even the Safe-Harbor Process in subsection (c)(1) "results in" a registration cancelled after inaction plus not voting. Plaintiffs reveal that their aim is to limit States to the Safe-Harbor Process, or something nearly equivalent. For example, they insist that even a tax record indicating that someone has changed residence would be insufficient—in fact, "absurd[]"—to use as "government information reliably indicating that a voter has moved." Appellants' Br. 47 & n.13. The absurdity would be in blocking the use of that information.

Nor does the U.S.'s similar statute-amending argument have any textual anchor. The Department locates in the statute an inference that a State process must use "comparably reliable evidence," U.S. Br. 19, to the Safe-Harbor Process. The limits on State programs are found in the specific words of the Act, such as the requirements of uniformity in subsection (b)(1) and the waiting period of two federal elections to cancel a registration in subsections (b)(2) and (d)(1). That the limits are explicit, not implicit, is confirmed by the Help America Vote Act, which gives States "discretion" to implement these programs. 52 U.S.C. § 21085. The limits in the Act are in the text, not "suggest[ed]." U.S. Br. 19.

Building on these errors of adding text to the statute, Plaintiffs accuse the district court of reading "out of the statute" the subsection (b) prohibition on cancelling registrations for non-voting. Appellants' Br. 26. That has it exactly

backwards. It is Plaintiffs who read out the words "nothing [in the statute] . . . may be construed to prohibit" cancellations for both failing to vote and failing to respond. 52 U.S.C. § 20507(b)(2). Plaintiffs' argument seeks to prohibit just that.

Plaintiffs push back, saying that this reading gives the States "virtually limitless discretion" to decide to whom it mails confirmation cards. Appt. Br. 26. The States do have that discretion. Nothing in the Act prohibits an *all-registrant* mailing every two years. The only limits are those in the Act, such as not cancelling a registration *solely* for non-voting. The Help America Vote Act confirms this point, as it gives States "discretion," 52 U.S.C. § 21085, about how to comply with that Act and establishes requirements that parallel the National Voter Registration Act, *id*. at 21083(a)(4)(A). The Act simply does not say that "failure to vote may not be considered as the basis for initiating the confirmation-and-cancell[ation] process." Appellants' Br. 28.

Plaintiffs next turn to structure, and insist that subsections (b), (c), and (d) must be read "holistically," Appellants' Br. 28, and that subsection (c) therefore "incorporates subsection (d) as the mechanism for confirming that [voters have moved]." Appellants' Br. 34. The cross-reference Plaintiffs highlight undermines the point. Subsection (c) refers only to the prepaid notice portion of subsection (d) (part (d)(2)); it does not refer to part (d)(1), the precise portion of subsection (d) that details how a State may cancel a registration for non-responsiveness and non-

voting combined. The better reading of these subsections, as explained above, is that subsection (c) contains two specific limits on cancellation programs, while subsection (d) details the process for certain cancellations, regardless of how that process starts.

Plaintiffs gain no ground in citing the discredited remedial-statute canon. Appellants' Br. 30. That rule invites interpretive problems; it does not resolve them. The chief problems are two: (1) what counts as a remedial law; (2) what counts as a liberal construction. *See* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at 364-65 (2012). Those problems are on full display here. The Act aims both to expand voter registration and contract oversubscribed registration lists. Is the interpretation favoring more registration or more list maintenance more faithful to the "remedial" goals of the statute? Appellants' Br. 30. To ask is to show there is no answer. The canon, even if it were valid, does no work here for an Act that has two conflicting "goals."

Plaintiffs also point (Br. 38) to legislative history, a move that is "unnecessary in light of the statute's unambiguous language." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 236, n.3 (2010). Even so, this history does not aid Plaintiffs. Nothing Plaintiffs cite says that a list-maintenance program cannot use voter inactivity when *coupled with* a confirmation notice. Indeed, both the Senate Report and House Report that Plaintiffs cite say only that

the Act bars States from cancelling registrations *solely* for non-voting without confirmation. As those reports note, at the time, almost "all states" used some procedure for updating lists. S. Rep. No. 103-6, at 46 (1993); H.R. Rep. No. 103-9, at 30 (1993). About 10 canvassed "all voters on the list." *Id*. The rest "target[ed] only those who did not vote in the most recent election (using not voting as an indication that an individual might have moved)." *Id*. Of these, only a handful of states "simply drop[ed] the non-voters from the list without notice." *Id.* "*These* states could not continue this practice under the bill." *Id*. (emphasis added). Only those programs that dropped voters without notice conflicted with the proposed law.

Plaintiffs next take an irrelevant detour about whether the Help America Vote Act changed (rather than clarified) the National Voter Registration Act. Appellants' Br. 33-34. The Help America Vote Act added language to what is now 52 U.S.C. § 20507(b). Whether that language clarified the law as it was then or changed it is irrelevant. The section as it stands *now* includes the words added in 2002. And those are the words that govern the State's obligation to maintain accurate voter lists. The words are what matter, not whether they clarified or changed the law.

What is relevant, as the district court said, is that Plaintiffs "seemingly ignore the rest of that clause, which . . . provides exceptions that allow for the

procedures specifically described in both subsections (c) and (d)." Or., R.66, PageID#23014; *see also id.* PageID#23015 ("it is Plaintiffs who focus on a single clause in Section 20507(b)(2) and not the entirety of the statute."). Plaintiffs' argument about how to *characterize* the Help America Vote Act, rather than interpret the words themselves, shows that the plain text dooms their argument.

Plaintiffs next take a single word out of context and assail Ohio's process as "unreasonable." Appellants' Br. 36; *see also* U.S. Br. 19-20. This argument plucks the word reasonable from the following text: "In the administration of voter registration for elections for Federal office, each State shall . . . (4) conduct a general program that makes a *reasonable* effort to remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(a)(4)(B) (emphasis added). As the whole passage makes plain, Plaintiffs' argument turns this command on its head. Plaintiffs take a statute requiring a program that makes a reasonable effort to *remove* the names of ineligible voters and turn it into one that requires States to "make a reasonable effort to *avoid* removing voters who remain eligible." Appellants' Br. 36 (emphasis added). Read in context, the reasonableness obligation tells States "to ensure that accurate and current voter registration rolls are maintained," 52 U.S.C. § 20501(b)(4), not to reasonably avoid doing so.

Plaintiffs' non-contextual reading is inconsistent with established methods of reading statutes. Courts do not ask "abstract question[s] about the meaning" of a word, they instead "seek[] the meaning of the whole phrase." *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 596 (2004); *Abramski v. United States*, 134 S. Ct. 2259, 2267 n.6 (2014) (a court should not interpret a word "with blinders on, refusing to look at the word's function within the broader statutory context"). Other parts of the Act already define what Congress believed would be unreasonable steps to maintain accurate voter rolls. *See* 52 U.S.C. § 20507(b) (cannot violate Voting Rights Act or otherwise discriminate); *id.* § 20507(c) (cannot remove for change of address within 90 days of an election); *id.* § 20507(d) (non-response to address-confirmation not sufficient by itself). The only general reasonableness requirement in the statute is to take reasonable steps to *remove* registrations from the rolls. Further confirmation that Plaintiffs take the word reasonable out of all context is the language in the Help America Vote Act reminding that the States have leeway to make the "specific choices" about the methods they use to meet their obligations to ensure accurate voter registration records. 52 U.S.C. § 21085. Even if reasonable means what Plaintiffs say, it is largely a question left to the States.

Plaintiffs also point to the position the U.S. Department of Justice has taken in a recent statement of interest. Appellants' Br. 36-37. Of course, the plain text

makes the Department's position irrelevant. *See* Or., R.66, PageID#23012 ("Plaintiffs' reliance on the Department['s] interpretations of the [Act] is misplaced because the Court need not consider those interpretations where the [Act] is clear on its face.").

Regardless, the Department's position is entitled to no weight because the Department is not tasked with interpreting the Act. The Act empowers the Department to sue "to carry out this chapter," 52 U.S.C. § 20510(a), not to interpret it. Because the Department is "not considered an administrative agency when it enforces statutes," it is "not entitled to *Chevron* deference" as to the meaning of those statutes. *United States v. Philip Morris USA, Inc.*, 310 F. Supp. 2d 68, 72 n.5 (D.D.C. 2004); *see United States v. New York*, 3 F. Supp. 2d 298, 308 (E.D.N.Y. 1998) (no deference to interpretation of National Voter Registration Act), *rev'd in part on other grounds*, *Disabled in Action of Metro. N.Y. v. Hammons*, 202 F.3d 110 (2d Cir. 2000).

Beyond that, the Department has earlier settled a case while allowing a practice that they now say violates the Act. In 2007, the Department settled litigation with Philadelphia that involved, among other issues, the city's failure to properly maintain its voter rolls. The settlement agreement obligated the city to use a process triggered by a registrant "not vot[ing] nor appear[ing] to vote." The relevant portion reads:

> It shall be the policy of the Board to use all mandatory and reasonably available optional voter update and removal programs and . . . (5) *send a forwardable confirmation notice to any registered elector who has not voted nor appeared to vote during any election*, or contacted the Board in any manner, and whose contact resulted in a change in his or her voter record; (6) place voters who do not respond to the confirmation notice into an inactive status . . . ; (7) remove inactive voters who fail to appear to vote during the period beginning with the date of the confirmation notice and ending after the second federal general election following the date of the confirmation notice or who indicate in writing that they have moved outside of the jurisdiction . . .

Settlement Agreement in *United States v. City of Philadelphia and Philadelphia City Comm'n*, No. 06-4592 (E.D. Pa. 2007), Doc 49-2, PageID#22453-54 (emphasis added). Although the Department *now* says that this settlement did not bless Pennsylvania law under the Act, *at the time*, the parties agreed that the City must "undertake the *specific activities* set forth in this Agreement to continue and/or enhance its activities to *comply with* state and *federal* election law." *Id.* PageID#22447 (emphasis added); *cf. Welker v. Clarke*, 239 F.3d 596, 599 (3d Cir. 2001) (Pennsylvania's list-maintenance procedures are "virtually identical to those of the [Act] for the removal of voters"). If the Department thought then what it thinks now, it should not have signed that agreement.

Plaintiffs finally turn to dicta from a Third Circuit decision that did not interpret the Act. Appellants' Br. 40 (citing *Welker*, 239 F.3d 596). *Welker*'s

statements about the Act were background for explaining Pennsylvania law about voting records. *See* 239 F. 3d at 599. And even that dictum only suggested using "reliable information from government agencies" to maintain an accurate voter roll. *Id.* That would certainly include the county records of voter inactivity used to initiate Ohio's process, just as Pennsylvania used voter inactivity in the very system discussed in *Welker*. *Id*. at 600*; see also Missouri*, 535 F.3d at 849-50 ("reasonable effort" mandate of Act requires that States "actively oversee a general program" to remove ineligible registrants from the roll).

2. The United States' additional arguments also fail to persuade

The U.S. offers a few additional arguments, but none give a solid reason to doubt the district court's decision declining to impose a permanent injunction.

The U.S. first finds unwarranted meaning in the word "confirms" in subsection (d)(1). According to the U.S., this must mean that the process in subsection (d) is confirming "some evidence that a voter has moved." U.S. Br. 17-18. Nothing in the Act supports this "some evidence" requirement. The subsection (d) process is aimed at confirming what *might* be true, not only what is *probably* true. One can confirm a suspicion, or a hunch. One need not only "confirm" what is already likely. A State could send confirmation notices to all registrants to "confirm" that they have not moved. Because such a mailing would reach millions of people, it would "confirm" that many had moved and many had

not. Nothing about the plain meaning of confirm requires that the State has any sense, one way or the other, what a particular recipient will confirm. Regardless, Ohio's Supplemental Process *does* have "some evidence" that a registrant has moved because non-voters are more likely to have moved than someone who has just voted.

The U.S. next (Br. 23) draws the wrong lesson from language in the Help America Vote Act telling States to remove registrants who both do not respond to a confirmation request and do not vote in two consecutive federal elections. 52 U.S.C. § 21083(a)(4)(A). According to the U.S., the clause, "except that no registrant may be removed solely by reason of a failure to vote," somehow limits the explicit language that a State "shall" remove registrants for the twin failure to confirm an address and to vote. But that clause simply reiterates that non-voting *by itself* cannot lead to a cancelled registration. That reading follows for four reasons. *First*, another passage that authorizes cancellations on this basis has no similar language attached. *See* 52 U.S.C. § 20507(d)(1). If this "except" clause meant what the Department claims, it should be part of that subsection.

Second, the "except" clause, as the First Circuit has noted, may be a congressional attempt to confer a private right of action. *See Colón-Marrero*, 813 F.3d at 18. Absent the language that "no registrant" shall have a registration cancelled solely for not voting, the rest of the statute would almost certainly not

confer any privately enforceable rights. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002).

Third, this is a common statutory belt-and-suspenders approach that explains what is permitted and what is prohibited by describing both sides of the same coin. *See McEvoy v. IEI Barge Servs., Inc.*, 622 F.3d 671, 677 (7th Cir. 2010) ("Congress may choose a belt-and-suspenders approach" to drafting); *cf. TMW Enter., Inc. v. Fed. Ins. Co.*, 619 F.3d 574, 577 (6th Cir. 2010) (legal language often includes clauses that, although unnecessary "as a matter of sheer logic," helpfully "serve[] to remind the reader[]" that there are "two sides" to the question; after all, "traffic lights" do not technically "need a green signal").

Finally, the analysis accompanying the origin of the two-step cancellation authority disproves the U.S.'s reading. That analysis distinguished between State programs that cancelled registrations *only* for not voting and those that *also* required non-response to some kind of confirmation. *See supra* at 41-42.

As a final point, the U.S. extracts an up-side-down meaning from an unreported district court case. U.S. Br. 25 (citing *Wilson* v. *United States*, Nos. 95-20042, 94-20860 (N.D. Cal. Nov. 2, 1995). *Wilson* held only that the Act allowed California's program of cancelling registrations after a confirmation card was returned as undeliverable and the registrant then did not vote. U.S. Br. Ex. 8, at 5. Only an "'undiscerning reader,'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 739 (2011),

would take *Wilson*'s endorsement of California's procedure as a condemnation of Ohio's. Indeed, *Wilson* "disagree[d]" with the argument that California's procedure "result[ed] in a voter being dropped from the list for his or her failure to vote." U.S. Br. Ex. 8, at 5. That rejected argument is the same one the Department makes here.

II. Ohio's Confirmation Notice Complies with the Act.

Of the various challenges that Plaintiffs leveled against the form of confirmation notice that Ohio used in the past, all of those claims are moot (or abandoned) except for the claim that the form must tell recipients how to register in another State. That non-moot claim has no merit both because no plaintiff has standing to bring it and because the text of the Act speaks only to continued registration *within* a State. The district court rightly rejected all of these claims, and the Plaintiffs' counterarguments do not show error.

A. Most claims about the confirmation notice are moot; the live one is meritless

As Ohio has switched to a new format for its confirmation notice, almost all of Plaintiffs' objections to the old notice are moot. Walsh Decl. ¶ 4, R.38-19, PageID#1363. The new form lists the date by which a person must respond and includes a bold-text message that failure to act will result in removal from the voter roll. The Secretary issued the new form of the confirmation notice, which local boards of elections will use for all mailings this year and going forward. *See*

Confirmation Notice, R.56-2, PageID#22821. The new notice, Form 10-S-1, gives voters instructions as to what they must do to maintain their voter registration, if they still reside in Ohio.

Plaintiffs alleged originally that the Act requires that a confirmation notice give three instructions to those who have either not moved or have moved but remain in the same registrar's jurisdiction. (Ohio's voter registrars operate on a county level.) First, that the voter must return the card by the deadline for mail registration. Second, that if the voter does not return the notice by the deadline, they may have to give confirmation or affirmation of their address in order to vote. Third, that if they fail to return the notice or vote within the next two federal election cycles, their name will be removed from the roll.

Ohio now satisfies these requests through the 10-S-1 form. The Form instructs those who have not moved to return the card by a given date. *Id.* It warns that those who fail to return the card may have to vote by provisional ballot in the upcoming election if they have moved. *Id.* Finally, it cautions voters that a failure to return the card, coupled with not voting in future elections, will cancel the registration. *Id.*

These changes moot the portions of the Amended Complaint attacking the former confirmation card for not setting deadlines, instructing recipients how to update an address, or informing recipients of the consequences of non-compliance.

Am. Comp., R.37, PageID#231-32. The new form also triggered changes to an accompanying website that lets Ohio registrants update or confirm an address online. That moots the complaint that the website (a convenience to voters) served only to facilitate a change of address. *Id*. PageID#231-32. The procedures now in place moot almost all of Plaintiffs' attacks on the confirmation card and website. As this Court has said, state-actors' "'self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.'" *Mosley v. Hairston*, 920 F.2d 409, 415 (6th Cir.1990) (citation omitted). Here, the district court found, "no evidence to suggest that the [Secretary] does not plan to use this Revised Notice in 2016 or at any other point in the future." Or., R.66, PageID#23024. That finding was not clearly erroneous.

That leaves one item in the Amended Complaint that Plaintiffs still advance on appeal—that the confirmation card does not tell recipients who have moved out of Ohio how to register in their new State. *See id*. PageID#231 & Appellants' Br. 44, 46. There is both a standing and a merits problem with this claim.

On standing, as far as the Secretary is aware, there is no evidence here that the individual plaintiff or members of either organization have been harmed (or will be) by Ohio's address-confirmation cards because those cards lack information about how to register in other states. Therefore, no plaintiff has personal or associational standing to litigate this claim. *See Davis v. Fed. Election*

Comm'n, 554 U.S. 724, 734 (2008) ("'a plaintiff must demonstrate standing for each claim he seeks to press'") (citation omitted); *Nat'l Air Traffic Controllers Ass'n v. Sec'y of Dep't of Transp.*, 654 F.3d 654, 660 (6th Cir. 2011) (no associational standing because no member had standing).

Nor does either entity here have organizational standing. "[E]fforts and expense to advise others how to comport with the law," generally do not give an entity organizational standing. *Fair Elections Ohio v. Husted* ("*FEO*"), 770 F.3d 456, 460 (2014). At best, that is all the entity plaintiffs would do here—advise others that they should register if they move out of Ohio. Regardless, there is no evidence that either entity has or plans to so educate others.

Finally, neither entity has third-party standing. The relationship between an advocacy group and its members or constituents is nothing like the doctor-patient or similar relationships that may satisfy third-party standing. *FEO*, 770 F.3d at 461.

Even if a plaintiff has standing as to the remaining portion of Count 2, the district court rightly rejected the claim on the merits. When an individual has moved to a place outside the registrar's jurisdiction, a confirmation notice must include "information concerning how the registrant can continue to be eligible to vote." 52 U.S.C. § 20507(d)(2)(B). Ohio's Confirmation Notice tells recipients who have changed residence to another Ohio county what they must do to update

their registrations. Confirmation Notice, R.56-2, PageID#22821. In fact, Ohio goes an extra step by allowing individuals to complete this process by filling out the card and returning it (postage prepaid) or by using a web-based service. *Id.* By providing information on how to update registrations, Ohio satisfies the Act.

The Act does not require that a confirmation notice include information on how to register outside Ohio if a person moves to a different State. The Act's phrase, "continue to be eligible," 52 U.S.C. § 20507(d)(2)(B), does not include instructions about registering in a new State. The States operate independent registration systems. *See, e.g.*, 52 U.S.C. § 21083(a) (each *State* "shall implement . . . [a] statewide voter registration list"). No voter "continues" to be registered by moving out of state. The plain meaning of the word confirms this. "Continue" here means to "remain, as to remain in office." *Ballentine's Law Dictionary* 261 (3d ed. 1969); *see also Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2560 (2013) ("'continued' plainly refers to a pre-existing state") (collecting authorities); *Pugach v. Office of Pers. Mgmt.*, 46 F.3d 1081, 1083 (Fed. Cir. 1995) ("continue means 'to maintain without interruption'") (citation omitted). No voter can "continue to be eligible" to vote by moving from Ohio to Michigan, no matter what instructions are on the confirmation card. Rather, the new Michigander must become a *newly registered* Michigan voter. By contrast, the Ohioan who moves

from one county to another can *continue* to be registered by updating a residential address.

As a practical matter, including the requirements for registration in every state and local jurisdiction where an individual may vote in a federal election would radically expand the confirmation card. It takes the United States Election Assistance Commission 18 pages to explain state-by-state voter registration instructions. U.S. Elections Commission, *Registering To Vote In Your State By Using This Postcard Form and Guide* (2006), R.49-8, PageID#22495. As the district court said, "It defies logic that the [Act] would saddle the various secretaries of state (or their equivalents) with the onerous burden of coaching out-of-state residents through the registration process in their new states of residence." Or. R.67, PageID#23025.

B. Plaintiffs muster no convincing counterargument

Plaintiffs resist the district court's finding that most of Count 2 is moot because the Secretary will abide by his new procedures. They contend that the Secretary has not shown "that the allegedly wrongful conduct cannot reasonably be expected to recur." Appellants' Br. 44. Yet they give no reason to doubt the district court's finding or to rebut the solicitude that this Court affords officials when they represent that their current practices will remain in place, and are not simply litigation-avoiding shams. *See Mosley*, 920 F.2d at 415; *Weeks v.*

Chaboudy, 984 F.2d 185, 190 (6th Cir. 1993) (vacating injunction as moot where officials had "already demonstrated a willingness" to do what would be required under the injunction); *see also Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (7th Cir. 1988); *Sossamon v. Texas*, 560 F.3d 316, 325 (5th Cir. 2009), *aff'd on other grounds*, 563 U.S. 277 (2011).

Plaintiffs counter that, because "the Secretary has regularly changed the form," it follows that he may change the form again. Appellants' Br. 45. That turns a virtue into a vice by criticizing the Secretary for past efforts to improve voting in Ohio *outside of litigation.* If that can be held against him, or future secretaries of state, then every improvement to Ohio election administration will need to come externally through litigation rather than internally through self-evaluation. The Secretary has changed the procedures in good faith. He has represented the changes to the Court. A permanent injunction to not recede from the status quo confers no benefit. Instead it undermines future voluntary changes that improve voting for all Ohioans.

Finally, Plaintiffs stand by the idea that Ohio must instruct those who receive confirmation cards about how to register in other states. The argument reads words into the Act, is impractical, and would do more harm than good. As explained above, the word "continue" means an intra-state move, not an interstate one. Nor is it practical for Ohio to provide voter information for all other states.

Indeed, it risks giving recipients inaccurate information if Ohio officials are not constantly abreast of new laws in every other state.

As a last-ditch effort, Plaintiffs suggest that the confirmation card could include a hyperlink to an online resource. Appellants' Br. 44 & n. 15. That suggestion does not match the statute's instruction to give recipients "information" about remaining registered. 52 U.S.C. § 20507(d)(2)(B). A website address is not itself information "concerning" how to remain eligible to vote. *Id.*

III. An injunction is not justified in any event

Plaintiffs propose two different injunctions. Both pose practical problems that, even apart from the merits, justify the district court's discretionary call to decline equitable relief. One aspect of Plaintiffs' request would require the Secretary to "use a confirmation notice" that complies with the Act. Appellants' Br. 47. But Plaintiffs do not specify what that means. As discussed above, the alleged deficiencies in the confirmation notice are either moot or meritless. A permanent injunction telling the Secretary to follow the law that he is already following is pointless, and unnecessarily embroils the federal court in the details of Ohio's election procedures. *See Missouri*, 535 F.3d at 851 (federal courts "should refrain from micromanaging the state and its agencies" through the Act).

Another aspect of the proposed injunction asks either for an impossibility or a procedure that conflicts with one plaintiff's position in parallel litigation. As

Plaintiffs say here, they request an injunction either "reinstat[ing] all" voters "unlawfully" removed *or* one that counts all provisional ballots cast by those who continue to reside at the "same address." Appellants' Br. 47. The broader request is impossible because there are not records of "all" registrations cancelled by reason of the supplemental process. *See* Damschroder Dep. 94:16-95:20, R.42-1, PageID#1555. The more narrow relief has two flaws. First, like the broader relief, it also depends on whether a record exists for a now-cancelled registrant. Second, it is inconsistent with the relief plaintiff Northeast Ohio Coalition for the Homeless secured in a different case. In that other litigation, a district court enjoined Ohio from requiring voters to list an accurate address on provisional ballots. *See Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2016 WL 3166251 (S.D. Ohio June 7, 2016). If provisional voters need not provide a current address, there is no way for a board of elections to determine whether the provisional voters reside at the same address as when they were cancelled. Thus, the narrower injunction would be impossible for a reason that the Coalition itself requested in another case.

More globally, a retroactive injunction is unnecessary because any person who was formerly a registrant, but had that status cancelled, can still register for the upcoming November election. Registration in Ohio continues to get easier. First, the Secretary has recently joined the Electronic Registration Information

Center ("ERIC"), a non-profit corporation which requires member States to contact eligible, unregistered individuals throughout the State and send them information about how to register to vote. Electronic Registration Information Center, Inc., *ERIC: Summary of Membership Guidelines and Procedures*, R.49-11, PageID#22546. Ohio expects to provide registration notices to 1.5 million such eligible, but unregistered, Ohio residents before the 2016 presidential-election voter-registration deadline. Second, at the Secretary's suggestion, the Ohio General Assembly recently passed Substitute Senate Bill 63, which authorizes online voter registration, beginning January 2017. *See* Ohio Rev. Code § 3503.20 (effective Sept. 13, 2016).

Finally, an injunction would guarantee more inaccuracies in Ohio's voter-registration lists. That opens the door to abuse, which in turn opens the door to "affect[ing] the outcome of a close election." *Crawford*, 553 U.S. at 195-96 (Stevens, J., op.).

CONCLUSION

The district court's judgment should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B):

1. Exclusive of the portions of the brief exempted by 6th Cir. R. 32 (b)(1), the brief contains 13,842 words.

2. The brief has been prepared in monospaced (nonproportionally spaced) typeface using a Times New Roman, 14 point font.

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CERTIFICATE OF SERVICE

I certify that a copy of this brief has been served through the Court's electronic filing system on this 20th day of July 2016. Electronic service was therefore made upon all counsel of record on the same day.

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DESIGNATION OF DISTRICT COURT RECORD

Appellee Secretary of State Jon Husted designates the following district court documents:

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R.38-3	Declaration of Patricia Wolfe	362-367
R.38-4	Settlement Agreement, *Judicial Watch, Inc. v. Husted*	368-373
R.38-6	Office of Inspector General, U.S. Postal Service, Strategies for Reducing Undeliverable as Addressed Mail	380-399
R.38-7	Directive 2009-05	400-408
R.38-9	The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2011-2012	410-494
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R.50-3	Consent Decree, *ACRU v. Walthall County, Mississippi Election Commission*	22573-22582
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