Case No. 18-3984

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OHIO A. PHILIP RANDOLPH INSTITUTE; NORTHEAST OHIO COALITION FOR THE HOMELESS; and LARRY HARMON

Plaintiffs-Appellants

v.

JON HUSTED, Secretary of State of Ohio

Defendant-Appellee

On Appeal from the United States District Court
for the Southern District of Ohio
Eastern Division

EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

Appellants Ohio A. Philip Randolph Institute ("APRI"), Northeast Ohio Coalition for the Homeless ("NEOCH"), and Larry Harmon move for an injunction pending appeal pursuant to Federal Rule of Appellate Procedure 8(a). Immediate injunctive relief is necessary to protect voters whom Appellee Jon Husted, the Ohio Secretary of State, purged from the voter rolls—and voters scheduled to be purged after November's election—for not responding to a notice that this Court described as "blatantly non-compliant" with the National Voter Registration Act "NVRA." *A. Philip Randolph Institute v. Husted*, 838 F.3d 699, 713 (6th Cir. 2016) ("*APRI I*").

From the inception of this lawsuit, Appellants have challenged the adequacy of the confirmation notice that Ohio used for some 20 years to begin the process of purging voters Ohio believed had moved. RE37 (Amended Complaint), PAGEID#237-238. The notices sent before 2016 did not comply with the NVRA because they: (1) failed to fully explain the circumstances that would lead to removal, and therefore "did not adequately inform voters of the consequences of failing to respond," *APRI*, 838 F.3d at 703; (2) failed to inform voters of the deadline for returning the confirmation card to affirm that they had not moved outside the jurisdiction; and (3) required eligible voters essentially to complete a

new voter registration form to remain on the rolls. Removing voters from the rolls on the basis of these legally insufficient notices directly violates the NVRA.

During final briefing on the merits in the District Court in 2016, Appellee issued a new notice that corrected these deficiencies, and the District Court ruled Appellants' claims were thereby rendered moot. This Court reversed because Appellee remained free to reinstitute the deficient notice absent injunctive relief and because correcting the notice did not address the harm to voters who had been purged after receiving "blatantly non-compliant" notices. Appellee did not seek certiorari on that aspect of this Court's ruling. APRI I, 738 F.3d at 713.

Following remand from the Supreme Court, Appellee argued—for the first time—that the notices had been lawful all along. On October 10, 2018, the District Court agreed—notwithstanding this Court's strong language to the contrary—and denied Appellants' request for a permanent injunction. This decision, coming as it did right after the close of registration, leaves Ohio voters purged without adequate prior notice with no way to correct their registrations before the November election. Issuance of an injunction by this Court is therefore necessary to protect Ohioans' fundamental right to vote.

Appellants ask this Court to order Appellee to issue a directive to Ohio's county boards of elections ("Boards") instructing them (*i*) to count certain provisional ballots that may be cast in the November 6, 2018 Federal Election, to

process certain UOCAVA absentee ballot requests, and to send information to certain voters who request mail ballots, all in accordance with a set of procedures, known as the "APRI Exception," that have been successfully implemented in every Ohio election since November 2016; and (*ii*) during this appeal, not to remove any voter under a voter-roll-maintenance procedure known as the Supplemental Process if the confirmation notice required to be sent in accordance with Section 8(d) of the NVRA was sent prior to August 2016. Because of the impending federal election on November 6, 2018, Appellants request Appellee be ordered to respond no later than October 17, and Appellants to reply no later than October 18.

FACTUAL AND PROCEDURAL BACKGROUND

A. Ohio's Confirmation Notice

In 1994, Ohio established a roll-maintenance procedure known as the Supplemental Process to identify people who "may have moved" and become ineligible to vote in their current voting district. *See, e.g.*, RE38-1 (Directive 94-36), PAGEID#286-90. Any voter who does not vote over a two-year span is targeted for removal. These voters are sent a confirmation notice—known when this litigation began as "SOS Form 10-S"[1] (hereinafter "Notice")—prescribed by

[1] Ohio's confirmation notice is now called SOS Form 10-S-1. *See* RE56-2 (SOS Form 10-S-1), PAGEID#22821.

the SOS. RE42-13 (SOS Form 10-S, Mar. 2015), PAGEID#1702; Ohio Rev. Code § 3503.21(B)(2). If a voter does not respond to the Notice and then does not vote or engage in certain other activity in the subsequent four-year period, the voter's name is removed from the rolls. *See* RE42-2 (Directive 2015-09), PAGEID#1587-91.

Prior to 2016, the Notice did not explain what activity would prevent a voter from being removed from the voter rolls. Instead, it stated that the voter's registration "may be cancelled" if the voter did not respond and "[did] not vote" in the subsequent four-year period. RE42-13, PAGEID#1702. In addition, the Notice did not alert voters to the deadline to respond—30 days before Election Day in Ohio—to avoid adverse consequences. Rather, the Notice stated that if the voter did not respond "immediately," the voter may be required to vote by provisional ballot in the next election. *Id.*

The Notice instructed voters that, to avoid the possibility of removal or having to vote by provisional ballot, the voter "should complete, sign, and return the [attached] confirmation form." *Id.* Completing the form required voters to enter their name, address, date of birth, and proof of identity, and to sign under penalty of perjury—the same information an unregistered Ohioan is required to provide to register to vote. *Id.*; Ohio Rev. Code § 3505.14.

As an alternative to completing and mailing back the confirmation form, the Notice directed voters to Appellee's website, which provided an online form on which registered voters could change their residence address. However, the site could not be used to confirm an existing, unchanged residence address. Any attempt to submit the form with the same address at which the voter was already registered was rejected with the message, "Please make a change or click Cancel to exit!" RE39-4 (Bonham Decl.), PAGEID#1446-47.[2]

To avoid removal or other consequences, voters had to complete and return the form even if they had not changed residence. The Notice did not clearly explain this. Instead, it instructed voters that the form must be completed "[i]f the address at which you received this notice is the same address printed on the delivery envelope, and is where you reside." RE42-13, PAGEID#1702.

B. Voters Have Been—And Will Be—Purged Under the Supplemental Process Based on the Pre-2016 Confirmation Notice.

Ohio's most recent voter purge occurred in the summer of 2015, when hundreds of thousands of Ohio voters—none of whom were provided with confirmation notices containing the required information—were removed from the

[2] The website was later modified to allow voters to confirm an existing address. RE56, PAGEID#22753 n.9.

state's voter rolls under the Supplemental Process. RE45 (Sealed Bell Decl.), PAGEID#1822-25, ¶¶ 13, 15, 17-19. Since this litigation began, additional removals have been enjoined pursuant to orders of the District Court and directives issued by Appellee. *E.g.*, RE118 (Order), PAGEID#23915, ¶ 5; *see* RE132-6 (Directive 2018-22), PAGEID#24057 n.4. As a result of the District Court's judgment, however, Ohio is poised to immediately purge more voters from the registration rolls immediately after the election—all of whom received defective Notices. *See, e.g.*, RE42-4 (Directive 2013-10), PAGEID#1063-64, 1607.

C. Proceedings Below

Appellants filed a Complaint in the U.S. District Court for the Southern District of Ohio on April 6, 2016, and an Amended Complaint, RE37, on May 17, 2016, asserting two causes of action. First, Appellants alleged that Ohio's practice of initiating voter purges by targeting people who had failed to vote in recent elections violated the NVRA. RE37, PAGEID#236-237. Second, Appellants alleged that the confirmation notice Ohio sent voters in this process failed to meet the requirements of Section 8 of the NVRA. *Id.*, PAGEID#237-238. This appeal concerns only the second cause of action.

In the 2016 proceedings, Appellee vigorously defended the use of non-voting to trigger removal pursuant to the Supplemental Process, but he did not argue for the validity of the Notice. Instead, on the final day of merits briefing

before the District Court, Appellee issued a new Notice (the "2016 Form") that corrected the issues outlined above. *APRI I*, 838 F.3d at 713. The District Court concluded that Appellee's issuance of the 2016 Form rendered Appellants' second cause of action on those grounds moot.

The District Court entered judgment for Appellee on June 29, 2016, RE66, and Appellants appealed. This Court ordered expedited briefing and argument and, on September 23, 2016, reversed the District Court's judgment. Regarding Count Two, the Court held, *first*, that all confirmation notices, including the newly revised 2016 Form, violated the NVRA by not advising voters how to re-register if they have moved to another state, *APRI*, 838 F.3d at 714-15,[3] and, *second*, that the 2016 Form did not render moot Appellants' remaining challenges to the pre-2016 forms because Appellee's voluntary correction of the notice (*i*) would not prevent future revisions that violated the NVRA and (*ii*) did nothing "to correct the fact that Ohio has, for years, been removing voters from the rolls because they failed to respond to forms that are blatantly non-compliant with the NVRA." *Id.* at 713.

On remand, in an order entered October 19, 2016, the District Court directed the state to count provisional ballots cast by voters purged under the Supplemental

[3] This is the only issue on which the District Court entered judgment for Appellants. RE140.

Process, in accordance with a procedure that has become known as the "APRI Exception." RE89 (Order); *see also* RE92; RE93 (extending the APRI Exception to additional groups of voters). Appellee issued a directive implementing this procedure for the November 2016 election that same day. RE90. The APRI Exception required Boards to count provisional ballots cast by voters purged under the Supplemental Process between 2011 and 2015 if the voter:

(1) cast the ballot at their county's early voting location or at the correct polling location on Election Day;

(2) continues to reside in the same county where they were previously registered; and

(3) did not become ineligible by reason of felony conviction, mental incapacity, or death subsequent to the date on which their name was removed from the rolls.

It also required Boards to mail information to purged voters who request vote-by-mail ballots explaining that they must vote in person. *Id.*

The APRI Exception was used in every federal, state, and local election held in Ohio between November 2016 and August 2018. It prevented nearly 8,000 eligible Ohio voters from being disenfranchised. RE133-4 (Damschroder Decl.), PAGEID#24119-70. In the 2016 Presidential Election, 7,515 eligible voters had their votes counted under the APRI Exception. *Id.*, PAGEID#24169.

After the election, Appellee filed a petition for writ of *certiorari* solely on the question of the legality of the non-voting trigger for the Supplemental Process. Appellee did not seek review of this Court's rulings in connection with the Count Two challenging the Notice. On May 30, 2017, the Supreme Court granted *certiorari*.

In a closely divided opinion, the Supreme Court upheld the use of nonvoting as a trigger to *begin* the confirmation process provided by Sections 8(c) and (d). *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018) (*"Husted"*). The majority noted that the NVRA "prescribes requirements that a State must meet in order to remove a name on change-of-residence grounds," and stated that "[t]he most important of these requirements is a prior notice obligation." *Id.* at 1838. The Court admonished that the notice must contain "statutorily prescribed content," and warned, "[i]f the State does not send such a card or otherwise get written notice that the person has moved, it may not remove the registrant on change-of-residence grounds." *Id.* at 1838-39. And although the Court stated that "Ohio's Supplemental Process follows subsection (d) to the letter," the court was describing the structure of the process, not the content of the Notice. *Id.* at 1842. Neither the facts of the Notice's content nor the legal question of the Notice's compliance with the NVRA were before the Court.

On remand, the parties engaged in mediation, which result in an interim agreement by Appellee to use the APRI Exception for the Special Election, but no final resolution. The parties then returned to litigation under an expedited briefing schedule, completed on October 5, 2018, on Appellants' motion for final judgment. On October 10, 2018, the District Court entered partial summary judgment for Appellee, ruling that the pre-2016 confirmation notice that the Appellee had used was not defective after all, but actually complied with the NVRA, with the exception of the one issue as to which this Court had already found a violation. RE140 (Opinion and Order). The District Court reasoned that Section 8(d) provides states with significant leeway in determining the content of the 8(d) notice, and specifically that (1) Ohio did not need to advise voters of a specific deadline for responding to the notice; (2) Ohio satisfied 8(d)'s requirement of warning voters that they "will" be removed from the rolls if they fail to respond by instead warning them that they "may" be removed for not responding; and (3) Section 8(d) does not prevent Ohio from requiring voters who have not moved to provide all information that would be necessary to make a new registration. *Id.*, PAGEID#24746-49, 24751-52. The District Court denied any relief for the 2018 election, or future elections, for in-state voters who had received the previous notices.

The next day, October 11, 2018, Appellants filed a Notice of Appeal and a motion for an injunction pending appeal in the District Court. RE143. On Friday, October 12, the District Court denied the motion on the ground that, largely for the reasons stated in its prior order denying their summary judgment motion, Appellants were not likely to prevail on their appeal. RE144.

Appellants are filing this Motion for an Injunction Pending Appeal with this Court on October 15, 2018, the next business day.

ARGUMENT

Courts in this circuit consider four factors when evaluating a motion for an injunction pending appeal under Federal Rule of Appellate Procedure 8(a): (1) the likelihood that the moving party will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent relief; (3) the prospect the requested relief will harm other parties; and (4) the public interest in granting the stay or injunction. *Serv. Employees Int'l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012). All four factors weigh in favor of granting an injunction pending appeal here.

A. Appellants Are Likely to Succeed on the Merits.

In entering judgment for Appellee, the District Court applied an erroneous construction of the NVRA to essentially undisputed facts. Review is therefore *de novo*. *Cass v. City of Dayton*, 770 F.3d 368, 373 (6th Cir. 2014).

Section 8 of the NVRA permits states to remove voters from the registration rolls on the ground that the voter has changed residence only in accordance with specific requirements and safeguards. 52 U.S.C. § 20507(a)(4)(B), (b)-(f). "The most important of these requirements is a prior notice obligation" set forth in Section 8(d). *Husted*, 138 S. Ct. at 1838 (citing 52 U.S.C. § 20507(d)). Under Section 8(d)'s prior notice requirement, states "may not remove a registrant's name on change-of-residence grounds unless either (A) the registrant confirms in writing that he or she has moved or (B) the registrant fails to return a [notice] containing statutorily prescribed content" and then fails to vote during the next two federal election cycles. *Id.* at 1838-39 (citing 52 U.S.C. § 20507(d)(1)).

The purpose of the notice requirement is to alert voters who appear to have moved that their voter registration is in jeopardy and provide them an opportunity to confirm or update their voter-registration information. To serve this purpose, the notice "must explain what a registrant who has not moved needs to do in order to stay on the rolls" and "for the benefit of those who have moved," the notice must explain "how the registrant can continue to be eligible to vote.'" *Id*. at 1839.

The required content of the notices is set out with specificity in Section 8(d)(2):

> (2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

> (A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) [*i.e.*, the state's voter registration deadline]. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal 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, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.
> (B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

52 U.S.C. § 20507(d)(2).

Thus, according to Section 8(d)(2), a notice must inform registrants of three critical pieces of information. First, the notice must inform voters that, if they have not moved outside of their election jurisdiction, they should return the card before the registration deadline for the next election to avoid having to provide confirmation of address at the polls. *Id.* § 20507(d)(2)(A). Second, the notice must notify voters of the consequences of failing to respond, and, specifically, that if they do not return the card or vote they "*will* be removed" from the voter rolls after the second subsequent federal general election. *Id*. § 20507(d)(2)(A) (emphasis added). Third, the notice must explain how voters "can continue to be eligible to vote" if they have "changed residence to a place outside the registrar's jurisdiction." *Id.* § 20507(d)(2)(B). The statute's use of the phrase "to the following effect" indicates that Congress prescribed the information that must be

included while recognizing that some information, such as the voter registration deadline, varies from state to state. *See id.* § 20507(d)(2). It does not authorize states to omit or alter content that the statute prescribes in detailed terms.

If the state does not send a confirmation notice containing the required content or otherwise get written notice from the voter confirming the change of residence, "it may not remove the registrant on change-of-residence grounds." *Husted,* 138 S. Ct. at 1839. It necessarily follows that the state also cannot require the voter to complete a new voter registration form, or its equivalent, in order to stay on the rolls, since such a requirement would have the same effect as removing the voter—in either case, the voter would have to submit a new registration form to become or remain registered. *See, e.g.*, S. Rep. No. 103-6, at 17-18, 34-35 (1993).

The Notices in use in Ohio until 2016 failed to conform to the NVRA's requirements in several ways. Each of these defects on its own rendered the Notices invalid and made any removal of voters predicated on them unlawful. Taken together and in combination with other misleading information contained in the Notices, these defects rendered the Notices wholly inadequate to inform voters whether and when a response was required, of the consequences of failing to respond, or how a voter who had not moved could avoid removal.

First, the Notice failed to explain the consequences of failing to respond. It did not explain the circumstances in which the voter's registration "will" be

cancelled, as the NVRA requires, or what actions a voter could take other than voting to keep from being removed. Instead, the notice stated only that the voter's registration "may be cancelled" if the voter did not respond and "[did] not vote" in the subsequent four-year period. Under the directives implementing the Supplemental Process, however, Boards are *required* to remove all voters who do not respond to the notice or engage in vaguely defined "voter activity" in the subsequent four-year period. *See, e.g.*, RE42-5 (Directive 2011-15), PAGEID#1615 ("board of elections … *shall* cancel [such an] elector's registration") (emphasis added). The District Court stated that "the NVRA does not require that [language explaining that a voter 'will be removed' if the voter fails to respond to the notice or vote] be included in the confirmation notice." RE140, PAGEID#24748. But the language of the statute could not be clearer on this point: the confirmation card must provide "notice [that i]f the card is not returned …, and if the registrant does not vote in an election during [the next two federal election cycles] the registrant's name *will be removed*." 52 U.S.C. § 20507(d)(2)(A) (emphasis added).

Ohio has argued that the Notice's use of the word "may" is accurate because other voter activities besides voting will also prevent removal. But as the Supreme Court has explained, the purpose of Section 8(d)'s notice requirement is to explain "what the registrant needs to do in order to stay on the rolls." *Husted*, 138 S. Ct. at

1839. If the voter may avoid removal through other activities, compliance with this requirement demands that the state provide that information and clearly explain the circumstances that "will" lead to removal. By omitting this information and using language suggesting that a response may not be required, the Notice "did not adequately inform voters of the consequences of failing to respond to the notice." *APRI I*, 838 F.3d at 703. This failure violated the NVRA.

Second, Ohio's Notices did not inform voters of the deadline to respond, but instead instructed them to respond "immediately." Section 8(d) specifically requires the Notice to alert voters of the deadline after which the voter may face adverse consequences, including being required to provide confirmation of the voter's address at the polls. 52 U.S.C. § 20507(d)(2)(A). It specifies that the relevant deadline is "the time provided for mail registration under subsection (a)(1)(B)"—in other words, the state's voter registration deadline for the next election. *See id.* § 20507(a)(1)(B). While there is nothing unlawful about encouraging a prompt response, failing to include information specifically required by the statute renders the notice invalid and renders any removals based on that notice unlawful.

The District Court held that, in requiring states to inform voters that they "*should* return the card" by the registration deadline, the statute makes inclusion of the deadline optional. RE140, PAGEID#24746-47. But the statute says *the voter*

"should return the card" by the deadline; it does not say *the state* "should" (but need not) notify voters of the deadline, and it does not authorize the state to impose a different deadline. The District Court also concluded that because a voter who returns the Notice after the deadline will also be restored to active, including the deadline was unnecessary. *Id.* But regardless of what Appellee or the District Court think about the efficacy of including the deadline, Congress decided that it should be included. *See Husted,* 138 S. Ct. at 1846 (court may not second guess "the congressional judgment embodied in subsection (d)'s removal process"). Moreover, the requirement to cast a provisional ballot or provide confirmation of the address at the polls can be avoided only if the voter responds by the registration deadline for the election in which the voter wishes to vote. RE-74-2 (Ohio Election Official Manual, Chapter 6), PAGEID#23105-06 (voter must cast a provisional ballot if "the voter has moved to a different precinct without updating his or her address by the voter registration deadline (30 days prior to the election)"). And the failure to give a clear deadline just makes it more likely that the voter will not return the card at all. 52 U.S.C. § 20507(d)(2)(A); *cf. Carter v. McDonald*, 794 F.3d 1342 (Fed Cir. 2015) (practice of accepting documentation in support of veterans' benefits claim after statutory deadline did not excuse failure to provide notice of the actual deadline).

Finally, Ohio's Notice instructed voters that, to "confirm [their] status as a registered Ohio voter," they must complete the equivalent of a voter registration form, even if nothing about the voter's eligibility had changed. RE42-13, PAGEID#1702. By demanding that voters re-register before two election cycles had elapsed since the Notice was sent, Ohio's Notice violated the NVRA.

The district court held that nothing in the NVRA "bars requiring the additional information." RE140, PAGEID#24751-52. But the NVRA does prohibit states from removing voters from the rolls without first complying with the notice and waiting period requirement. 52 U.S.C. § 20507(d). To claim that a voter has not been purged when that voter is told she must complete a form that is for all intents and purposes the same as the form required of a voter who has been purged is to make a distinction without a difference.

These defects demonstrate how failure to abide by the NVRA's safeguards would have led to widespread disenfranchisement absent the APRI Exception. Voters who had not moved were sent what appeared to be a new voter registration form, which they rightfully would not expect to have to complete. These voters would have to puzzle out that the language "[i]f the address at which you received this notice is the same address printed on the delivery envelope, and is where you reside," referred to them (which might require that they had kept the envelope in which the Notice arrived). The voters received no clear statement that they had to

respond and no clear explanation of what would happen if they did not. Voters who went to the website referenced in the Notice and tried to confirm their address were instructed that the site was only for people who have changed address. Not surprisingly, fewer than 20% of the voters who received these Notices in the 2012 election cycle actually responded. RE38-9 (U.S. Election Assistance Commission Report, 2011-12), PAGEID#475.

Because the Notices sent to voters through 2016 lacked the information required by the NVRA and imposed requirements prohibited by the NVRA, Appellee could not lawfully remove those voters from the voter rolls. *Husted*, 138 S. Ct. at 1839. Thus, (1) every voter removed for failing to respond to a Notice sent through 2015 was removed unlawfully, and (2) all removals scheduled to occur through the summer of 2020 would also be unlawful. Indeed, in reversing the District Court's mootness ruling, this Court emphasized that the harm done to individuals purged on the basis of a noncompliant Notice had not been remedied. *APRI I*, 838 F.3d at 714.

The District Court erred in concluding that the pre-2016 Notice did not violate the NVRA and in denying injunctive relief. Accordingly, Appellants have shown a likelihood of success on their appeal.

B. Appellants, Their Members, and Ohio Voters Will Suffer Irreparable Injury Absent of the Requested Injunction.

This Circuit has repeatedly held that "[a] restriction on the fundamental right to vote . . . constitutes irreparable injury." *See, e.g.*, *Johnson*, 833 F.3d at 669; *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). Hundreds of thousands of Ohio voters had their registrations cancelled in 2015 alone, without proper notice under the NVRA. Such voters are often unaware that they have been removed from the registration rolls until they go the polls to vote. *E.g.*, RE133-4, PAGEID#24119-24170; RE39-6 (Harmon Decl.), PAGEID#1461-62, ¶¶ 7-9. Many of these voters remain perfectly eligible to vote at the same address or in the same county where they had previously been registered. *See* RE133-4, PAGEID#24119-24170. But without the APRI Exception, Boards do not count provisional ballots cast by voters purged under the Supplemental Process, even if they remained eligible, because Ohio considered them not to be properly registered. 74-2, PAGEID#23118.

The voters who have suffered or are threatened with unlawful purging include members of NEOCH and individuals who APRI and NEOCH spent organizational resources to register in the past. *See, e.g.*, RE46 (Sealed Davis Decl.), PAGEID#22302-04, ¶¶ 21-25, 30; RE39-1 (Washington Decl.), PAGEID#1434, ¶ 25. "An organization has been harmed in its own right if the defendant's actions have 'perceptibly impaired' the organization's programs,

making it more difficult to carry out its mission." *North Carolina NAACP v. North Carolina State Board of Elections*, 2016 WL 6581284, *9 (M.D.N.C. Nov. 4, 2016)) (quoting *Havens Realty v. Coleman*, 455 U.S. 363, 379 (1982)) .

An injunction requiring the votes of unlawfully purged voters to be counted this November and prohibiting further unlawful removals is necessary to prevent irreparable harm.

C. Appellee Can to Easily Administer the Requested Relief, and Any Minimal Inconvenience Is Far Outweighed by the Harm to Appellants.

In contrast to the irreparable harm that will result absent an injunction, the relief Appellants seek will impose no significant hardship on Appellee. The balance of hardships thus strongly favors the issuance of an injunction here. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008).

The APRI Exception has been used in every federal, state, local, special, and primary election for the past two years. The counting of provisional ballots under the APRI Exception does not begin until after Election Day. RE74-2, PAGEID#23113. It does not alter Election Day procedures; it merely dictates which votes get counted and which discarded during the official canvas. Appellee has admitted that the APRI Exception is easily administered and ensures that only the ballots of eligible voters are counted. Per Appellee's own expert witness, county election officials indicated that implementation of the APRI Exception in 2016 was smooth. These officials did not receive complaints from voters about the

process and were "very confident" that no ineligible ballots were counted. RE113-2, PAGEID#23814-17 (Part IV(B)).

Because (1) any burden Appellee would face here is one that he has admitted is "manageable," (2) the voters who would be impacted by the relief requested can be readily identified using procedures the Boards are already familiar with, and (3) the relief would prevent disenfranchisement, the balance of the equities favors an injunction. *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 387 (6th Cir. 2008) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006)).

D. The Public Interest in Protecting the Right to Vote Favors an Injunction.

Courts have repeatedly recognized that the public has "a strong interest in exercising the fundamental political right to vote." *Hunter v. Hamilton Cty. Bd. of Elecs.*, 635 F.3d 219, 244 (6th Cir. 2011) (internal quotation marks omitted). "That interest is best served by favoring enfranchisement and ensuring that qualified voters' exercise of their right to vote is successful." *Id.*; *Obama for Am.*, 697 F.3d at 436-36 (same). "The vindication of constitutional rights and the enforcement of a federal statue serve the public interest almost by definition." *League of Women Voters of Florida v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012)).

CONCLUSION

This Court should grant Appellants' motion and issue an injunction pending appeal.

Dated: October 15, 2018

Respectfully submitted,

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** Institutional affiliation for the purpose of identification only

STATEMENT OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5174 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Times New Roman 14-point type) using Microsoft Word 2016.

Dated: October 15, 2018

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Injunction Pending Appeal was filed this 15th day of October, 2018 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

Dated: October 15, 2018

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DESIGNATION OF DISTRICT COURT RECORD

Plaintiff-Appellants hereby designate the following items from the District Court record:

A. Philip Randolph Institute et al. v. Husted
District Court Case No. 2:16-cv-00303-GCS-EPD

Docket Entry No.	PageID No.	Document Descriptions
1	1-17	Complaint
37	222-241	Plaintiffs' First Amended Complaint
38-1	286-292	Directive No. 94-36. Cancellation of Voter Registrations in Accordance with AM. SUB. S.B. 300 and the NVRA
39	1366-1429	Plaintiffs' Motion for Summary Judgment and Permanent Injunction or, in the alternative, Preliminary Injunction
39-1	1430-1436	Declaration of Andre Washington in Support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction
39-4	1445-1454	Declaration of Elizabeth Bonham in Support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction
39-6	1460-1462	Declaration of Larry Harmon
39-7	1463-1465	Declaration of Chad McCullough
42-2	1586-1593	Directive 2015-09. 2015 General Voter Records Maintenance Program
42-3	1594-1601	Directive 2014-14. 2014 General Voter Records Maintenance Program
42-4	1602-1609	Directive 2013-10. 2013 General Voter Records Maintenance Program (National Change of Address and Supplemental Processes); Grounds for Registration

Docket Entry No.	PageID No.	Document Descriptions
		Cancellations
42-5	1610-1618	Directive 2011-15. 2011 General Voter Records Maintenance Program (National Change of Address and Supplemental Processes); Grounds for Registration Cancellations
42-13	1701-1702	SOS Form 10-S. Important Information About Your Ohio Voter Registration. Confirmation Notice
45	1817-1846	Sealed Declaration of Cameron Bell in Support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction
46	22297-22306	Declaration of Brian Davis in Support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction
56	22717-22756	Defendant Secretary of State Jon Husted's Third Merit Brief
56-2	22821-22824	SOS Form 10-S-1. Confirmation Notice
66	23003-23026	Order Denying Plaintiffs' Motion for Summary Judgment and Permanent Injunctions
74-2	23105-23127	Directive 2015-28. Provisional Voting
89	23529-23550	Order Granting in Part and Denying in Part Defendant's Motion to Implement Remedy and Plaintiffs' Motion for Temporary Restraining Order
90	23551-23553	Notice of Issuance of Directive Pursuant to Court Order
90-1	23554-23557	Directive 2016-39. Provisional Ballots Cast by Voters Cancelled Since 2011 Under Ohio's Supplemental Process
92	23566	Order Granting Parties' Joint Motion for Further Relief

Docket Entry No.	PageID No.	Document Descriptions
93	23567-23568	Order that the Ohio Secretary of State shall Issue a Directive regarding the Absentee Ballot Requests of Military and Overseas Voters
113-2	23807-23846	Initial Expert Report of Donald Palmer
118	23915-23916	Order Granting Motion to Stay
122	23984-23985	Order Granting Defendant's Motion to Lift the Stay and to Vacate the Orders related to the Interim Remedies
132-3	24042-24047	Directive 20126-20. 2016 General Voter Records Maintenance Program – Supplemental Process
132-6	24056-24057	Directive 2018-22. Notice of Cancellation Procedures
133-4	24109-24178	Declaration of Matthew M. Damschroder
140	24730-24756	Order Granting in Part and Denying in Part Plaintiffs' Motion for Final Judgment and Granting in Part and Denying in Part Defendant's Motion for Final Judgment
143	24761-24770	Plaintiffs' Motion for Injunction Pending Appeal
144	24771-24773	Order Denying Plaintiffs' Motion for Injunction Pending Appeal

General Information

Court	United States Court of Appeals for the Sixth Circuit; United States Court of Appeals for the Sixth Circuit
Federal Nature of Suit	Civil Rights - Voting[3441]
Docket Number	18-03984