Nos. 24-2044, 24-2045

In the

United States Court Of Appeals

for the

Fourth Circuit

REPUBLICAN NATIONAL COMMITTEE; NORTH CAROLINA REPUBLICAN PARTY,
Plaintiff-Appellees,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, KAREN BRINSON BELL; ALAN HIRSCH; JEFF CARMON; STACY EGGERS, IV; KEVIN N. LEWIS; SIOBHAN O'DUFFY MILLEN,
Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of North Carolina
Case No. (5:24-cv-00547-M-RJ)

BRIEF OF NORTH CAROLINA NAACP, JACKSON SAILOR JONES, AND BERTHA LEVERETTE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS

JEFFREY LOPERFIDO
HILARY H. KLEIN
CHRISTOPHER SHENTON
SOUTHERN COALITION FOR SOCIAL JUSTICE
5517 DURHAM-CHAPEL HILL BLVD.
DURHAM, NC 27717
(919) 794-4213

EZRA D. ROSENBERG
JENNIFER NWACHUKWU
POOJA CHAUDHURI
ALEXANDER S. DAVIS
JAVON DAVIS
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K STREET, NW, STE. 900
WASHINGTON DC, 20005
(202) 662-8600

LEE RUBIN
RACHEL J. LAMORTE
CATHERINE MEDVENE
JORDAN HILTON
HARSHA TOLAPPA
MAYER BROWN LLP
TWO PALO ALTO SQUARE, SUITE 300
3000 EL CAMINO REAL
PALO ALTO, CA 94306
(650) 331-2000

COUNSEL FOR AMICI CURIAE

October 23, 2024

TABLE OF CONTENTS

PAGE

DISCLOSURE STATEMENT 1

INTERESTS OF AMICI CURIAE 1

INTRODUCTION 3

ARGUMENT 4

I. Plaintiffs' State Constitutional Claim Raises a Substantial Federal Question Because Section 8 of the NVRA Bars Plaintiffs' Requested Relief and Preempts that Claim. 4

A. Section 8(c) of the NVRA Preempts Plaintiffs' State Constitutional Claim. 4

B. Section 8(c) of the NVRA Bars Plaintiffs' Requested Relief. 5

C. The District Court Erred in Declining to Dismiss Count Two Under the NVRA. 13

CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases

Arcia v. Fla. Sec'y of State,
772 F.3d 1335 (11th Cir. 2014) 6, 12, 16

Arizona v. Inter Tribal Council of Ariz., Inc.,
570 U.S. 1 (2013).....4, 5

Beneficial Nat'l Bank v. Anderson,
539 U.S. 1 (2003).....15

Boyce v. Wachovia Sec., LLC,
09-cv-263, 2010 U.S. Dist. LEXIS 30128 (E.D.N.C. Feb. 17, 2010) 16

BP p.l.c. v. Mayor of Baltimore
593 U.S. 230, 241-42 (2021) 3

Ketema v. Midwest Stamping, Inc.,
180 F. Appx. 427 (4th Cir. 2006).....16

Majority Forward v. Ben Hill Cnty. Bd. of Elections,
509 F. Supp. 3d 1348 (M.D. Ga. 2020) 9

North Carolina State Conf. of the NAACP v. North Carolina State Bd. of Elections,
No. 16-1274, 2016 WL 6581284 (M.D.N.C. Nov. 4, 2016).....7, 8, 9

Smiley v. Holm,
285 U.S. 355 (1932).....4

United States Student Ass'n Found. v. Land,
546 F.3d 373 (6th Cir. 2008) 9, 11, 12, 13

United States v. Gonzales,
520 U.S. 1 (1997).....6

United States v. Rodgers,
466 U.S. 475 (1984).....10

Wu v. Mamsi Life & Health Ins. Co.,
No. 07-1170, 2010 U.S. Dist. LEXIS 155312 (D. Md. June 2, 2010).....16

Statutes

52 U.S.C. § 20501(b)(1)–(2).....6

52 U.S.C. § 20507(c)(2).....6, 10

52 U.S.C. § 20507(c)(2)(B(ii).....6

52 USC § 20501(b)(2) 12

Help America Vote Act 8, 13, 14, 15

N.C.G.S. § 163-82.11(a) 5, 10

National Voter Registration Act ..... *passim*

DISCLOSURE STATEMENT

Pursuant to Local Rule 26.1(b), counsel for amici curiae certify that amicus organization North Carolina NAACP is a nonprofit organization that has no parent corporations and has issued no publicly held stock. Thus, no publicly held company owns ten percent or more of the amici organization's stock. Amici curiae have separately submitted the form "Disclosure Statement" required by this Court.

INTERESTS OF AMICI CURIAE[1]

Amici are the North Carolina State Conference of the NAACP ("North Carolina NAACP") and individuals who stand to be directly affected by the extraordinary election-eve relief sought by Plaintiffs here. North Carolina NAACP strives to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. North Carolina NAACP has 70 adult branches and numerous students and youth branches, composed of over 10,000 members. Its members are predominantly Black or from other communities of color and include registered voters across the state. The organization has members that appear on the list

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

generated in response to Carol Snow's Public Records Request 24-16 as not having a driver's license number or a Social Security Number ("SSN"). Furthermore, the relief sought in this suit—removal of hundreds of thousands of voters—frustrates a core part of the organization's mission, *i.e.*, protecting the register voters educate them, and mobilize them to polls. The removal of 225,000 voters from the rolls will undo all the hard work that North Carolina NAACP has done ahead of the 2024 General Election. Furthermore, North Carolina NAACP will have to divert significant organizational resources away from other planned activities, including voter mobilization, to assist its members and other eligible voters should a massive purge occur before election day.

Jackson Sailor Jones has voted in North Carolina for more than three decades. He re-registered to vote in July 2022 after changing residences. Despite presenting his driver's license when voting in the 2024 Primary Election and having provided his SSN to election officials in the past, Mr. Jones's name appears on the list generated in response to Carol Snow's Public Records Request 24-16. Mr. Jones is listed as one of thousands of voters who does not have a driver's license or SSN in the State's voter record. Mr. Jones is eligible to vote and intends to vote in the 2024 General Election. He has already submitted the requisite information on his Absentee Ballot Request Form. Mr. Jones will be removed from the voter rolls if

Plaintiffs' relief is granted. He does not want to have to navigate the provisional ballot process and the ensuing uncertainty regarding whether his vote will count.

Bertha Leverette has been a registered voter in North Carolina since 1972 and last updated her voter registration in 2016. Ms. Leverette's name appears on the list of voters as not having a driver's license nor SSN, despite having both forms of identification. She has already presented her driver's license in the 2024 Primary Election when she voted curbside. She intends to vote in the 2024 General Election. Ms. Leverette will be removed from the voter rolls if Plaintiffs' relief is granted. She does not wish to navigate the provisional ballot process and the uncertainty around whether her vote will count.

INTRODUCTION

This case belongs in federal court.[2] Plaintiffs seek to force the North Carolina State Board of Elections ("NCSBE") to conduct a systematic voter removal program that could purge hundreds of thousands of voters from the registration rolls in the midst of an ongoing presidential election. This requested relief violates Section 8(c) of the National Voter Registration Act of 1993 ("NVRA"), which prohibits

[2] While there are various arguments for various avenues concerning the appealability of the district court's order here, *BP p.l.c. v. Mayor of Baltimore* definitively answers the question in the affirmative. 593 U.S. 230, 241-42 (2021) (holding that appellate courts can review a district court's remand order under § 1447(d) so long as § 1442 or § 1443 was invoked in the initial removal, regardless of whether those statutes were a proper basis for removal).

systematic voter removal programs within 90 days of a federal election. That Plaintiffs style their claim as arising under the state constitution does not allow them to avoid the clear commands of federal law embodied in the NVRA—there is no artful pleading exception to federal preemption law. Plaintiffs' state constitutional claim presents a substantial federal question because the NVRA bars and preempts that claim. The district court should have dismissed it.

ARGUMENT

I. Plaintiffs' State Constitutional Claim Raises a Substantial Federal Question Because Section 8 of the NVRA Bars Plaintiffs' Requested Relief and Preempts that Claim.

A. *Section 8(c) of the NVRA Preempts Plaintiffs' State Constitutional Claim.*

The National Voter Registration Act, as an exercise of Congressional power under the Elections Clause, unambiguously preempts state law where they conflict. "The Clause's substantive scope is broad. 'Times, Places and Manner,' we have written, are 'comprehensive words,' which 'embrace authority to provide a complete code for congressional elections,' including, as relevant here and as [Plaintiffs] do not contest, regulations relating to 'registration.' *Smiley v. Holm*, 285 U.S. 355, 366 (1932)." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9 (2013). "In practice, the Clause functions as a 'default provision; it invests the States with responsibility for the mechanics of congressional elections, but **only so far as**

Congress declines to pre-empt state legislative choices.'" *Id.* at 9 (citing *Foster v. Love*, 522 U.S. 67, 69 (1997)) (emphasis added).

The NVRA is just such a preemption. "When Congress legislates with respect to the 'Times, Places and Manner' of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States. Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent." *Id.* at 14 (holding that the NVRA preempts state regulations on voter registration). And while states are free to have a dual registration system that allows them to impose requirements inconsistent with the NVRA on state voters (as Arizona has chosen to do post-*Inter Tribal Council*), North Carolina has only one system of registration for both state and federal elections, and thus is bound by the provisions of the NVRA for all registrants. *See* N.C.G.S. § 163-82.11(a) (establishing "a statewide computerized voter registration system" to "serve as the single system for storing and maintaining the official list of registered voters in the state").

B. *Section 8(c) of the NVRA Bars Plaintiffs' Requested Relief.*

The purpose of the NVRA is to require states to enact voter-friendly registration systems that "increase the number of eligible citizens who register to vote" and make it "possible for Federal, State, and local governments to implement

[the NVRA] in a manner that enhances the participation of eligible citizens as voters." 52 U.S.C. § 20501(b)(1)–(2). To further these objectives, the NVRA narrowly prescribes if, how, and when states may remove voters from their registration rolls. One such restriction is Section 8(c), which prohibits states from engaging in "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" within 90 days of a federal election. 52 U.S.C. § 20507(c)(2); *see also Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1345–46 (11th Cir. 2014). "[T]he phrase 'any program' suggests that the 90 Day Provision has a broad meaning. . . [and] strongly suggests that Congress intended the 90 Day Provision to encompass programs of any kind. . . ." *Arcia*, 772 F.3d at 1344; *see also United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'") (citation omitted).

The only exceptions to this 90 day quiet period are: (1) removals at the request of the registrant; (2) removals because of criminal conviction or mental incapacity, as set forth by state law; (3) removals upon the death of the registrants, or (4) "correction[s] of registration records" pursuant to Section 8 of the NVRA. 52 U.S.C. § 20507(c)(2)(B(ii). Thus, a proscribed systematic removal program that does "not rely upon individualized information or investigation to determine which names from the voter registry to remove" is prohibited within 90 days of an election. *Arcia*,

772 F.3d at 1344. So too are any removal programs not based on "reliable first-hand evidence specific to that voter." *See North Carolina State Conf. of the NAACP v. North Carolina State Bd. of Elections,* No. 16-1274, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016).

There is a good reason for preventing systematic removal programs within 90 days of a federal election, because that is "'when the risk of disfranchising eligible voters is the greatest.'" *Id*. (quoting *Arcia*, 772 F.3d at 1346). This is because "[e]ligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote." *Id*. Indeed, as the Senate Committee on Rules and Administration explained during an early debate about the merits of including a quiet period in the NVRA:

> [I]n cases where errors in removing legitimate voters from the lists occur ... such notification often comes too late for legitimate voters and citizens to act to correct the error or to re-register. In many States registration closes 30 days before a general election. If the notification fails to reach a citizen in time, he or she will be unable to re-register for the election. It follows that removal of names from registration lists should be timed so that individuals will have an opportunity to appeal or re-register before the next election[.]

S. Rep. No. 101-140, at 13 (1989).

Here, despite the NVRA's unambiguous purpose to increase voter-friendly registration systems and its obvious bar on systematic voter purges immediately prior to a federal election, Plaintiffs seek to require the NCSBE to potentially remove

over 200,000 voters from the rolls because the voters allegedly registered using a state-administered voter registration form that purportedly did not comply with the Help America Vote Act ("HAVA"). *See* Dkt. 1-3 ("Compl.") at 13.[3] Plaintiffs filed their complaint on August 23, 2024—just 74 days before the November elections, and inside the proscribed 90 day quiet period. Notably lacking from Plaintiffs' complaint, however, is *any* information—much less any *individualized information*—that any of the over 200,000 targeted voters is actually ineligible to vote. Instead, Plaintiffs rely on a list of voters whose records lack drivers' license or social security numbers—exactly the type of information that federal courts in North Carolina have determined is not sufficiently individualized to override the 90 day quiet period. *See North Carolina State Conf. of the NAACP*, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016) (finding removal program not sufficiently individualized where there was "no evidence in the record that these third parties that challenged the voters had any reliable first-hand evidence specific to the voters challenged" and where "most of these voters were targeted based on information about their status contained on the State Board's website."). Nor have Plaintiffs attempted any individualized inquiry into the eligibility of the voters on the list; instead, they seek the *en masse* removal of all these voters in one fell swoop. Compl.

[3] Citations to "Dkt." refer to the trial court below. Citations to "Doc." refer to the Fourth Circuit docket.

at 20-21 (seeking an order requiring the State Board of Elections to "identify[] all ineligible registrants and remov[e] them from the state's voter registration lists"). Plaintiffs' requested relief is thus a systematic removal program that is barred by the NVRA's 90 day quiet period.

To the extent Plaintiffs seek to elude the NVRA's protections by including alternative relief in their prayer that would require the targeted voters to cast provisional ballots if "removal is not feasible," that effort fails as a matter of law. Compl. at 19. Courts have consistently rejected attempts to evade the NVRA's 90 day quiet period by claiming that a voter is not removed if they are allowed to cast a provisional ballot. *See Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1352-55 (M.D. Ga. 2020) (enjoining removal program under Section 8(c) of the NVRA that would require targeted voters to cast provisional ballots); *North Carolina State Conf. of the NAACP*, 2016 WL 6581284, at *10 (rejecting alternative argument "that each of the wrongfully purged voters should be required to cast provisional ballots."). This makes sense: "[b]ecause the ultimate goal of registering to vote is to permit a person actually to vote . . . a person becomes a 'registrant,' for the purposes of the NVRA, from the first moment that [they are] actually able to go to the polls and cast *a regular ballot*." *United States Student Ass'n Found. v. Land*, 546 F.3d 373, 383 (6th Cir. 2008) (emphasis added).

Plaintiffs also suggest that the over 200,000 targeted voters are not protected by the NVRA because they were never properly registered in the first place. Doc. 19 at 16-17. The NVRA's plain text is not defeated so easily. Section 8(c) of the NVRA prohibits the systematic removal of any "name[]" of a voter "from the official lists of eligible voters" within 90 days of a federal election. 52 U.S.C. § 20507(c)(2). There is no textual basis to narrow the term "name" to Plaintiffs' proposed construction, especially given that the subsection explicitly references, and prohibits, any program whose goal is "to systematically remove the names of ineligible voters[,]" as Plaintiffs allege they seek. *Id.* The term "name" is clear, straightforward, and not susceptible to Plaintiffs' proposed definition of "persons [who] should have been registered to vote in the first place[.]" Doc. 19 at 16. Plaintiffs' reading would render the second part of § 20507(c)(2)(A) absurd and superfluous. *See also United States v. Rodgers*, 466 U.S. 475, 480 (1984) (rejecting a "narrow, technical definition" of a statutory term when it "clashes strongly" with "sweeping" language in the same sentence).

Similarly, the NVRA's plain language prohibits systematic removals of names from the "official lists of eligible voters" within 90 days of a federal election, 52 U.S.C. § 20507(c)(2), and there is no dispute here that the electronic list the State Board maintains is the state's official list of eligible voters. *See* N.C. Gen. Stat. § 163-82.11(a) (requiring the State Board of Elections to "develop and implement a

statewide computerized voter registration system" that "shall serve as the official voter registration list for the conduct of all elections in the State."). Nothing that Plaintiffs allege could possibly render the voter registration list "unofficial" under state or federal law. In other words, the NVRA prohibits the systematic removal of anyone on the official list under these circumstances. That no voter on the list is alleged to be actually ineligible only reinforces the importance of protecting those voters against erroneous removal by vindicating Congressional intent with respect to the NVRA's 90 day quiet period.

Several other Circuits have confirmed this interpretation as consistent with both the statutory language and purpose of the NVRA. In *Land*, the Sixth Circuit affirmed a preliminary injunction prohibiting the removal of active registrations from Michigan's voter rolls when voter ID cards were returned undeliverable. 546 F.3d at 382-83. In doing so, the court recognized (as noted above) that "[b]ecause the ultimate goal of registering to vote is to permit a person actually to vote, we think that, at the very least, a person becomes a 'registrant,' for the purposes of the NVRA, *from the first moment* that he or she is actually able to go to the polls and cast a regular ballot." *Id.* at 384 (emphasis added). The court rejected arguments that state law would govern when a person became a "registrant" subject to the protections of the NVRA. "[M]aking the question of who is a 'registrant' a matter of state law would frustrate the NVRA's purpose of regulating state conduct of elections, by

essentially permitting states to decide when they will be bound by the NVRA's requirements….If states could define 'registrant,' they could circumvent the limitations of the NVRA by simply restricting the definition, and hence the federal protections of the NVRA, to a very limited class of potential voters." *Id.* at 382-83. The North Carolina voters who are the subject of Plaintiffs' Complaint, and whose removal Plaintiffs seek, are voters entitled to cast a regular ballot. Plaintiffs cannot strip the NVRA's protections from those voters by merely redefining what it means to be a "registrant."

In *Arcia*, the Eleventh Circuit similarly observed that Congress's failure to expressly include removals based on lack of citizenship in its "exhaustive list of exceptions to the 90 Day Provision is good evidence that such removals are prohibited." 772 F.3d at 1345. This observation applies equally here, where the 90 day provision provides no carve-out for individuals whose registrations are alleged to be incomplete, but who are undisputedly processed and enrolled on North Carolina's list of eligible registered voters.

The specific language chosen by Congress and the plain text interpretation of the words Congress employed, are directly in line with the NVRA's purpose to enhance "the participation of eligible citizens as voters in elections for Federal Office." 52 USC § 20501(b)(2). Not only do Plaintiffs fail to allege actual knowledge of ineligible voters within the list of 225,000—repeatedly referencing

"potentially" ineligible voters in their brief, Doc. 8 at 1, 27—but the record is replete with evidence that any systemic program would undoubtedly impact eligible voters, including those who have properly provided the requirement HAVA numbers that, by no fault of the voter, do not appear in their record. *See, e.g.*, Dkt. 19-3.

In short, "[t]hough the public certainly has an interest in a state being able to maintain a list of electors that does not contain any false or erroneous entries, a state cannot remove those entries in a way which risks invalidation of properly registered voters." *Land*, 546 F.3d at 388. Congress's choice to prohibit removal of "names" from the "official lists of eligible voters" under the circumstances, and without limitation to only *some* names, forecloses Plaintiffs' arguments that the NVRA could not apply to the list of voters at issue in this case. Accordingly, the NVRA bars Plaintiffs' requested relief.

C. *The District Court Erred in Declining to Dismiss Count Two Under the NVRA.*

The district court recognized that the NVRA is *the* federal issue at the heart of this case. "That is the issue of federal law, and it is disputed. Plaintiffs say Defendants are required to remove these voters [under HAVA]. See DE 1-3 at 18-19. Defendants say they cannot do so [under the NVRA]. See DE 31 at 7-8." Dkt. 58 ("Order") at 22. The district court (correctly) recognized the centrality of this dispute over federal law to Plaintiffs' first claim and properly exercised jurisdiction

over that claim. *Id.* (holding that "the meaning of 'section 303(a)' of HAVA is an essential element of Plaintiffs' claim") (citation omitted).

Yet after finding that the issue of federal law predominates over the action, the district court deferred answering that question, and declined to consider whether the NVRA did in fact bar Plaintiffs' requested relief. "The court expresses no view on the strength of either position, but observed that, if Defendants' argument prevails, then they will not have violated their duty [under HAVA]. On the other hand, if Plaintiffs' position prevails (i.e., that **the NVRA's restrictions on removals applies only to valid registrants, and individuals who registered to vote in a manner inconsistent with HAVA are not valid registrants**), then they could prevail on their claim[.]" Order at 22 (emphasis added).

But in deferring the merits of the parties' positions, the district court confirmed that Count Two arises under federal law. The district court found that Plaintiffs *must* prevail on their theory of the NVRA—the core, federal, issue presented in this case—in order to even have a *possibility* of prevailing on their state claim. Order at 22. Despite correctly identifying the integral nature of the federal issue in the case, and finding that Count One did present a federal question (under HAVA), the district court inexplicably declined to consider the dispositive nature of the NVRA in determining its jurisdiction over either Count One or Count Two. *Compare* Order at 33 ("In sum, the court finds that Count One necessarily raises a

disputed and substantial issue of federal law, and that its resolution in federal court would not disrupt the state-federal balance approved by Congress."), *with id.* at 18-19, 33 (declining original jurisdiction over Count Two "even where that claim raises an issue of federal law" and exercising only supplemental jurisdiction).

Failing to recognize that the NRVA issue predominated over Count Two was error.[4] The NVRA completely forecloses *all* the relief Plaintiffs requested for the 2024 general election, and the federal issue of the NVRA's application accordingly predominates over all others in the case. *See* Part I.B; *cf. Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003) ("[W]hen a federal statute wholly displaces the state-law cause of action…a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law.")

Moreover, federal jurisdiction is appropriate here. When discussing the propriety of exercising federal jurisdiction over Count One, the district court noted that "state by state variations of interpretation about the scope of a state's obligations under HAVA and the NVRA creates the risk of horizontal disuniformity and would thereby undermine the very devices that Congress created to ensure a uniform national system of voter registration and election administration." Order at 25. These

[4] Deferring consideration of the NVRA was also erroneous, since Plaintiffs' interpretation of the statute is not correct (*see* Part I.B, supra).

concerns apply with the same force in the context of Count Two, and jurisdiction is warranted over both Counts One and Two accordingly.

None of Plaintiffs' requested relief can be granted within the 90 day quiet period the NVRA provides. Accordingly, both Count One and Count Two are preempted by the NVRA, because they seek voter registration removals within 90 days of a federal election. The federal issue presented by the NVRA is the heart of this case and the 90 day quiet period is a critical part of federal policy. *Arcia*, 772 F.3d at 1346. Failing to exercise original jurisdiction over Count Two to vindicate this federal policy was error.[5]

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the district court and dismiss Plaintiffs' Complaint in its entirety.

[5] Even if declining to exercise original jurisdiction over Count Two were not error, the district court could have exercised supplemental jurisdiction under § 1367, even after dismissing Count One. *See Wu v. Mamsi Life & Health Ins. Co.*, No. 07-1170, 2010 U.S. Dist. LEXIS 155312, at *2 (D. Md. June 2, 2010) (citing *Isaac v. North Carolina Dep't of Transp.*, 192 F. Appx. 197, 200 (4th Cir. 2006)). Declining to exercise supplemental jurisdiction is reviewed for abuse of discretion. *Ketema v. Midwest Stamping, Inc.*, 180 F. Appx. 427, 428 (4th Cir. 2006). Remanding Count Two would also be an abuse of discretion under this standard, because of the predominance of the NVRA issue over all of Plaintiffs' requested relief. *See, e.g.*, *Boyce v. Wachovia Sec., LLC*, 09-cv-263, 2010 U.S. Dist. LEXIS 30128, at *17 (E.D.N.C. Feb. 17, 2010).

DATED: October 23, 2024

Respectfully submitted,

/s/ Jeffrey Loperfido

Lee H. Rubin (*pro hac vice* forthcoming)
MAYER BROWN LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
(650) 331-2000
(650) 331-2060-Facsimile
lrubin@mayerbrown.com

Rachel J. Lamorte (*pro hac vice* forthcoming)
Catherine Medvene (*pro hac vice* forthcoming)
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101
(202) 263-3000
(202) 263-3300-Facsimile
rlamorte@mayerbrown.com
cmedvene@mayerbrown.com

Jordan Hilton (*pro hac vice* forthcoming)
MAYER BROWN LLP
201 S. Main Street, Suite 1100
Salt Lake City, UT 84111
(801) 907-2717
(801) 289-3142-Facsimile
jhilton@mayerbrown.com

Harsha Tolappa (*pro hac vice* forthcoming)
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606

Jeffrey Loperfido (NC Bar # 52939)
Hilary H. Klein (NC Bar # 53711)
Christopher Shenton (NC Bar #60442) (application for admission forthcoming)
SOUTHERN COALITION FOR SOCIAL JUSTICE
5517 Durham Chapel Hill Blvd.
Durham, NC 27707
Telephone: 919-794-4213
jeffloperfido@scsj.org
hilaryhklein@scsj.org
chrisshenton@scsj.org

Ezra D. Rosenberg
Jennifer Nwachukwu (*pro hac vice* forthcoming)
Pooja Chaudhuri (*pro hac vice* forthcoming)
Alex Davis (*pro hac vice* forthcoming)
Javon Davis (*pro hac vice* forthcoming)
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW
1500 K Street, NW, Ste. 900
Washington DC, 20005
(202) 662-8600
erosenberg@lawyerscommittee.org
jnwachukwu@lawyerscommittee.org
pchaudhuri@lawyerscommittee.org
adavis@lawyerscommittee.org
jdavis@lawyerscommittee.org

Telephone: (312) 782-0600
Facsimile: (312) 701-7711
htolappa@mayerbrown.com

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because this brief contains 3,986 words.

2. This brief 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), as required by Fed. R. App. P. 27(d)(1)(E), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman style, with 14-point font.

DATED: October 23, 2024

/s/ Jeffrey Loperfido

Jeffrey Loperfido
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2024, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

/s/ Jeffrey Loperfido
Jeffrey Loperfido
Counsel for Amici Curiae