No. 18-11808-GG

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AMERICAN CIVIL RIGHTS UNION, *Plaintiff-Appellant*,

v.

BRENDA SNIPES, in her official capacity as the Supervisor of Elections of Broward County, Florida, *Defendant-Appellee*,

1199SEIU UNITED HEALTHCARE WORKERS EAST, *Intervenor-Defendant-Appellee*.

On Appeal from the United States District Court for the
Southern District of Florida
Case No. 16-cv-6147 (Hon. Beth Bloom)

JOINT RESPONSE BRIEF OF APPELLEE BRENDA SNIPES AND INTERVENOR-APPELLEE 1199SEIU UNITED HEALTHCARE WORKERS EAST

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Eleventh Circuit Rule 26.1-1 and Federal Rule of Appellate Procedure 26.1, Appellee and Intervenor-Appellee hereby furnish a complete list of the following persons that have an interest in the outcome of this case.

Adams, J. Christian – Counsel for Appellant

American Civil Rights Union, Inc. – Counsel for Appellant

Amunson, Jessica R. – Counsel for Intervenor-Appellee

Bains, Chiraag – Counsel for Intervenor-Appellee

Bloom, Beth – District Court Judge

Boldt, Allie – Counsel for Intervenor-Appellee

Bracey, Kali N. – Counsel for Intervenor-Appellee

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Davis, William E. – Counsel for Appellant

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Possolo, Manuel C. – Counsel for Intervenor-Appellee

Public Interest Legal Foundation – Counsel for Appellant

Roberson-Young, Katherine – Counsel for Intervenor-Appellee

Service Employees International Union – Counsel for Intervenor-Appellee

Slutsky, David – Counsel for Intervenor-Appellee

Snipes, Brenda, Broward County Supervisor of Elections – Appellee

Vanderhulst, Joseph A. – Counsel for Appellant

1199SEIU United Healthcare Workers East – Intervenor-Appellee

No publicly traded company or corporation has an interest in the outcome of this appeal.

STATEMENT REGARDING ORAL ARGUMENT

Appellee and Intervenor-Appellee agree with the position taken by all courts that have addressed the issue that Section 8 of the National Voter Registration Act of 1993 ("NVRA") does not require states to have a general program to remove voters for any reason other than the death or the relocation of the voter, and further agree with the court below that Broward County has a program in place that complies with Section 8. However, because the contrary position of Plaintiff-Appellant ACRU raises questions of first impression for this Court, Appellee and Intervenor-Appellee agree that oral argument will assist the Court in resolving this appeal. This statement regarding oral argument is submitted pursuant to Federal Rule of Appellate Procedure 34(a) and Eleventh Circuit Rules 28-1(c) and 34-3(c).

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INTRODUCTION

Broward County Supervisor of Elections Brenda Snipes and her staff work diligently and in compliance with federal and state law to ensure that Broward County's voter registration rolls are complete, accurate, and up to date. Nevertheless, Appellant American Civil Rights Union ("ACRU") contends that Supervisor Snipes has violated the National Voter Registration Act of 1993 ("NVRA") because Broward County has too many voters on the voter rolls. Supervisor Snipes is not alone in facing such baseless claims. In recent years, organizations like ACRU have brought suits under the NVRA against jurisdictions around the country, asserting that election officials have an obligation under federal law to engage in aggressive voter purges without regard for the risk that eligible voters will be erroneously removed in the process. But, as the court below found—and as every court to have considered the question likewise has found—that is not what federal law requires. In the NVRA, Congress struck a careful balance that encourages both increasing voter registration and maintaining accurate voter rolls. As part of this balance, the NVRA requires that a state conduct a general program that makes a reasonable effort to locate and remove only those voters who have become ineligible due to death or a change in residence. At the same time, the NVRA permits, but does not require, states to have a general program to remove voters from the rolls based on other specified criteria. No voters can be removed,

however, unless the procedures set forth in the statute are followed. The Help America Vote Act ("HAVA") further confirms that removal of a registered voter from the voter rolls cannot occur unless in conformance with the NVRA's procedures.

After a full trial and a careful evaluation of all the trial evidence, including expert testimony, lay witness testimony, and documentary evidence, the district court found that Supervisor Snipes and her staff have implemented a general program that makes a reasonable effort to identify and remove those registrants who have died or relocated from Broward County's voter rolls. In a 61-page opinion, the district court thoroughly rejected ACRU's contention that Supervisor Snipes violated Section 8 of the NVRA. That ruling is supported by substantial evidence and should be affirmed.

STATEMENT OF JURISDICTION

This case was properly filed in the United States District Court pursuant to that court's federal question jurisdiction, 28 U.S.C. § 1331. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

COUNTERSTATEMENT OF THE ISSUES

1. Whether the district court correctly found that Section 8 of the National Voter Registration Act ("NVRA") should be interpreted in accordance with its plain text to require states to have a general program that makes a reasonable effort to

remove the names of ineligible voters from the official lists of registered voters only in cases of the death or change in residence of the voter.

2. Whether the district court properly found, after weighing all of the evidence following trial, that Broward County Supervisor of Elections Dr. Brenda Snipes ("Supervisor Snipes") has a general program for Broward County that makes a reasonable effort to remove the names of ineligible voters from the official list of eligible voters by reason of death or relocation.

STATEMENT OF THE CASE

A. Federal Statutory Background[1]

In 1993, Congress enacted the NVRA, 52 U.S.C. § 20501 et seq., Pub. L. No. 103-31, 107 Stat. 77, to establish national voter registration procedures for federal elections. The NVRA has four stated purposes:

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
>
> (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
>
> (3) to protect the integrity of the electoral process; and
>
> (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501.

[1] The relevant federal statutes are set forth in the addendum to this brief.

Section 8 of the NVRA governs a state's "administration of voter registration for elections for Federal office." 52 U.S.C. § 20507.[2] Consistent with the NVRA's objectives, Section 8 places significant restrictions on state efforts to remove the names of registered voters from the rolls, while imposing limited affirmative obligations on states to remove the names of ineligible voters.

In furtherance of the NVRA's voter participation goals, Section 8 restricts the ability of states to purge the voter rolls. When Congress enacted the NVRA, it was "wary of the devastating impact purging efforts previously had on the electorate." *ACRU v. Phila. City Comm'rs*, 872 F.3d 175, 178 (3d Cir. 2017). Congress found that purging efforts are often "highly inefficient and costly" by requiring reprocessing of registrations removed in error and that "there is a long history of such list cleaning mechanisms which have been used to violate the basic rights of citizens." S. Rep. No. 103-6, at 18 (1993). Accordingly, Section 8 allows states to remove names from the voter rolls only in "certain specific circumstances." *ACRU*, 872 F.3d at 182. The name of a registrant may not be removed from the voter rolls except (A) at the request of the registrant; (B) as provided by state law, by reason of criminal conviction or mental incapacity; (C) by reason of death of the registrant or

[2] This brief generally refers to 52 U.S.C. § 20507 as "Section 8," reflecting the statute's original location at Section 8 of Pub. L. No. 103-31, May 20, 1993, 107 Stat. 77.

(D) by reason of a change in residence of the registrant. 52 U.S.C. § 20507(a)(3)-(4).

In addition to restricting the circumstances in which states may remove names from the voter rolls, the NVRA also restricts how and when names may be removed. A state's removal program must be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act" and must not result in the removal of the name of any registered voter "by reason of the person's failure to vote." 52 U.S.C. § 20507(b)(1)-(2). States furthermore may not remove a registrant's name due to a change in residence unless the registrant (1) confirms the change in writing or (2) fails to respond to a notice and has not voted or appeared to vote for a specified period of time. 52 U.S.C. § 20507(d).

Section 8 also requires states to take certain minimum steps to maintain the accuracy of their lists of registered voters. Each state shall "[c]onduct 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." 52 U.S.C. § 20507(a)(4). This statutory text makes clear that the obligation imposed on states is limited in two important respects. First, each state is required to remove voters who are ineligible

by reason of *two criteria only*: death or change in residence.[3] Second, the state's program need only make a *reasonable effort* to remove the names of ineligible voters based on the two enumerated criteria.

The NVRA also identifies what the Department of Justice has called a "safe harbor program," which, by the statute's own terms, fully satisfies the law's requirement that election officials conduct a "general program" to remove voters who have become ineligible because they have moved.[4] Specifically, Subsection 8(c) allows states to use National Change of Address ("NCOA") data, provided by the United States Postal Service ("USPS"), to identify registrants who may have changed residence. *Id*. § 20507(c).

In 2002, Congress enacted HAVA, 52 U.S.C. § 20901 et seq., Pub. L. No. 107-252, 116 Stat. 1666. Among other things, HAVA requires each state to implement a computerized statewide list "that contains the name and registration information of every legally registered voter in the State," 52 U.S.C.

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[3] The NVRA's legislative history likewise states: "States are *permitted* to remove the names of eligible voters from the rolls at the request of the voter or as provided by State law by reason of mental incapacity or criminal conviction." S. Rep. 103-6 at 18 (1993) (emphasis added). "In addition, States are *required* to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists *by reason of death or a change in residence*." *Id.* (emphasis added).

[4] U.S. Dep't of Justice, *Overview: The National Voter Registration Act of 1993 (NVRA)*, https://www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited Sept. 20, 2018) (hereinafter "DOJ NVRA Overview").

§ 21083(a)(1)(A). Like the NVRA, HAVA requires election officials to "perform list maintenance" on that computerized voter list, subject to certain requirements—including the requirement that all removals be "in accordance with the provisions of the [NVRA]." 52 U.S.C. § 21083(a)(2). HAVA further provides that, for purposes of removing ineligible voters from the list due to their felony status or death, the state "shall coordinate the computerized list with State agency records." 52 U.S.C. § 21083(a)(2)(A)(ii). List maintenance under HAVA must be conducted in a manner ensuring that (1) "the name of each registered voter appears in the computerized list," (2) "only voters who are not registered or who are not eligible to vote are removed from the computerized list," and (3) "duplicate names are eliminated from the computerized list." 52 U.S.C. § 21083(a)(2)(B). HAVA provides that "specific choices on the methods of complying" with its list-maintenance requirements "shall be left to the discretion of the State." 52 U.S.C. § 21085. Unlike the NVRA, HAVA does not include any private right of action to enforce its provisions. 52 U.S.C. §§ 21111-21112; *ACRU*, 872 F.3d at 184-85.

B. Background on State and County List-Maintenance Procedures

By state statute, responsibility for maintaining accurate and up-to-date voter rolls in Florida is shared by the Division of Elections ("DOE") and the county supervisors of elections. *See, e.g.*, Fla. Stat. §§ 98.015, 98.035, 98.045. DOE aggregates information concerning deceased voters, duplicate registrations, felony

convictions, and adjudications of mental incapacity and distributes that information to the relevant counties via the Florida Voter Registration System ("FVRS")—Florida's implementation of the computerized statewide voter registration list required by HAVA. *See id.* § 98.075(2)-(5); Fla. Adm. Code § 1S-2.041(4)(a)-(c); App. II at 55-57.[5] Counties are responsible for acting on that information and removing voters who are ineligible from their voter rolls. Fla. Stat. § 98.075(2)-(5), (7); Fla. Adm. Code § 1S-2.041(4)(a)-(c). Counties are also responsible for identifying voters who have changed residence and removing them (if they become ineligible by moving out of state), updating their registrations (if they move to a new address within the same county), or transferring the registration to the new county (if they move to a different Florida county). Fla. Adm. Code §§ 1S-2.039(3), 1S-2.041(3); *see generally* Fla. Stat. §§ 98.065, 101.045.

FVRS is administered by DOE. Fla. Stat. § 98.035. County supervisors of elections, including Supervisor Snipes, access voter registration records in FVRS through their own voter registration systems. Like most other Florida counties, Broward County uses a vendor-supplied application known as VR Systems to access FVRS. App. II at 57; Supp. at 139, 161, 209-10. VR Systems includes functions to

[5] The three volumes of Appellant's Appendix are cited as "App. I," App. II," and "App. III," with pin cites to the page number of the pertinent volume because Appellant's Appendix is not consecutively paginated. Appellees' Supplemental Appendix is cited as "Supp."

perform most of the list-maintenance activities assigned to counties under Florida law, including receiving, processing, and updating voter registration information, generating address confirmations and mailings to voters, and marking voters as inactive or ineligible (thereby removing them from the county's voter rolls). App. II at 42-43, 52, 57; Supp. at 194, 196-97, 208, 210, 203-06. To supplement the functionality built into VR Systems, Broward County also contracts with a vendor, Commercial Printers, to handle the high volume of mail it must print and send. App. II at 46; Supp. at 156. Commercial Printers is certified to provide NCOA services through the USPS's NCOA-Link program. App. II at 58; Supp. at 202.

C. The Complaint

On January 26, 2016, ACRU sent a letter to Supervisor Snipes alleging that she was "in apparent violation" of Section 8 of the NVRA. Supp. at 2; App. II at 9. ACRU alleged that Broward County had "an implausible number of registered voters compared to the number of eligible living citizens," based on a comparison of "publicly available data from the U.S. Census Bureau and the federal Election Assistance Commission." Supp. at 2; App. II at 9. The letter concluded with a request for information and documents about Supervisor Snipes's list-maintenance activities. Supp. at 3-4; App. II at 9-10.

On February 8, 2016, Supervisor Snipes responded to ACRU's letter and provided five years' worth of certification statements—documents that each county

must submit to the DOE every six months. Supp. at 6; App. II at 10, 46. These certifications, covering the period from January 1, 2011 to December 31, 2015, indicated that Supervisor Snipes used a variety of data sources to maintain Broward County's voter rolls. Supp. at 6; App. II at 46-47. The certifications demonstrated that Supervisor Snipes had an active list-maintenance program that included the use of, among other tools, change-of-address information from the NCOA program. App. II at 30, 46-50; Supp. at 6, 44.

Despite this evidence, on June 27, 2016, ACRU and one of its members (Andrea Bellitto) filed a complaint against Supervisor Snipes alleging violations of Section 8 of the NVRA. App. I at 26-35. An amended complaint was filed on August 4, 2016. App. I at 53-64. In Count I, ACRU claimed that Supervisor Snipes had "failed to make reasonable efforts to conduct voter list-maintenance programs, in violation of Section 8 of NVRA, 52 U.S.C. § 20507, and 52 U.S.C. § 21083(a)(2)(A) [("HAVA")]." App. I at 60, ¶ 28. In Count II, ACRU claimed that Supervisor Snipes had "failed to respond adequately to Plaintiffs' written request for data" and failed to produce or otherwise make available records "concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Broward County, in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i)." App. I at 61, ¶ 33. ACRU asked the district court to declare Supervisor Snipes in violation of Section 8

and order her to implement a list-maintenance program to ensure that non-citizens and ineligible registrants are not on Broward County's voter rolls. App. I at 61. 1199SEIU United Healthcare Workers East ("1199SEIU") intervened in the suit to protect its members and eligible voters from unjustified and unlawful purges of the voter rolls. Supp. at 28-32.

D. The Trial

In a decision ACRU does not challenge, the district court dismissed Count II *sua sponte*, and the case proceeded to a bench trial solely on Count I. Supp. at 33-43; App. II at 9. The five-day bench trial took place in the summer of 2017. App. II at 7, 11.

At trial, ACRU presented the expert testimony of Dr. Steven Camarota, Director of Research for the Center for Immigration Studies, who analyzed population and registration data for Broward County from 2010 through 2014. Supp. at 94-95. Dr. Camarota testified that Broward County's voter registration rate was too high given the eligible voter population. Supp. at 96-104. To counter Dr. Camarota's testimony, 1199SEIU offered Professor Dan Smith, who testified that Dr. Camarota's numbers did not add up. Supp. at 211-19. Specifically, Professor Smith testified that in calculating the registration rate, Dr. Camarota's denominator underestimated the eligible voter population in Broward County and his numerator overestimated the number of registered voters. *Id.* ACRU also presented the

testimony of Scott Gessler, the former Colorado Secretary of State, who opined that Supervisor Snipes did "not conduct a general program of voter list maintenance" and "failed to take reasonable steps to maintain the accuracy of the county voter rolls." App. III at 80; *see* App. II at 26-32. And ACRU offered various lay witnesses who testified about their experiences contacting Supervisor Snipes about potentially ineligible voters. App. II at 32-42; *e.g.*, App. III at 119-31, 138-61.

Supervisor Snipes and 1199SEIU offered counter-testimony and other evidence demonstrating the steps Supervisor Snipes and her staff take to maintain accurate voter rolls. App. II at 38-46. In particular, they presented evidence showing that employees are trained on how to maintain accurate voter rolls, use a voter registration database system that interfaces with the statewide registration database to ensure accurate registration data, and implement various list-maintenance policies and procedures for updating the rolls when voters become ineligible by reason of a change in residence, death, felony conviction, mental incapacity, or lack of citizenship, and for removing duplicate registrations. App. II at 38-46.

E. The District Court's Opinion

After hearing the evidence at trial and reviewing post-trial briefing, the district court entered judgment in favor of Supervisor Snipes and 1199SEIU. Supp. at 236-37. In a 61-page opinion, the district court thoroughly rejected ACRU's

interpretation of the NVRA and its purported evidence that Supervisor Snipes was in violation of the statute. App. II at 6-67.

As an initial matter, the district court rejected ACRU's argument that the statute required Supervisor Snipes to have a general program in place that would "continually scour [the] voter rolls to ensure that every ineligible voter is removed at the earliest possible moment permitted by law." App. II at 11-16. Instead, the court held that "[t]he NVRA only requires '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*.'" App. II at 33 (quoting 52 U.S.C. § 20507(a)(4) (emphasis in Order)). Thus, the court stated that its "focus" in its opinion was "on whether Snipes . . . conducted a general program that makes a reasonable effort to remove ineligible voters by reason of death or change of address as required by Section 8 of the NVRA." App. II at 11.

The district court likewise rejected ACRU's arguments about what constitutes a "general program that makes a reasonable effort." After thoroughly analyzing the "text, structure, purpose and history of the NVRA," the district court held that a state's list-maintenance program makes a "reasonable effort" in compliance with Section 8(a)(4) of the NVRA so long as it:

(1) Uses NCOA information supplied by the USPS, or similarly reliable information garnered from other sources, such as mass mailings or targeted mailings, to identify registrants whose addresses have changed to update its voter rolls;

(2) Uses information from the state health department or other similarly reliable sources to identify voters who have recently died to remove deceased individuals from the rolls; and

(3) Complies with all mandatory list-maintenance tools established by the governing state to remove the names of ineligible voters by reason of death or change in residence.

App. II at 19-20. The court then proceeded to analyze the evidence and determined that Supervisor Snipes has a general program that makes a reasonable effort to remove the names of ineligible voters due to death or change in residence.

1. Expert Evidence

Regarding the expert evidence, the district court rejected Dr. Camarota's testimony concerning what he called an "implausibly high" voter registration rate, and credited the contrary testimony of 1199SEIU's expert Professor Smith. App. II at 24 ("the Court finds Professor Smith's analysis persuasive and finds Dr. Camarota's calculations to be misleading"). The court found that Dr. Camarota used datasets that "do not allow for an accurate comparison" and that included "different

groups of voters from different time periods." App. II at 24-26. Specifically, the court found that the statistic Dr. Camarota used for the number of registered voters in Broward County (survey data from the U.S. Election Assistance Commission) overstated the registration rate, while estimated levels of voter-eligible citizens (derived from the U.S. Census Bureau's American Community Survey data) understated the eligible population. App. II at 24-25.

The district court also rejected much of Mr. Gessler's testimony. First, the court rejected Gessler's opinion that Supervisor Snipes's program was unreasonable because the office lacked consistent and written policies. App. II at 28-29. The court found that the VR System, to which all employees in Supervisor Snipes's Voter Services Department ("Voter Services") have access, includes an online "help desk" providing topic-specific, written list-maintenance policies and procedures (the "VR Manual"). App. II at 51-52.

Second, the court rejected Mr. Gessler's opinion that the certifications that Supervisor Snipes submitted to the Florida Department of State ("DOS") showed fluctuating rates of list maintenance. App. II at 29-30, 46-50. The Court found that Mr. Gessler's opinion was not supported by the evidence. App. II at 29-30. Instead, the court found that the certifications provided by Supervisor Snipes demonstrated that she performed substantial list-maintenance activities—including processing thousands of mailings and placing thousands of voters on the "inactive" list—every

year from 2011 through 2016. App. II at 29-30 ("when the certifications are viewed in their totality, there is sufficient evidence demonstrating that [Broward County] has an ongoing list maintenance program in place").

Finally, the district court rejected Mr. Gessler's opinion that Supervisor Snipes's program failed to use adequate list-maintenance tools, including the Systematic Alien Verification for Entitlement ("SAVE") system to identify non-citizens, Social Security Disability Index ("SSDI") records to identify deceased voters, the Electronic Registration Information Center ("ERIC") to compare information from state to state, and the Department of Highway Safety and Motor Vehicles ("DHSMV") "DAVID" database to identify potentially ineligible voters, including non-citizens. App. II at 30-32. The court found that "Snipes was either using the suggested databases through the VR system, applying to use the system or does not have the power to implement the system." App. II at 30-31.

2. Citizen Complaints

The district court also considered ACRU's proffered evidence from individual citizens who sent information to Supervisor Snipes concerning voters registered in Broward County whom they believed were ineligible to vote. App. II at 32-42.

First, ACRU witnesses Richard Gabbay, Greg Prentice, and Richard DeNapoli testified they had sent Supervisor Snipes lists of voters that they claimed had moved away or died and were therefore no longer eligible to vote in Broward

County. App. II at 34. The court found that these witnesses' testimony as well as the documentary evidence—which was admitted for the limited purpose of showing these witnesses' communications with Supervisor Snipes and not for the truth of their assertions that there were any dead or non-resident voters on the voter rolls—demonstrated that the Supervisor's staff investigated and acted on this information. App. II at 32-42 & 33 n.8; *see* Supp. at 115-16.

Second, ACRU presented evidence of citizen submissions pertaining to alleged voter ineligibility for reasons other than death or change of address, including lists of registrants who witness William Skinner contended were also registered in New York State, as well as testimony from witness Greg Prentice concerning individuals purportedly registered to vote at commercial addresses. App. II at 36-39. The court declined to find that these individuals were no longer residents of Broward County or that they were ineligible on any other ground. App. II at 37, 40-41. Moreover, the court found that Supervisor Snipes had responded to Mr. Prentice with information about the steps she was taking to verify the registrations he had identified, and that ACRU had made no showing that those steps were inappropriate under Florida law. App. II at 41.

3. Supervisor Snipes's Existing List-Maintenance Program

The court found Supervisor Snipes's list-maintenance program to be in full compliance with Section 8. As the court noted, Supervisor Snipes has removed

hundreds of thousands of registrants from Broward County's rolls since 2014. App. II at 58; *see* Supp. at 90, 221, 223-25 (239,868 registrants removed between January 2014 and December 2016; 192,157 registrants removed between January 2015 and January 2017). The court found that Supervisor Snipes and her staff receive ongoing training on carrying out their duties, including training retreats held three to four times a year and ongoing training of the clerks who process voter registrations. App. II at 44-46; *see* Supp. at 134, 135, 145-46, 162-65, 170, 174-76.

a. List-Maintenance Activities by Reason of Changed Address

The district court found that Supervisor Snipes administered a general program that makes a reasonable effort to remove registrants due to a change of residence pursuant to Section 8(a)(4). As the court found, Supervisor Snipes consistently sends list-maintenance mailings to identify individuals who have relocated. In every odd-numbered year, Supervisor Snipes sends mailings to registrants identified from the NCOA program. App. II at 52, 66; Supp. at 49, 65, 70, 73, 168, 209. Broward County contracts with Commercial Printers to complete these mailings. App. II at 49, 52; Supp. at 156, 202. Broward County exports information regarding all active Broward County voters from VR Systems, and Commercial Printers checks this information against the NCOA database, returning forwarding address information for any identified matches. App. II at 52; Supp. at 202. Voter Services reviews each NCOA change of address and flags the voter's

record for the appropriate action to be taken—such as sending out an address confirmation notice, a final notice, a voter identification card, or other mailings. App. II at 52; Supp. at 203-06. Supervisor Snipes's Information Technology ("IT") Department then reviews and exports this information so that Commercial Printers can send out appropriate mailings. App. II at 52.

Through DOE, Supervisor Snipes also receives change-of-address information from DHSMV. App. II at 54; Supp. at 141. Supervisor Snipes regularly sends forwardable and non-forwardable mass mailings to all active voters as part of her list maintenance for changes of address. App. II at 54. If the mailings are returned as non-deliverable, Supervisor Snipes sends out a request card, followed by a change-of-address notice, and then a final notice. App. II at 53; Supp. at 148-49. In 2015, Supervisor Snipes also sent non-forwardable address confirmation mailings to individuals who had not voted or updated their registration in the last two years, and processed change-of-address information from any such cards returned as undeliverable. App. II at 53-54; Supp. at 150.

The court found that by using information obtained through the mailings and related procedures described above, Supervisor Snipes makes reasonable efforts to remove registrants who become ineligible based on a changed address and updates the addresses of voters who move within Broward County and remain eligible. *See*, *e.g.*, App. II at 54, 58. In total, between January 1, 2014 and December 31, 2016,

Supervisor Snipes removed 85,484 registrants who moved out of the county, 2,739 registrants who moved out of the county and requested an address change, 1,886 who requested to be removed, and 97,941 whose mail was returned and who remained inactive for two general elections. App. II at 54, 58; Supp. at 90, 199-201. In addition, she updated the addresses of 148,645 voters who moved within Broward County. App. II at 58.

b. List-Maintenance Activities by Reason of Death

The district court also found that Supervisor Snipes met Section 8(a)(4)'s requirement of maintaining a general program that makes a reasonable effort to remove registrants who have died. DOS obtains reports of deceased individuals from the Florida Department of Health ("DOH") and SSDI. App. II at 55; Supp. at 222. Using this information, DOS identifies individuals who have died within and outside of Florida, and forwards their names to Broward County and other counties through FVRS. App. II at 55. On a daily basis, Supervisor Snipes uses that data to remove deceased voters from the rolls where certain fields of information match; where there is any non-matching information, Supervisor Snipes requests a death certificate from the voter's family to verify the death. *Id.*; Supp. at 151-52, 183.

Similarly, if Supervisor Snipes receives information about a death through a source other than DOS, she attempts to confirm the death before removing the registrant from the rolls. App. II at 55. If she cannot obtain the death certificate,

Supervisor Snipes checks with the state; if the death still cannot be confirmed, her office sends a notice to the voter's last-known address to verify the death before removal. *Id.*; Supp. at 170-71. Pursuant to these policies, Supervisor Snipes removed 37,095 registrants determined to be deceased between January 1, 2014 and December 31, 2016. App. II at 55; Supp. at 90.

c. Removal by Reasons Other Than Changed Address or Death

Although the NVRA does not require a general program to remove ineligible voters on any basis other than death or change in residence, Supervisor Snipes also makes efforts to remove individuals who are ineligible to vote on the following grounds, as the district court found.

1. Felony convictions and adjudicated mental incapacity. The court found that on a daily basis, Supervisor Snipes receives from DOS through the VR System an electronic list of individuals that DOR has identified as being ineligible due to felony convictions. App. II at 5; Supp. at 166, 184. DOS also regularly sends Supervisor Snipes information regarding individuals who have been adjudicated mentally incapacitated. App. II at 50; Supp. at 177, 185. Pursuant to Florida law, after receiving such information, Supervisor Snipes sends three 30-day notices to the individual flagged as ineligible by reason of felony conviction or mental incapacity to allow them to confirm or contest the information; if no response is received after the prescribed 90 days, the voter is removed. App. II at 50-51; Supp. at 167

(felonies) & 186 (adjudicated mental incapacity). Removals for felony conviction and adjudicated mental incapacity are conducted at the end of every month. App. II at 50-51; Supp. at 184, 186. Between 2014 and 2016, Supervisor Snipes removed 5,102 registrants due to felony disenfranchisement, and 238 registrants due to adjudicated mental incapacity. App. II at 50-51; Supp. at 90.

2. Duplicate registrations. The court found that on a daily basis, Supervisor Snipes receives information from DOS about potential duplicate voter registrations, and that Voter Services staff then makes an effort to determine whether the records in fact concern the same voter. App. II at 57; *see* Supp. at 152-53. Voter Services staff consolidates registrations that are confirmed to be duplicates so that only one remains active or removes the Broward County registration if the more recent duplicate registration is in another county. App. II at 57. Pursuant to this procedure, Supervisor Snipes removed 5,225 voters "Now Registered Elsewhere" and 4,407 duplicate registrations between 2014 and 2016. App. II at 57; Supp. at 90.

3. Non-citizenship. The court found that Supervisor Snipes also removes individuals from the voter rolls if she determines that they are non-U.S. citizens, which can occur when a person applies for naturalization. App. II at 56; *see* Supp. at 154-55. Between January 2014 and December 2016, Supervisor Snipes removed four non-citizens from the rolls. App. II at 56; *see* Supp. at 90. Florida voter registration applications require applicants to affirm under penalty of perjury that

they are citizens, and Supervisor Snipes does not register individuals who fail to make such an affirmation. App. II at 56.

In sum, the district court found that Supervisor Snipes's list-maintenance procedures are in full compliance with the law.

COUNTERSTATEMENT OF STANDARD OF REVIEW

Following a bench trial, district court conclusions of law are reviewed *de novo*. *Fla. Int'l Univ. Bd. of Trs. v. Fla. Nat'l Univ., Inc.*, 830 F.3d 1242, 1253 (11th Cir. 2016). The court's factual findings are reviewed "only for clear error, drawing all inferences in favor of the district court's decision," *id.*, and can be reversed only if, "after viewing all the evidence," this Court is "left with the definite and firm conviction that a mistake has been committed" because the lower court's findings are not "supported by substantial evidence." *Sidman v. Travelers Cas. & Sur.*, 841 F.3d 1197, 1201 (11th Cir. 2016) (citations & quotation marks omitted).

Contrary to ACRU's statement, the issues presented in this appeal are not all "pure questions of law or of how the law applies to specific facts" subject to *de novo* review. ACRU Br. 9. Rather, ACRU mostly takes issue with the district court's factual findings, which this Court can reverse only if it finds they are clearly erroneous and not supported by substantial evidence.

SUMMARY OF ARGUMENT

The NVRA requires states to conduct a general program that makes a reasonable effort to remove the names of ineligible voters based on two criteria only: death or relocation of the registrant. Despite the plain text of the NVRA, ACRU argues that the district court erred by failing to find that states must also conduct a general program to remove the names of voters who become ineligible due to reasons *other* than death or relocation. This argument lacks merit. ACRU points to no case law or statutory text that supports its claim. Instead, it relies on the same "statutory contortion" that led the Third Circuit Court of Appeals to not only reject this very argument, but also to suggest that such an argument was potentially sanctionable. *See ACRU*, 872 F.3d at 184. ACRU further attempts to rely on HAVA. But as the Third Circuit also held, ACRU has no right to sue under HAVA, and even if it did, the statute lends no support to its argument. *See id.* at 184-85.

Based on a detailed review of the evidence presented at trial, the district court concluded that Supervisor Snipes complied with her obligation to conduct a general program that makes a reasonable effort to remove registrants rendered ineligible by reason of death or relocation. ACRU argues that the district court incorrectly determined what constitutes a "reasonable effort." But ACRU's proposed "reasonable effort" standard has no basis in either the statutory text or the case law. ACRU also seeks to substitute its own factual findings for those of the district court.

But substantial record evidence supports the district court's judgment, and ACRU identifies no clear error in the district court's factual findings.

Finally, ACRU spends much of its brief arguing that Supervisor Snipes has failed to do things that she is not required to do by the NVRA. Whether Supervisor Snipes has implemented ACRU's wish list of vote-purging mechanisms, however, is irrelevant to whether Supervisor Snipes has complied with the actual mandates of federal law. But even assuming that Supervisor Snipes was required to implement a general program to remove names from the voter rolls for reasons other than death or relocation—which she is not—ACRU's evidence fell far short of proving any deficiency in Supervisor Snipes's list-maintenance practices. For all these reasons, the district court's judgment should be affirmed.

ARGUMENT

I. FEDERAL LAW REQUIRES STATES TO UNDERTAKE A GENERAL PROGRAM THAT MAKES A REASONABLE EFFORT TO REMOVE INELIGIBLE VOTERS BASED ONLY ON DEATH OR RELOCATION.

ACRU's principal argument on appeal is that the "district court erroneously interpreted the list-maintenance requirements of federal law as limited to the removal of voters who have become ineligible only by reasons of death or change of address." ACRU Br. 19. ACRU's position—that states are *required* under federal law to have a general program designed to remove names of registered voters from the voter rolls for reasons other than death or change of address—is contrary to the

plain text of the NVRA. Indeed, when ACRU recently took that exact same position before a federal district court in Pennsylvania and before the Third Circuit Court of Appeals, those courts questioned whether ACRU had so "grossly misrepresented the plain language of the statute" that ACRU should be sanctioned. *See ACRU*, 872 F.3d at 178 (quoting district court); *see id*. at 184 (noting that ACRU's appellate briefing engaged in "exactly the kind of statutory contortion that led the District Court to respond to ACRU's arguments by threatening to impose sanctions for blatant misrepresentation of the statute").

Despite the threat of sanctions in the Third Circuit, ACRU takes the exact same position on the meaning of Section 8 again here. But that position ignores the plain text of the statute. "It is axiomatic that the interpretation of a statute must begin, and usually ends, with the text of the statute." *Boca Ciega Hotel, Inc. v. Bouchard Transp. Co.*, 51 F.3d 235, 237 (11th Cir. 1995). Section 8's text could not be clearer. It provides that each state shall "[c]onduct 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." 52 U.S.C. § 20507(a)(4). Thus, the district court below correctly concluded that, under the NVRA, Supervisor Snipes was required to conduct a general program that makes a reasonable effort to remove ineligible voters based on two grounds only: death or relocation of the registrant. App. II at 12-13,

58. The court correctly noted that states are permitted, but not required, to have a general program to remove voters who are ineligible by reason of felony conviction or mental incapacity. The district court also observed that, "while the NVRA undoubtedly permits states to remove any non-citizen who somehow becomes registered to vote when such individuals come to the state's attention, it does not require a generalized program that attempts to identify such voters." App. II at 13.

ACRU offers no case citation or any authority that supports its reading of Section 8. And it relegates to a single mention in a footnote the Third Circuit decision squarely rejecting the exact same interpretation of Section 8(a)(4) that ACRU attempts to advance here. ACRU Br. 15 n.2.[6] In *ACRU v. Philadelphia City Commissioners*, 872 F.3d 175 (3d Cir. 2017), ACRU argued that because Pennsylvania does not permit individuals to vote while incarcerated for a felony, the

[6] In its footnote, ACRU erroneously argues that the Third Circuit's reading of the NVRA would prohibit removal of individuals who "*never were* eligible" to vote. App. Br. at 15 n.2. But the Third Circuit suggested no such thing. It merely held that in *permitting* states to remove those convicted of felonies, the NVRA did not *require* such removals as part of the state's general list-maintenance program. *ACRU*, 872 F.3d at 182. And as ACRU observes, this Court has already held that the NVRA permits removal of individuals who were never eligible to register. *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014) ("[W]e do not accept [the] argument that the NVRA distinguishes between the removals of registered voters who become ineligible to vote and registrants who were never eligible in the first place"). But, just as with felony convictions, simply because states are *permitted* to remove never-eligible individuals does not mean they are *required* to have a general program to remove such individuals. *See ACRU*, 872 F.3d at 182.

Philadelphia City Commissioners were required under the NVRA and HAVA to have a general program to remove the names of incarcerated felons from the voter rolls. The Third Circuit disagreed. As to the NVRA, the court held that, "[b]y its terms, the mandatory language in Section 8(a)(4) only applies to registrants *who have died or moved away*." *Id.* at 182 (emphasis added). The court concluded that removing names based on *other* criteria, such as criminal conviction, is "merely permitted—not required." *Id.* at 181-82. In addition, the court held that HAVA (unlike the NVRA) did not give ACRU a private right of action to bring its claim and that, even if it did, the statute did not require state election officials to go beyond the requirements of the NVRA in removing ineligible voters from the voter rolls. *Id.* at 184-85. Ultimately, the Third Circuit found that ACRU had "mangle[d] the statute beyond recognition," and engaged in "statutory contortion" akin to a "game of statutory Twister" to advance its argument. *ACRU*, 872 F.3d at 183-84.

Despite the utter rejection by the Third Circuit, ACRU repeats the exact same arguments here. The three NVRA provisions ACRU relies upon—subsections 8(a)(1), 8(a)(4), and 8(c)(2)—provide no support for its claim that a state must remove the names of registered voters for reasons other than death or relocation. Regarding subsections 8(a)(1) and 8(a)(4), ACRU argues they impose a general duty on states to ensure that voter registration lists are limited to "eligible" voters and "registrants." This argument is nothing more than an "attempt to rewrite the statute

to support [ACRU's] desired outcome." *ACRU*, 872 F.3d at 183. Subsection 8(a)(1) requires states to "ensure that any eligible applicant is registered to vote in an election" so long as the voter's registration form is accepted more than a specified number of days before the election. Subsection 8(c)(2) provides that states "shall complete" any systematic effort to remove names of registered voters no later than 90 days before an election. Far from requiring the *removal* of names, those provisions actually promote registration by (1) requiring states to *add* voters who submit registration forms by the deadline and (2) mandating that states *cease* systematic removal efforts shortly before elections. In addition, despite ACRU's claims to the contrary, Subsection 8(a)(4) specifies only two criteria that states must use to remove ineligible voters: death or relocation of the registrant. The Supreme Court has recognized as much, recently stating that "the NVRA requires States to 'conduct a general program that makes a reasonable effort to remove the names' of voters who are ineligible 'by reason of' death or change in residence." *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1838 (2018).

Because their argument is foreclosed by the plain text of the NVRA, ACRU attempts to bootstrap its NVRA claim by relying on HAVA. But that ploy is just as futile here as it was when ACRU attempted it before the Third Circuit. *See ACRU*, 872 F.3d at 184 (noting that "even if [ACRU's] interpretation" that HAVA "broadens" or "augments" the NVRA "is correct, the ACRU would still be out of

court"). Just as it did before the Third Circuit, ACRU argues that HAVA imposes requirements for removal beyond what is required by the NVRA. ACRU Br. at 18. But as the Third Circuit found, ACRU has no right to sue directly under HAVA. "Unlike the NVRA, the HAVA does not include a private right of enforcement." *ACRU*, 872 F.3d at 184-85. And "even assuming the ACRU could ground a right to sue in the HAVA, the statute would still not support the ACRU's claims." *Id.* at 185. HAVA makes clear that any removal of a name from the computerized list of registered voters must be done "in accordance with the provisions of the National Voter Registration Act of 1993." 52 U.S.C. § 21083(a)(2)(A)(i). Thus, HAVA must be interpreted consistent with the NVRA's removal provisions, including the provision that states are required to conduct a general program to remove names of registered voters from the voter rolls by reason of two criteria only: death or relocation.

The specific HAVA provisions cited by ACRU provide no additional support for its argument. For example, ACRU points to HAVA's requirement that states conduct a "system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters." ACRU Br. at 18. But that provision does not add any mandatory criteria for the removal of names of ineligible voters beyond those specified in the NVRA. ACRU also cites HAVA provisions requiring states to ensure that "the name of each registered voter

appears in the computerized list" and that "only voters who are not registered or who are not eligible to vote are removed from the computerized list." ACRU Br. at 19. But contrary to ACRU's argument, these provisions actually promote registration and limit removals.

Finally, ACRU notes that HAVA requires states to ensure that "duplicate names are eliminated from the computerized list." ACRU Br. at 19. Removal from the computerized database of a duplicate entry for the same voter has nothing to do with the voter's eligibility or status as a registered voter, however—after the duplicates have been removed, the voter remains registered. And because HAVA provides that removal of *voters* (as opposed to removal of extraneous entries for the same voter) must always be done "in accordance with the provisions of the National Voter Registration Act," 52 U.S.C. § 21083(a)(2)(A)(i), this HAVA provision does not impose any removal obligations on states with respect to ineligible voters beyond those required by the NVRA. In any event, to the extent that duplicate entries result from multiple registrations by the same voter, they may be viewed as written confirmation of a voter's change in residence, not a separate ground for removal. *See* 52 U.S.C. § 20507(d) (permitting removal if the registrant "confirms in writing that the registrant has changed residence").

In sum, although ACRU purports to have brought this suit to ensure electoral integrity, the Third Circuit found: "It is the ACRU's interpretation of the

NVRA . . . that most threatens the goals of the statute and the integrity of the vote." *ACRU*, 872 F.3d 187. This Court should likewise reject ACRU's atextual reading of the statute.

II. THE DISTRICT COURT'S CONCLUSION THAT SUPERVISOR SNIPES COMPLIED WITH THE NVRA, AND SUPPORTING FINDINGS OF FACT, SHOULD BE AFFIRMED.

A. ACRU's interpretation of Section 8's "reasonable effort" requirement has no basis in the statutory text or precedent and is unworkable.

Under the NVRA, states must have a general program that makes a "reasonable effort" to remove ineligible voters from the voter rolls based on death or relocation. 52 U.S.C. § 20507(a)(4). Section 8 does not dictate specific actions that states must undertake to remove ineligible voters, or otherwise micromanage the compliance of every state—and every state's many local election officials—with its "reasonable effort" standard. Instead, Section 8 gives states, and the local officials frequently tasked with day-to-day voter roll maintenance, latitude to decide how best to ensure that registrants who have died or moved out of the county are removed from the rolls. This latitude is not without limits—it must be exercised in a way that is uniform, nondiscriminatory, and in compliance with the Voting Rights Act as well as the restrictions on list maintenance found in the other provisions of Section 8—but it gives states leeway to develop list-maintenance programs suited to

their own circumstances and legal regimes. *See, e.g.*, *Husted*, 138 S. Ct. at 1847 (quoting 52 U.S.C. § 20507(b)(1)).

The district court interpreted Section 8's "reasonable effort" standard to require that Supervisor Snipes: (1) use NCOA or similarly reliable information to identify registrants who have relocated; (2) use state health department or similarly reliable information to identify registrants who have died; and (3) comply with all mandatory list-maintenance tools established by the state to remove voters who have died or relocated. App. II at 19-20. The court derived the first two prongs of this standard directly from Section 8.[7]

ACRU argues that the district court's standard is erroneous on three grounds. First, ACRU contends that Section 8 does not create a compliance safe-harbor for removing registrants ineligible due to relocation through use of NCOA data. ACRU Br. at 47-50. Second, ACRU claims that Section 8's "reasonable effort" language "incorporates a professional reasonableness standard." *Id*. at 31. Third, ACRU argues that the district court subordinated federal law to state law. ACRU is wrong on all three counts.

[7] As to the third prong of the district court's test, as discussed *infra*, nothing in Section 8's plain language or the case law requires compliance with state voter list-maintenance laws. ACRU does not appear to disagree with this point. App. Br. at 39-40. Nevertheless, the district court's finding that Supervisor Snipes is using the list-maintenance tools mandated by state law supports its conclusion that her list-maintenance program is reasonable. *See* App. II at 61-66.

a. Section 8(c)(1) provides a compliance safe-harbor for removal of voters who become ineligible due to relocation.

The NVRA expressly provides in Section 8(c)(1) that a "State may meet the requirement of subsection (a)(4) by establishing a program under which . . . change-of-address information supplied by the Postal Service . . . is used to identify registrants whose addresses may have changed" and requisite notice is given. 52 U.S.C. § 20507(c)(1). In accordance with the plain text of the statute, the Supreme Court has observed that use of the Postal Service NCOA option is sufficient to show compliance with Section 8's "reasonable effort" requirement for address changes. *See Husted*, 138 S. Ct. at 1840 (noting that it is "undisputedly lawful" for a state to use the "Postal Service option set out in the NVRA" to identify registrants who have "lost their residency qualification"); *id.* at 1847 ("By its terms, subsection (c) simply provides one way . . . in which a State '*may* meet the [NVRA's] requirement[s]' for change-of-residence removals.").

The Department of Justice explicitly refers to the Postal Service NCOA procedure set forth in Section 8(c)(1) as a "safe harbor" procedure "under which States can satisfy their obligation to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the rolls due to a change of residence."[8] Other courts have similarly recognized that the use of NCOA

[8] DOJ NVRA Overview.

information as set forth in Section 8(c)(1) provides a safe harbor for the relocation removal requirements of Section 8(a)(4). *See, e.g.*, *Judicial Watch, Inc. v. Lamone*, No. ELH-17-2006, 2018 WL 2564720 (D. Md. June 4, 2018) ("A state may meet the requirements of 52 U.S.C. § 20507(a)(4) by establishing a program under § 20507(c)(1).").

In light of *Husted* and the language of Section 8(c)(1) itself, the district court correctly concluded that the NVRA permits local election officials to satisfy their obligation to remove registrants ineligible due to relocation by removing registrants who appear to have moved based on NCOA information, after the requisite confirmation notices are sent. App. II at 60-61. ACRU asserts that the NCOA process "does not function as a ceiling for permissible change-of-address removal programs" and thus, "by logical extension," cannot serve as a "floor for satisfactory list maintenance," because it is a "permissible," not mandatory, process.[9] ACRU Br. at 49-50. But the district court did not hold that the NCOA process is a minimum requirement or maximum limit; it simply recognized what Section 8 itself plainly provides—that a state or local elections official "*may* meet the requirement of"

[9] ACRU also observes that the NCOA process "could only conceivably deal with inaccuracies resulting from changes of address," and cannot address removal of registrants ineligible due to death. App. Br. at 50. This point is irrelevant given that the district court found, based on substantial evidence, that Supervisor Snipes also undertakes reasonable efforts to remove voters who have died.

Section 8 to remove registrants ineligible due to relocation from the voter rolls by using NCOA data to identify such registrants. 52 U.S.C. § 20507(c)(1) (emphasis added). The district court likewise recognized that states may—but were not required to—use other methods for reliably identifying and removing relocated registrants in addition to, or in lieu of, the NCOA process. *See* App. II at 61.

b. Section 8(a)(4)'s "reasonable effort" requirement is not measured by a "professional standard of care" to be prescribed in each case by an expert.

Unlike Section 8's NCOA safe-harbor provision that is explicitly based on the statutory text, ACRU's proposal to apply a "professional reasonableness" standard to assess a state's list-maintenance program is made up out of whole cloth and finds no support in either the statute or case law. ACRU baldly asserts that statutes "imposing a 'reasonable' care or effort mandate on government officials and others . . . provid[e] for a professional standard of care." ACRU Br. at 32. But ACRU offers no authority that even suggests that the words "reasonable effort" in a federal statute must always—or even ever—translate to "professional reasonableness." Nor does ACRU offer any support for its proposition that "a determination of the reasonableness of professional election administration duties

should be determined through the use of expert witnesses in the professional field." *Id.* at 35.

Ultimately, ACRU asks this Court to reverse the district court for "substitut[ing]" its own interpretation of Section 8's "reasonable effort" standard for the "professional opinion" of ACRU's proffered expert on the "standard of professional care mandated by the NVRA," Scott Gessler. ACRU Br. at 36. A district court, of course, does not "substitute" its judgment for that of an expert, for a court's judgment and an expert's offered opinion are not, in any way, equivalent; rather, the court assesses the credibility of the expert's opinions and how much weight to afford them, and its assessment cannot be overturned absent clear error.[10] *See Mathis v. Huff & Puff Trucking, Inc.*, 787 F.3d 1297, 1305 (10th Cir. 2015). The district court correctly found that Mr. Gessler's "ultimate opinion" on whether Supervisor Snipes's list-maintenance efforts complied with Section 8 was

[10] A court must assess the credibility and probity of an expert's opinion even if no competing expert testimony is offered by the opposing party, and may determine that the expert's opinion is unreliable even if it has been "presented with no countervailing professional opinion to adopt." App. Br. at 36; *see Kilpatrick v. Breg, Inc.*, 613 F.3d 1329, 1333 (11th Cir. 2010) (affirming district court's exclusion of "single expert witness" because his methodology was unreliable). This is all the more true here, where the expert was offered by the party bearing the burden of proof. As the district court correctly concluded, because the defendants did not bear the burden of proving a reasonable list-maintenance program, "[n]either Snipes nor United ha[d] an affirmative duty to proffer expert witness testimony to prove that Snipes had such a program in place." App. II at 32 & n.7.

"unsupported by the weight of the evidence."[11] App. II at 32. This finding, based as it is on substantial evidence following the court's thorough review of the record, is not subject to reversal on appeal. *See, e.g.*, *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985).

ACRU cites two completely inapposite cases in support of its argument for a "professional reasonableness" standard. First, ACRU references a single district court's observation that, as used in a state law notice requirement, "[t]he term 'reasonable,' connotes an objective standard . . . with which physicians, agencies

[11] As an example of evidence of "prevailing professional norms under the NVRA regarding list-maintenance practices" that the district court, in ACRU's opinion, "should have . . . accepted" as "unrefuted," ACRU notes that Mr. Gessler "opined that a high registration rate is considered a red flag according to professional norms and that registration rates should be monitored." ACRU's Br. at 37. The district court, however, found that ACRU's evidence of a "high registration rate" in Broward County was "not reliable" and "misleading," and thus that the "entire premise of [Mr. Gessler's] opinion," based as it was on an "inaccurate registration rate," was "flawed from the start." App. II at 31-32. These findings are entitled to full deference from this Court. *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985).

Moreover, the record demonstrated that Supervisor Snipes met even ACRU's proposed "professional judgment" standard, because—as the district court found—Supervisor Snipes undertook every list-maintenance activity recommended by Mr. Gessler that it could legally undertake. Supervisor Snipes used USPS change-of-address information and returned non-forwardable return-if-undeliverable mail to identify voters with changed addresses; had consistent and written list-maintenance policies and procedures documented in its VR Manual; removed substantial numbers of ineligible registrants for six consecutive years; relied on SSDI data provided to it by the DOS through FVRS on a daily basis; and had applied for access to DAVID. App. II at 26-31.

regulating physicians, and courts are well acquainted." *Womancare of Orlando, Inc. v Agwunobi*, 448 F. Supp. 2d 1293, 1308 (N.D. Fla. 2005); ACRU Br. at 32. This observation, however, occurred in the distinct context of a void-for-vagueness challenge to a state law requiring parental notification of abortion—the district court concluded that the statute was not vague because physicians and the courts were familiar with what a "reasonable effort" in the context of providing healthcare services entailed. *Womancare of Orlando, Inc.*, 448 F. Supp. 2d at 1295, 1308. In other words, the district court in *Womancare of Orlando* did *not* hold that "reasonable effort" incorporates a professional judgment standard, either in the statute at issue before it or in any other statute.

Nor does *Newland v. Hall*, 527 F.3d 1162 (11th Cir. 2008), the second case ACRU cites, hold that "statutes directing . . . government officials [to] perform their duties 'reasonably'" impose a standard based on "prevailing professional norms." ACRU Br. at 32. The use of the term "reasonableness" in *Newland* did not even involve the interpretation of a statute; instead, it involved the application of the Supreme Court's standard for assessing claims of ineffective assistance of counsel as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)—again, a context plainly distinct from that of the NVRA and having nothing to do with the interpretation of a federal statute. 527 F.3d at 1184. ACRU's attempts to transform the mere usage of the word "reasonableness" in *Strickland* into a universal directive

for any statutory use of the term "reasonable" are unjustified. Nothing in either *Newland* or *Strickland* suggests that the reasonableness standard those cases articulate has any application beyond the confines of ineffective assistance of counsel claims under the Sixth Amendment.

Not only is ACRU's proposed standard unsupported, it is also unworkable. In ACRU's judgment, the absence of strict liability or specific compliance mechanisms in Section 8 somehow proves that Congress intended to hold state and local election officials across the country to a "professional reasonableness" standard that can only be applied after consulting the opinions of election administration "experts"—in this case, a former state-level official and individuals with no professional expertise who have only reviewed publicly accessible voter data and drawn conclusions of questionable reliability—on "how reasonable professionals in the field would carry out their duties under similar circumstances." ACRU Br. at 31-36. Stated differently, in place of the district court's standard, which examines whether a local election official has complied with defined, objective criteria, ACRU proposes that courts should judge the efforts of local election officials against the opinions of "expert witnesses in the [election administration] professional field," *id.* at 35-36—*i.e.*, against the subjective opinions of other election officials and individuals lacking relevant professional experience. ACRU further proposes that the standard in any given jurisdiction would turn on the "state of [the jurisdiction's voter] rolls," ACRU

Br. at 35, a state which varies depending on which year, and which time of the year, the rolls are assessed—making ACRU's proposed standard all the more unworkable.

In any event, the absence of strict liability or specific compliance mechanisms prescribed in Section 8 shows the opposite of what ACRU argues—Congress did not intend to lock states and local election officials into a one-size-fits-all approach to compliance, either set by statute or by "expert" opinion. ACRU is thus correct to acknowledge that Section 8 "creates a minimum objective standard for voter list maintenance" that allows for variance in the "particular means and tools that each state may adopt" in complying with Section 8's mandate. ACRU Br. at 34. But ACRU is wrong to suggest that a court cannot determine whether a state has met those minimum objective standards unless it relies on "expert witnesses in the professional field." *Id*. at 35.

c. The district court did not "subordinate" federal law to state law.

ACRU also attempts to characterize the district court's interpretation of "reasonable effort," which incorporated compliance with mandatory list-maintenance procedures established by the state, as "subordinat[ing] federal law to state law on a matter constitutionally delegated to Congress" and somehow "lessen[ing] the obligations imposed by" the NVRA. ACRU Br. at 39. But the district court's standard, when viewed as a whole, would require states and local election officials to comply with *both* the NVRA's federal mandate to remove

registrants who are ineligible due to relocation or death *and* with state list-maintenance laws regarding removal for those reasons. If anything, ACRU reveals that the district court's standard is *more*—not less—demanding than what federal law actually requires, because the NVRA does not, either in plain language or purpose, require compliance with state list-maintenance laws, either for the purposes of fulfilling Section 8's "reasonable efforts" mandate or otherwise. *See* 52 U.S.C. § 20507(a)(4); *id.* § 20501(b)(1)-(2); *cf. Arizona v. Inter Tribal Council of Ariz., Inc. ("ITCA")*, 570 U.S. 1, 4, 15, 20 (2013) (noting that the NVRA is "a complex superstructure of federal regulation atop state voter-registration systems").

B. Substantial evidence demonstrates that Supervisor Snipes makes reasonable efforts to remove registrants from the voter rolls who become ineligible by reason of relocation or death.

The district court correctly found that Supervisor Snipes has a general program that makes reasonable efforts to remove registrants who become ineligible by reason of death or relocation, as required by the NVRA. ACRU now asks that this Court retread all of the district court's findings about Supervisor Snipes's efforts. ACRU's Br. at 43-50. But ACRU identifies no clear error, or anything in the district court's review of the evidence, that would leave this Court with "the definite and firm conviction that a mistake has been committed." *U.S. Commodity Futures Trading Comm'n v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1322 (11th Cir. 2018) (quotation marks omitted) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364,

395 (1948)).[12] Instead, ACRU weighs the evidence differently from the district court. The district court's findings of fact, however, are entitled to deference, not ACRU's. *See, e.g.*, *Fla. Int'l Univ. Bd. of Trs.*, 830 F.3d at 1253.

First, substantial evidence supports the district court's finding that Supervisor Snipes made reasonable efforts to remove registrants for ineligibility due to relocation. The district court based this finding on (1) invoices from Broward County's third-party vendor, Commercial Printers, demonstrating that NCOA change-of-address mailings were completed in 2009, 2011, 2013, and 2015 and that both forwardable and non-forwardable mass mailings to more than one million registrants were completed in 2013 and 2015; (2) original and amended "Certifications of List Maintenance" attesting to the completion of NCOA mailings and showing that nearly 200,000 registrants were removed from the rolls over a three-year period due to relocation;[13] and (3) testimony from Jorge Nunez, Supervisor Snipes's IT Director, describing Supervisor Snipes's procedures for removing relocated registrants. App. II at 49-50, 52-55.

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[12] ACRU fails to argue that the district court's factual findings were clearly erroneous and has therefore waived any argument for reversal on this basis. *See United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003).

[13] The court found that it would reach the same conclusion even discounting the amended certifications, based on the original certifications and other evidence in the record, including invoices from and other information exchanged with Commercial Printers. App. II at 49-50 & n.17.

Ignoring the standard of review, ACRU attempts to dispute the district court's factual findings, contending that no non-forwardable mailings were done at all. ACRU's Br. at 44-45. But the district court found that Supervisor Snipes did complete non-forwardable mass mailings, most recently in 2015, to more than one million voters; this was demonstrated by an amended certification that the court chose to credit, as was within its discretion, as well as testimony from Supervisor Snipes's Voter Services staff. App. II at 53; *see Anderson*, 470 U.S. at 573-74 ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous."). ACRU also attempts to spin the lack of targeted mailings—which neither Florida law nor the NVRA requires—as evidence of Supervisor Snipes's violation of the NVRA that the district court purportedly ignored. ACRU Br. at 45-47. But the district court credited all of the evidence ACRU cites. Based on this evidence, the district court questioned whether targeted mailings had been effectively implemented by Supervisor Snipes, but concluded that this question was ultimately irrelevant because both NCOA mailings and mass mailings had been done. App. II at 54-55. Moreover, the district court concluded that Supervisor Snipes completed NCOA mailings in 2009, 2011, 2013, and 2015, and removed nearly 200,000 registrants over three years due to relocation. Pursuant to the NVRA's safe harbor provision, this was sufficient to demonstrate compliance with Section 8. App. II at 53.

Second, substantial evidence supports the district court's finding that Supervisor Snipes made reasonable efforts to remove registrants for ineligibility due to death. The district court based this finding on (1) testimony that DOS receives reports of deaths from DOH and SSDI, which are then forwarded to county supervisors of elections through FVRS; (2) testimony that Supervisor Snipes removes registrants reported as deceased by family and others after receiving a death certificate; and (3) evidence demonstrating that nearly 40,000 registrants were removed from the rolls due to death between January 2014 and December 2016. App. II at 55, 64-66.

In an attempt to get around the deferential "clear error" standard of review, ACRU distorts the district court's decision and attempts to manufacture a question of law about whether, despite HAVA requiring consultation of only in-state death records, the NVRA's "reasonable effort" standard nonetheless required Supervisor Snipes to seek out-of-state death records as part of her list-maintenance program. ACRU Br. 50-51. In reality, although the district court noted that neither NVRA nor HAVA require the use of out-of-state records to remove deceased registrants, it found that Florida *did* use the federal SSDI to discover out-of-state deaths, and that DOS disseminated this information to county supervisors of elections, Supervisor Snipes included. These factual findings render ACRU's claims that Florida law does not require use of SSDI data, and its featuring of select testimony from Supervisor

Snipes on whether her office used this data, *see* ACRU Br. at 51 n.9 & 52, meaningless.

III. SUBSTANTIAL EVIDENCE SUPPORTS THE DISTRICT COURT'S FINDING THAT SUPERVISOR SNIPES'S PROGRAM FOR REMOVING VOTERS FOR REASONS PERMITTED, BUT NOT REQUIRED, BY THE NVRA IS REASONABLE.

As discussed in Section I, by its plain terms, Section 8 of the NVRA requires states to conduct a general program to remove only those voters who have become ineligible by reason of death or change of residence. 52 U.S.C. § 20507(a)(4). Section 8 also *permits*—but does not *require*—states to have general programs to remove registrants who have become ineligible by reason of felony conviction or mental incapacity, or who request removal. *Id*. § 20507(a)(3); *ACRU*, 872 F.3d at 182. And while the NVRA undoubtedly permits states to remove non-citizens who somehow become registered to vote when such individuals come to the state's attention, it does not require a generalized program that attempts to identify such individuals. *See id*.; *Arcia*, 772 F.3d at 1344.

ACRU spends much of its brief accusing Supervisor Snipes of failing to have a generalized program that would remove voters for these and other non-mandatory reasons. But any evidence of such a failure—even if it existed (and it does not)—is simply irrelevant to ACRU's claim that Supervisor Snipes did not comply with the NVRA and thus irrelevant to the issue before this Court. Nonetheless, even if the NVRA's list-maintenance provision required, rather than simply permitted,

Supervisor Snipes to have a general program to remove voters for reasons other than death or change in residence, ACRU did not satisfy its burden of proving that Supervisor Snipes failed in this respect.

A. ACRU did not prove that Supervisor Snipes's program unreasonably failed to remove non-citizens.

The district court found that Supervisor Snipes does not process voter registration applications submitted by non-citizens, and that she removes non-citizens from the rolls when she receives information that they are registered to vote. *See* App. II at 56; Supp. at 90. Florida voter registration applications require applicants to affirm under penalty of perjury that they are citizens, and neither Supervisor Snipes nor her staff register individuals who fail to make such an affirmation—a fact that ACRU does not dispute. App. II at 56; ACRU Br. at 22 (acknowledging use of a citizenship checkbox on voter registration form). The district court also found that when Supervisor Snipes receives notice that a person who is not a U.S. citizen is registered to vote, that person is removed from the rolls. App. II at 56; *see* Supp. at 154-55 (non-citizens are immediately removed when identified through self-reporting, Department of Homeland Security, or related inquiries regarding individuals in the naturalization process) & 147 (non-citizens are removed upon request when they identify themselves as non-citizens).

ACRU's argument that Supervisor Snipes fails to take reasonable steps to prevent non-citizens from registering or to remove them if they become registered

is unsupported.[14] ACRU's first complaint appears to be that Supervisor Snipes relies on an applicant's affirmation of U.S. citizenship under penalty of perjury to register the person to vote without requiring additional information to verify citizenship. But Supervisor Snipes is required to do exactly this under both state and federal law. Like most states, Florida does not require documentary proof of an individual's citizenship in order to register to vote. Fla. Stat. § 97.052. Supervisors of elections therefore *must* accept completed voter registration applications and ensure the applicant is registered to vote if the application form indicates that the applicant is eligible. *Id.* § 97.052(1), (5); 52 U.S.C. § 20507(a)(1).[15] Supervisor Snipes's reliance on a voter's affirmation of citizenship to register a person to vote pursuant to Florida law plainly does not render her list-maintenance efforts unreasonable.

ACRU further complains that Supervisor Snipes does not use the federal SAVE system or records from the DHSMV to verify citizenship, claiming

[14] ACRU offers no support for its suggestion that, merely because Broward County has a high percentage of non-citizen residents, it must also have a high number of non-citizens on its voter rolls; such an inference is unwarranted. App. Br. at 21-22.

[15] Even if state law did allow Supervisor Snipes to impose her own documentary proof of citizenship requirement on those using the state's voter registration form, the NVRA would prohibit imposing such a requirement, at least in Florida, if the applicant uses the federal voter registration form. *See ITCA*, 570 U.S. at 20 (citing 52 U.S.C. § 20505(a) and holding that registrar must accept federal form if voter complies with state-specific instructions, which do not require documentary proof of citizenship in Florida). ACRU thus argues that Section 8 of the NVRA makes it unreasonable to accept a voter registration form without proof of citizenship, despite the fact that Section 6 expressly requires states to accept such forms.

incorrectly that evidence of the efficacy of these systems is "uncontroverted." ACRU Br. at 24. But the district court found that ACRU failed to prove that SAVE is even available to local jurisdictions like Broward County (as opposed to states). App. II at 31. Moreover, 1199SEIU's expert testified that use of SAVE, even if available, would make Supervisor Snipes's removal program, if anything, *less* reasonable because of its history of generating false positives that threaten citizens' right to vote. Supp. at 227-30. Regarding the DHSMV data on citizenship, ACRU fails to note that the Florida Secretary of State attempted to use this very data to remove non-citizens in the past, but was forced to halt this effort after mere months because it inaccurately identified citizens as non-citizens. *See Arcia*, 772 F.3d at 1338.

B. The evidence does not support ACRU's contention that Supervisor Snipes fails to remove individuals who register in other states.

ACRU's contention that Supervisor Snipes's list-maintenance program is unreasonable because she fails to remove registrations of voters who—according to ACRU—are registered in another state is also false. ACRU's primary support for this argument consists of testimony by lay witnesses who submitted citizen complaints to Supervisor Snipes regarding alleged duplicate registrations. These witnesses used only limited data and conceded they had no firsthand knowledge of the residence of anyone on their list or whether individuals registered in both New York and Broward County who shared a name and birthdate were in fact the same

individual. *See* App. II at 37 n.12. But even if these were actual duplicate registrations, simply cancelling a registration because the person was also registered in another state, without determining which of the two registrations was invalid—as ACRU seems to suggest should happen—would be unreasonable. If both jurisdictions acted as ACRU seems to desire, the person would be cancelled in both places.

In any event, as the district court found, Florida law authorizes removal of a voter from FVRS only when notice is received from *an election official from another state* that the voter has registered there, not from a third party. App. II at 44-45 (citing Fla. Stat. § 98.045(2)(b)) (providing that such notice shall be considered "a written request from the voter to have the voter's name removed from the statewide voter registration system."); 52 U.S.C. § 20507(a)(3). As the court found, this provision of Florida law, like the NVRA, permits but does not require supervisors to rely on information from other states to remove voters who have registered elsewhere. There is no support for ACRU's argument that Supervisor Snipes has any obligation—under the NVRA or otherwise—to seek out information from other states in order to identify voters who may also be registered elsewhere.[16]

[16] The court rejected ACRU's related argument that Supervisor Snipes's program is unreasonable because it does not affirmatively seek out out-of-state registration information. The court found it unclear whether such information is available to Supervisor Snipes. App. II at 31.

C. ACRU did not prove that Supervisor Snipes's program unreasonably fails to remove individuals registered to vote at a commercial address.

ACRU likewise failed to show that Supervisor Snipes's list-maintenance practices were unreasonable with respect to individuals ACRU contended were registered at commercial addresses, such as a P.O. box. Under Florida law and regulations, an individual who considers Broward County to be their permanent residence but who does not maintain a fixed address in the county must be registered in the precinct in which the Supervisor of Elections has her main office. Fla. Stat. § 101.045(1). Such individuals can include military and overseas voters and their families, as well as others residing temporarily outside of the county. *Id.*; *see also* Fla. Div. of Elections, *Voter Residency in Florida: DE Reference Guide 0003* (updated June 2014).[17] Certain voters, including homeless voters and voters living in mobile homes or on boats, may also register using the address where they regularly receive mail, including the "address of a mail-forwarding service company." DE-0003. Although a Supervisor of Elections may demand additional proof of residence for voters who register with such addresses, nothing bars the

[17] *Available at* https://soe.dos.state.fl.us/pdf/DE_Guide_0003-Voter_Residency_Updated_06-2014.pdf ("DE-0003").

Supervisor from allowing voters to use such addresses or allows the Supervisor to wholesale purge such voters from the rolls without notice.

ACRU suggests that in failing to remove approximately 1,200 individuals whose voter registration addresses appeared to belong to UPS stores, and instead changing the addresses for some of the identified voters to her office address, Supervisor Snipes rendered her list-maintenance program unreasonable. Here, ACRU relies on the testimony of Gregg Prentice, who testified that he sent information identifying these individuals to Supervisor Snipes.[18] Mr. Prentice further testified that Supervisor Snipes informed him that she had sent letters to these individuals asking them to update their addresses and notifying them that if they did not respond, their addresses would be changed to the address of the Broward County Supervisor of Elections, but he did not know whether Supervisor Snipes had received responses to any of these letters or what procedure she had followed or was required to follow to verify these individuals' registrations. App. II at 41; Supp. at 121-23, 124.

ACRU's argument that Supervisor Snipes failed to prove that her actions complied with the NVRA improperly flips the burden of proving ACRU's case to Supervisor Snipes. ACRU offered no evidence that any of the individuals identified

[18] The specific information submitted by Mr. Prentice was not offered or admitted into evidence.

by Mr. Prentice actually were ineligible to vote or that Supervisor Snipes acted unreasonably or unlawfully by declining to remove these voters and instead changing their addresses to the address of her office.

D. ACRU did not prove that Supervisor Snipes fails to remove individuals disenfranchised by reason of federal felony convictions.

Finally, ACRU suggests that Supervisor Snipes fails to remove voters convicted of felonies in federal court. ACRU concedes that there is no evidence that this is true, that Supervisor Snipes receives felony conviction information through DOE daily and acts on it, and that ACRU's own expert opined that Supervisor Snipes's program for removing voters with felony convictions appeared reasonable. ACRU Br. at 29-30. Nevertheless, ACRU argues that the removal program is unreasonable simply because Supervisor Snipes was not certain that the felony conviction information she receives via DOE includes federal convictions. But this argument ignores Florida Statute § 98.093(2)(c), which requires *DOS* to use felony conviction information received from the U.S. Attorney's Office for removal of voters, information that is received by and acted upon by Supervisor Snipes's staff on a daily basis. Moreover, this argument once again misconstrues the burden of proof. Supervisor Snipes was not required to prove that she removes individuals with federal felony convictions.

CONCLUSION

For the reasons set forth herein, the judgment of the district court should be affirmed.

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Federal Rule of Civil Procedure 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 12,938 words, and that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6).

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CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, an attorney, hereby certify that on September 24, 2018, I caused the foregoing Joint Response Brief to be filed with the Court and to be served upon counsel of record via the Court's ECF email system.

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ADDENDUM

INDEX

[19] This addendum includes a selection of key provisions of the National Voter Registration Act pertinent to this appeal, as codified at 52 U.S.C. § 20501 et seq. The "section" numbers included in parentheses denote the original location of the provisions in Pub. L. No. 103-31, May 20, 1993, 107 Stat. 77.

[20] This addendum includes a selection of key provisions of the Help America Vote Act pertinent to this appeal, as codified at 52 U.S.C. § 20901 et seq. The "section" numbers included in parentheses denote the original location of the provisions in Pub. L. No. 107-252, 116 Stat. 1666.

NATIONAL VOTER REGISTRATION ACT

§ 20501. FINDINGS AND PURPOSES. (SECTION 2)

(a) Findings

The Congress finds that--

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this chapter are--

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

§ 20507. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION. (SECTION 8)

(a) In general

In the administration of voter registration for elections for Federal office, each State shall--

(1) ensure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except--

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) 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, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(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). 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.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in

future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include--

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such

additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term "registrar's jurisdiction" means--

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

§ 20510. CIVIL ENFORCEMENT AND PRIVATE RIGHT OF ACTION. (SECTION 11)

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this chapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws

(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this chapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this chapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

HELP AMERICA VOTE ACT

§ 21083. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL. (SECTION 303)

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of Title 42 (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and

the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 21082(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 21082(a) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act;

(ii) provided the right to vote otherwise than in person under section 20102(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form.".

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

§ 21085. **METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE. (SECTION 305)**

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.

§ 21111. **ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF. (SECTION 401)**

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under sections 21081, 21082, and 21083 of this title.

§ 21112. ESTABLISHMENT OF STATE-BASED ADMINISTRATIVE COMPLAINT PROCEDURES TO REMEDY GRIEVANCES. (SECTION 402)

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds

If a State receives any payment under a program under this chapter, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).

(2) Requirements for procedures

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III, the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds

(1) In general

Not later than January 1, 2004, each nonparticipating State shall elect--

(A) to certify to the Commission that the State meets the requirements of subsection (a) in the same manner as a State receiving a payment under this chapter; or

(B) to submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of subchapter III.

(2) States without approved plan deemed out of compliance

A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of subchapter III if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined

In this section, a "nonparticipating State" is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under this chapter of its intent to participate in, and receive funds under, the program.