IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

THE DEMOCRATIC PARTY OF VIRGINIA,	)	
	)	**Civil Action No. 1:13-cv-01218-CMH-TRJ**
Plaintiff,	)	
v.	)	
VIRGINIA STATE BOARD OF ELECTIONS et al.,	)	
Defendants.	)	

***AMICI CURIAE* BRIEF OF JUDICIAL WATCH AND ALLIED EDUCATIONAL FOUNDATION IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Judicial Watch, Inc., and Allied Educational Foundation, respectfully submit this *amici curiae* brief in support of the defendants and in opposition to the plaintiff's motion for a preliminary injunction, filed October 3, 2013.[1] This brief is intended to address issues of federal election law raised by the plaintiff, of which *amici* have knowledge and expertise.

Background Facts.

The National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg *et seq*., was intended both to increase lawful voter registration and to "protect the integrity of the electoral process; and . . . ensure that accurate and current voter registration rolls are maintained." 42 U.S.C. § 1973gg(b). To further the goal of electoral integrity, Section 8 requires that "each State

[1] This brief is filed concurrently with a motion for leave of court to file an *amici curiae* brief. The grounds for the request for leave to file this brief are contained in the motion. No party or counsel for a party in the above-captioned case authored this brief in whole or in part, and no person other than the *amici* made a monetary contribution intended to fund the preparation and submission of this brief.

shall . . . 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 – (A) the death of the registrant; or (B) a change in the residence of the registrant . . ." 42 U.S.C. § 1973gg-6(a)(4). States failing to conduct the reasonable maintenance of their voter registration lists required by the NVRA have been sued, both by the United States and by private plaintiffs. *See, e.g., U.S. v. Missouri*, 535 F.3d 844 (8th Cir. 2008) (suit by the Justice Department); *Judicial Watch, Inc., v. King*, 2012 U.S. Dist. LEXIS 174360 (S.D. Ind., Dec. 10, 2012) (ongoing private action).

Notwithstanding the requirements of the NVRA, states have been inconsistent in meeting its mandates. Indeed, the routine failure of certain states to comply with their voter list maintenance obligations, and the resulting poor condition of many state voter rolls, are quickly becoming a national, nonpartisan issue. For example, the Pew Research Center on the States released an astonishing report in 2012 noting that "[a]pproximately 2.75 million people have active registrations in more than one state." *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, PEW RESEARCH CENTER ON THE STATES, Feb. 14, 2012, at 1.[2] That same report observed that "24 million – one of every eight – active voter registrations in the United States are no longer valid or are significantly inaccurate," and that "[m]ore than 1.8 million deceased individuals are listed as active voters." *Id.*; *see* Jonathan Brater, *Presidential Voting Commission Can Modernize Elections: Testimony to the Presidential Commission on Election Administration*, THE BRENNAN CENTER, Sept. 4, 2013 ("A

[2] Virginia's State Board of Elections appears to have cited the Pew study as key a factor in its decision to join a multi-state effort to identify ineligible voters. Doc. No. 7-1 at 21, 26 (Weinstein Decl., second page of Ex. C and Ex. D). This report is available at http://www.pewstates.org/research/reports/inaccurate-costly-and-inefficient-85899378437.

system in which 1 in 8 records has serious errors raises the prospect of fraud and manipulation.").[3]

Given the sorry condition of voter rolls throughout the nation, states have adopted a variety of approaches to meet their federal obligations under the NVRA to remove ineligible voter registrations from the rolls. One approach has been to undertake agreements between and among groups of states to compare voter registration lists in order to find and remove duplicate registrations. Indeed, the interstate compact to which the plaintiff objects in this lawsuit is not the only such agreement. For example, in 2012, seven states – the majority of which have Democratic legislatures and governors – formed the Electronic Registration Information Center (ERIC) for the same purpose. Virginia is one of the founding members of ERIC. [4]

In 2012, Virginia also joined the Interstate Voter Registration Crosscheck Program (IVRCP). The basic mechanism utilized by the IVRCP in finding duplicate registrations is a search for a particular kind of registration data match. It is a robust search. As explained in written guidance provided by Virginia's State Board of Elections:

> All voters identified in the Crosscheck Program were matched based on a 100% exact match of first name, last name, date of birth and last four digits of their Social Security Number. All of these fields had to be the same in their Virginia data and in the other state's data.

Doc. No. 1, Ex. B at 2 (question 2).

When this search was applied to the voter rolls of the states participating in the IVRCP, it produced a list with the names of approximately 57,000 Virginia voters. The large number of

[3] This testimony is available at http://www.brennancenter.org/analysis/testimony-presidential-voting-commission-can-modernize-elections.

[4] A description of the program is available at http://www.pewstates.org/research/featured-collections/electronic-registration-information-center-eric-85899426022.

voters whose registrations so closely matched those in other states suggests that the Pew study had correctly gauged the national scope of the problem of duplicate registrations.

Virginia law permitted the removal of all of these registrations. Va. Code Ann. § 24.2-427(B)(iv). However, guidance issued by the State Board of Elections urged registrars to consider all information at their disposal, and to err on the side of caution:

> **4. Is being listed in the [IVRCP] report a sufficient basis for cancellation?**
> **Answer:** Legally, yes; however, as a safeguard, each general registrar should examine carefully any voter's voting history and all available information in the voter's registration record to rule out any possibility of subsequent registration or activity since the communication SBE received from the jurisdiction reporting a new registration.

Doc. No. 1, Ex. B at 2. The guidance also told registrars that if a voter whose registration was cancelled for any reason shows up to vote on Election Day, that voter should be offered a provisional ballot. Doc. No. 1, Ex. B at 4 (Question 10).

The State Board of Elections also sent an email to registrars containing the following text:

> It is important that you closely review the data provided against the identified individual's voter registration and voter history in VERIS [the State's database]. If you believe the match is not accurate, that the individual may have registered in Virginia *after* their registration in another state, or there is some other issue then you may wish to hold off on cancellation until you have had the opportunity to research the matter further. Ultimately, you need to use your best judgment.

Doc. No. 1, Ex. A (emphasis original). Both this and the foregoing guidance conveyed the same instructions. They directed the registrars to review all information available in the voter's computerized registration record, and in particular to try to determine if there is any new registration in Virginia after the registration that was recorded in the other state. They also conveyed a general note of caution, suggesting that any doubts about the accuracy of a multi-state match should be resolved in favor of keeping the registration.

Virginia has been performing crosschecks pursuant to the IVRCP since January 2013. Doc. No. 1, ¶ 12. On October 3, 2013, the plaintiff filed its complaint, alleging that the data used to conduct registration crosschecks between and among participating states is unreliable, and also that the procedures used by Virginia registrars to process the information the IVRCP has generated are arbitrary. The plaintiff contends that these problems so beset the multi-state crosscheck program that its use to cancel duplicate registrations violates both the Equal Protection Clause and the Due Process Clause of the 14th Amendment. Doc. No. 1 at 10-12.

I. The Plaintiff Has Presented Almost No Evidence to Support a Request For an Injunction that Would Preserve Tens of Thousands of Invalid Registrations and Actually Restore the Registrations of Voters Who Do Not Live in Virginia.

While the plaintiff's motion is long on innuendo, inference, and implication,[5] it is remarkably short on evidence. Missing from the plaintiff's complaint, from all of its supporting declarations and affidavits, and from its brief, is any reference to *even a single instance* where a voter was erroneously and permanently removed from Virginia's voter rolls because of the IVRCP data or the procedures used by registrars. The plaintiff has submitted one declaration from a voter whose registration was erroneously cancelled on the stated ground that she was believed to have moved to another state; but after the voter called her registrar, she was told her removal had been an error and that she had been restored to the rolls. Doc. No. 7-2 (Declaration of Ebony N. Wright), ¶¶ 2-4 and Ex. B. The plaintiff also has submitted a hearsay declaration

[5] We cannot let pass without comment the plaintiff's repetitive use, in almost every paragraph, of an inflammatory, "attack" word to describe the removal of ineligible voters: "purging." Presumably it was chosen to suggest the political arrests, show trials, and summary executions of a totalitarian regime. *See, e.g.,* ROBERT CONQUEST, THE GREAT TERROR: A REASSESSMENT (1990) ("Book I: The Purge Begins"). Aside from the obvious hyperbole implicit in such a comparison, note that cancelling the voter registrations of those who have died or moved out of state is expressly mandated by federal law under the NVRA; that it is an eminently sensible policy that, among other things, reduces the opportunities for fraud; and that voters whose registrations are cancelled because they live and vote elsewhere have lost no rights.

from one of its employees who testified that the registrar of Accomack County said that she had restored 5 voters (out of 187) whose registrations had been erroneously cancelled. Doc. No. 10-5 (Declaration of James Slattery), ¶ 2. (There is no indication whether these 5 voters had to contact the registrar to be restored.) Even crediting the hearsay, that means that, at most, 6 voters had their registrations temporarily cancelled; and all had their registrations restored. This, despite the fact that the plaintiffs have alleged to this Court that the ICVRP data has been relied on to remove "hundreds of voters from Virginia's voter registration lists." Doc. No. 1, ¶ 29.

Unable to point to any voters who have been actually harmed by the use or implementation of the IVRCP, the plaintiff tries instead to focus narrowly on the perceived error rate of the duplicate registration lists the program generated. Although this is the wrong focus – surely the relevant fact is whether any eligible voters have actually lost an opportunity to vote – the plaintiff's evidence on this issue is equally thin. The complaint and supporting affidavits rely in part on rough estimates offered during informal, telephonic interviews. For example, the deputy registrar for the City of Chesapeake, after "an initial review," is reported to have said that the ratio of lawfully registered voters on the list of duplicate registrations he received for his jurisdiction is "maybe 10 percent." Doc. No. 1, ¶ 24. Further, the cursory summaries and conversations offered by the plaintiff do not allow either the Court or the parties to tell whether registrars' decisions to designate particular voters as eligible were made out of an abundance of caution, or whether instead they reflect actual errors in the IVRCP data. Even taking the plaintiff's allegations at face value, however, the implied error rate is low. While the complaint relies on descriptive phrases like "riddled with errors" or "countless errors," (Doc. No. 1, ¶ 20), the actual error rate suggested by the allegations in the complaint is under 10%. *See* error rates

and duplicate totals in Doc. No. 1, ¶¶ 21, 22, 24-27 (alleging a combined total 1,418 erroneous designations out of 14,916 registrations).

The plaintiff's requested injunctive relief is out of all proportion to these allegations. Among other things, the Prayer for Relief requests the following:

> 2. A preliminary and permanent injunction that prohibits Defendants . . . from implementing Defendants' process for purging voters from Virginia's voter registration lists, *including a preliminary and permanent injunction that prohibits the use of the SBE's voter purging list* and bars local election officials from exercising the standard-less decision-making authority delegated by the SBE . . .
>
> 3. A preliminary and permanent injunction that (i) requires Defendants . . . *to restore to Virginia's voter registration list all voters who were removed* from those lists as the result of Defendants' unlawful purging; and (ii) requires the SBE . . . *to restore to Virginia's voter registration lists all voters who were removed* from those lists as the result of Defendants' unlawful purging . . .

Doc. No. 1, at 12-13 (emphasis added).

Despite the fact that 57,000 Virginia registrations show a very close match with registration records in other states, paragraph 2 would enjoin any future use whatsoever of Virginia's IVRCP list. Even under the plaintiff's gloomiest estimates regarding the list's accuracy, about 90% of the 57,000 names on that list – say, 51,000 voters – do not live in Virginia and are not eligible to vote there. The plaintiff's requested relief would deliberately prevent Virginia from using the list to do anything about that fact.

Paragraph 3 is even more radical. It asks the Court to restore to Virginia's rolls all voters who were removed because of data obtained through the multi-state crosscheck program. If the fact that no eligible voters have been permanently removed from the rolls, and only 6 eligible voters have been temporarily removed, is any indication of Virginia's likely error rate, that means that all or almost all of the restored voters will be ineligible to vote in Virginia because they reside in other states. But even if we accept the error rate implicitly alleged by the plaintiff

of around 10%, the consequences of this injunctive relief are stark. To be clear, the plaintiff is asking for an injunction that would restore hundreds of voters to Virginia's rolls, even though the plaintiff believes that 90% of these voters are not eligible to vote in Virginia because they reside in another state.[6]

Note that, if Virginia acted on its own to accomplish the same objectives the plaintiff seeks – that is, if Virginia chose to ignore 51,000 invalid registrations, and then intentionally restored registrations for ineligible voters – it would violate Section 8 of the NVRA by failing to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters." Indeed, the requested injunction is worse than an improper exercise of equitable power. It requests unlawful relief. Section 12 of the NVRA makes it a crime, punishable by fines and up to five years in prison, in elections for federal office to

> knowingly and willfully deprive[], defraud[], or attempt[] to deprive or defraud the residents of a State of a fair and impartially conducted election process, by . . . the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held . . .

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[6] The "exacting standard of review" that applies to all grants of preliminary relief "is even more searching when the preliminary injunctive relief ordered by the district court is mandatory rather than prohibitory in nature." *Sun Microsystems, Inc. v. Microsoft Corp. (In re Microsoft Corp. Antitrust Litig.)*, 333 F.3d 517, 524 (4th Cir. 2003), citing *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994) ("Mandatory preliminary injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances."). A "preliminary injunction's tendency to preserve the status quo determines whether it is prohibitory or mandatory." *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013).

As explained in the text, paragraph 3 seeks to restore cancelled registrations to Virginia's voter rolls, notwithstanding that even the plaintiff appears to believe that most of these are invalid. Compelling Virginia to place ineligible registrations on its voter rolls is not returning to a lawful status quo ante. It is, therefore, a mandatory injunction, and should be judged by the more searching standard the law imposes.

42 U.S.C. § 1973gg-10. Section 11(c) of the Voting Rights Act makes it a crime, punishable by fines and up to five years in prison, in elections for federal office, to "conspire[] with another individual for the purpose of encouraging his false registration to vote or illegal voting . . ." 42 U.S.C. § 1973i(c). And Virginia law makes it a felony, punishable by fines and up to 5 years in prison, to "procure[], assist[], or induce[] another to register to vote at more than one address at the same time, whether such registrations are in Virginia or in Virginia and any other state or territory of the United States." Va. Code Ann. § 24.2-1004 (2013). Compelling Virginia to accept and to restore invalid registrations would amount to compelling it to violate federal and state law. *Cf. Northeast Savings, F.A. v. Director, Office of Thrift Supervision*, 770 D. Supp. 19, 24 (D.D.C. 1991) (injunctive relief contrary to the Tucker Act "cannot be granted because it is contrary to federal law. Plaintiff seeks, in essence, an order permitting plaintiff, and requiring defendants, to violate statutory and regulatory requirements.").

In sum, the plaintiff, on the basis of almost no evidence, is asking this Court, sitting in equity, to issue an injunction that would retain and restore registrations that even the plaintiff believes to be invalid – thereby guaranteeing that Virginia's voter rolls will become *less* accurate than they are at present. On its face, this relief is unreasonable and should be denied.

II. In Implementing the IVRCP, Virginia Has Successfully Incorporated Reasonable Standards and Safeguards In Order to Protect Eligible Voters.

Notwithstanding the paucity of evidence that there are problems with the IVRCP, the plaintiff argues that the registrars are acting without standards in deciding when to remove registrations. In making this argument, the plaintiff repeatedly quotes the directive to "use your best judgment" contained in an email from the Board of Elections to the registrars, often without quoting the text immediately preceding that statement. *E.g.*, Doc. No. 1, ¶¶ 1, 32, 39; Doc. No. 7 at 2, 10, 14, 15.

But the context is important. That paragraph starts by directing registrars to "closely review the data provided against the identified individual's voter registration and voter history in VERIS," the State's voter registration database, and it instructs the registrars to determine if "the individual may have registered in Virginia *after* their registration in another state." Doc. No. 1, Ex. A (emphasis original). This is perfectly consistent with the guidance from the State Board of Elections that "each general registrar should examine carefully any voter's voting history and all available information in the voter's registration record to rule out any possibility of subsequent registration or activity since the communication SBE received from the jurisdiction reporting a new registration." Doc. No. 1, Ex. B at 2.

In other words, the registrars were clearly told to check the voter's computerized records to see if the voter had a registration in Virginia *after* their last out-of-state registration. This is not only sensible advice, it is exactly what some of the plaintiff's own affiants testify to having done. *See, e.g.*, Doc. No. 7-3 (Declaration of Lawrence C. Haake), ¶ 5 ("I did a more thorough review of the list and found that about 170-180 of the Active registered voters on the list showed a more recent last registration date in Virginia than the date they were reported to have registered in another state."). Indeed, Mr. Haake's declaration is mostly relevant, not (as the plaintiff appears to believe) because it shows that the IVRCP list had errors, but rather because it shows a registrar following the exact procedure the State Board of Elections had specifically prescribed in at least two separate written communications.

The plaintiff's argument that the registrars acted arbitrarily or without standards is primarily a literary exercise, without substance. The plaintiff simply ignores the specific instructions imparted by the State Board of Elections. The plaintiff focuses instead on a general

admonition to act cautiously, and seeks to re-characterize it as a license to do whatever one likes. But the two are not the same, and that is not what the State Board of Elections told its registrars.

This case is readily distinguished from *Bush v. Gore*, 531 U.S. 98 (2000), on which the plaintiff relies. In that case, the Equal Protection violation arose from the application of completely different – and wholly inconsistent – bright-line rules, often among members of the same county board. These rules, moreover, concerned the fundamental question of which candidate a ballot was intended to be cast for, so any error was irretrievable. As the Court noted:

> A monitor in Miami-Dade County testified at trial that he observed that three members of the county canvassing board applied different standards in defining a legal vote. . . . And testimony at trial also revealed that at least one county changed its evaluative standards during the counting process. Palm Beach County, for example, began the process with a 1990 guideline which precluded counting completely attached chads, switched to a rule that considered a vote to be legal if any light could be seen through a chad, changed back to the 1990 rule, and then abandoned any pretense of a *per se* rule, only to have a court order that the county consider dimpled chads legal. This is not a process with sufficient guarantees of equal treatment.

531 U.S. at 106-107. By contrast, the registrars in Virginia all were given the same, simple instructions: to check the computer database for any match to determine whether there were subsequent registrations, and to err on the side of caution.

The facts in *Hunter v. Hamilton Co. Bd. of El.*, 635 F.3d 219 (6th Cir. 2011) are also very different. In that case, flatly inconsistent rules regarding how to treat provisional ballots affected by poll worker error resulted in the acceptance of 27 ballots of one description, and the simultaneous rejection of 849 ballots in another category – in an election, moreover, that was initially decided by a mere 23 votes. *Id.* at 222, 235 *passim.* The application of these inconsistent rules was further complicated by a barrage of new and often inconsistent directives, issued by the Secretaries of State of two different administrations. *Id.* at 224, 227-230. The

welter of conflicting rules and directives in *Hunter* contrasts with the simple and consistent instructions provided to registrars by Virginia's Board of Elections.

The potential deprivation of rights in *Hunter* was also far more severe. The dispute arose at the "counting" stage of the electoral process, and 849 voters were threatened with the complete rejection of their ballots. As the Court observed:

> Constitutional concerns regarding the review of provisional ballots by local boards of elections are especially great. As in a recount, the review of provisional ballots occurs after the initial count of regular ballots is known. . . .This particular postelection feature makes "specific standards to ensure . . . equal application," *Bush*, 531 U.S. at 106, particularly "necessary to protect the fundamental right of each voter" to have his or her vote count on equal terms, *id*. at 109. . . . In contrast to more general administrative decisions, the cause for constitutional concern is much greater when the Board is exercising its discretion in areas "relevant to the casting and counting of ballots," like evaluating evidence of poll-worker error.

Hunter, 635 F.3d at 235 (citation omitted).

In this case, by comparison, the dispute is over the cancellation of registrations. The plaintiff cannot identify a single voter whose registration was, and remains, cancelled; but even if such a voter existed, the potential harm he or she faced would be far less significant than that faced by, for example, the 859 voters identified in *Hunter*. The primary reason this is so is that there is still time to correct a faulty registration.

Indeed, in contrast to both *Bush* and *Hunter*, any registration error in Virginia can be resolved in favor of the voter as late as Election Day by allowing that voter to cast a provisional ballot. Under federal law pertaining to federal elections, "[i]f an individual declares that such individual is a registered voter" in a particular jurisdiction, "but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote," he or she may "cast a provisional ballot." 42 U.S.C. § 15482(a). If that voter was correct, "the individual's provisional ballot shall be counted as a vote

in that election in accordance with State law." 42 U.S.C. § 15482(a)(4). Virginia law also specifies a number of instances when a voter must be offered a provisional ballot, including when a voter's name is omitted from a pollbook and the general registrar cannot confirm "that the voter is registered to vote, that his registration has not been cancelled, and that his name is erroneously omitted from the pollbook." Va. Code Ann. § 24.2-653(A) (cross-referring to § 24.2-652). "If the electoral board determines that such person was entitled to vote," the voter's provisional ballot is opened and voted. Va. Code Ann. § 24.2-653(B). After "completion of its determination, the electoral board shall proceed to count such ballots and certify the results of its count." Va. Code Ann. § 24.2-653(B).

The plaintiff casually dismisses the value of provisional ballots by stating that "[t]here is no assurance that a provisional ballot will even be accepted and, in the typical case, such ballots are not counted until days after an election – often after a winner has already been declared." Doc. No. 7 at 14. This statement misconstrues the nature of provisional ballots. Under both federal and state law, a provisional ballot will be accepted and counted as long as it was properly cast by an eligible voter. *See* 42 U.S.C. § 15482(a); Va. Code Ann. § 24.2-653(B). If this did not occur, then the ballot should not be counted, and the person attempting to cast it can have no cause to complain. The second objection makes no sense. Provisional ballots are included in the formal vote count that determines the winner. *Id.* Many ballots – absentee, overseas and military, ballots delivered late to counting authorities, and, indeed, all ballots counted after the television networks have predicted a winner on election night – are counted after a winner has been *informally* declared. There is no resulting prejudice to a voter as long his or her vote is accepted and counted.

In conclusion, the State Board of Elections has incorporated reasonably defined and prudent procedures for removing invalid registrations (which procedures Virginia's registrars appear to be using). In the event that a voter's registration is erroneously removed, the error can be corrected in time (as already has happened). Finally, federal and state laws concerning provisional ballots ensure that even a voter whose registration was improperly cancelled can still cast a ballot on Election Day. All of these factors serve to distinguish this action from the cases relied on by the plaintiff.

III. Virginia's Implementation of the IVRCP Is Part of a Reasonable Program Designed to Remove Ineligible Voters From Virginia's Voter Rolls.

The NVRA requires states to undertake "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" a change in address or the death of a registrant. 42 U.S.C. § 1973gg-6(a)(4). One of the few courts to attempt to discern the meaning of the term "reasonable" in this context has noted:

> The NVRA does not define "reasonable effort" and the Court has found no authority that describes the parameter of the terms. . . . Because the NVRA contains no definition of the term "reasonable effort," the Court will give it its ordinary meaning. "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979).
>
> A reasonable effort is one based on reason and not improper purposes. The dictionary defines the term "reasonable" as "agreeable to reason"; "not extreme or excessive"; "possessing sound judgment." Webster's 7th New Collegiate Dictionary. The antonym for effort is "do-nothingness, ease, inaction, lackadaisicalness, laziness.." Roget's New Millennium Thesaurus First Edition (Vol. 3.1).

United States v. Missouri, 2007 U.S. Dist. LEXIS 27640 (W.D. Mo. April 13, 2007), *rev'd in part on other grds.*, 535 F.3d 844 (8th Cir. 2008).

By this criterion, Virginia's participation in the IVRCP is an excellent example of reasonable, well-constructed and thoughtfully implemented program. The list generated by the

multi-state comparison only indicates a duplicate if two records show a 100% match in first and last names, dates of birth, and the last four digits of a Social Security number.[7] Yet, even where there is such a match, registrars have been counseled to review the database records for any indication that the match might be inaccurate, and to resolve any doubts by retaining a registration. The plaintiff's own evidence supports the conclusion that they are doing this.

As a result of these efforts, tens of thousands of suspect registrations have been identified and are being examined and removed, while no registrations are known to have been cancelled erroneously and permanently. The plaintiff has identified no more than 6 voters whose registrations, it is alleged, were erroneously cancelled *temporarily*. No doubt it is the combination of a robust data search along with the careful implementation by the registrars that has resulted in there being so few reported problems.

Virginia should be lauded for its efforts and its program should serve as a model for compliance with the NVRA. The plaintiff's request to enjoin this program should be denied.

[7] The duplicate registration outside of Virginia could not be accomplished without the written assent of the voter indicating that they have a new residence address. *See eg.*, 42 U.S.C. § 1973gg-6(d)(1)(a).

CONCLUSION

For all the foregoing reasons, *amici curiae* respectfully request that this Court DENY the Motion for Preliminary Injunction.

Dated: October 16, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2013, I transmitted the foregoing document to the named parties' emails by means of an electronic filing pursuant to the ECF system.

s/ J. Christian Adams

J. Christian Adams