Nos. 24-2044, 24-2045

In the United States Court of Appeals
for the Fourth Circuit

REPUBLICAN NATIONAL COMMITTEE, et al.,

Plaintiffs-Appellees,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of North Carolina

DEFENDANTS-APPELLANTS' REPLY BRIEF

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INTRODUCTION

Plaintiffs' brief further confirms what the State Board has been saying all along: this is a case about a *federal* law—the Help America Vote Act of 2002—and the obligations that law imposes on state officials. It belongs in federal court, and the district court was wrong to remand.

From their very first paragraph, Plaintiffs criticize the State Board for "fail[ing] to collect statutorily required information" and for "refus[ing] to provide any retrospective relief," including by taking further steps to "confirm that each of the 225,000 affected registrants were otherwise qualified to vote in North Carolina." Resp. Br. (Dkt. 59) 1. As an initial matter, this assertion is wrong on the facts: before any of the voters that Plaintiffs target are actually allowed to cast a ballot, the State Board requires them to present both HAVA ID and a photo ID, to confirm that they are qualified voters. But more importantly for present purposes, determining whether Plaintiffs' criticisms are valid requires a close analysis of HAVA, a federal law.

Recognizing HAVA's essential role in this case, the district court correctly held that the State Board was right to remove this lawsuit to federal court. But after dismissing Count One of Plaintiffs' complaint on

the merits, the court remanded Count Two to state court. This was error, and nothing in Plaintiffs' brief persuades otherwise.

First, as Plaintiffs largely concede, this Court has appellate jurisdiction. Plaintiffs readily admit that this Court can consider both the district court's analysis under § 1443(2) and its supplemental-jurisdiction conclusion. Their only quarrel is over this Court's ability to consider whether Count Two was properly removed under § 1441. To argue against appellate jurisdiction, Plaintiffs creatively recast the Supreme Court's decisions in *B.P. P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021), and *Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 556 U.S. 635 (2009). These opinions do not help Plaintiffs. Rather, they together make clear that § 1447(d) carves out a relatively narrow exception to the ordinary rule that appellate courts can review final judgments in their entirety. This appeal does not fall within the scope of § 1447(d)'s exception, so this Court can review the remand order in full.

Exercising that appellate jurisdiction, this Court should reverse the district court's ruling that it lacked original jurisdiction over Count Two. Like Count One, Count Two necessarily raises a substantial and disputed federal question: whether HAVA requires the State Board to remove from

the State's voter lists individuals who registered using a prior form without providing a driver's license or social security number. And because Congress intended for federal courts to interpret HAVA, the district court can resolve this case without upsetting Congress's approved division of labor between state and federal courts. Plaintiffs' only response to all of this is to belatedly invoke a different state statute—one they never cited in their complaint. But Plaintiffs cannot run away from their complaint on appeal to evade federal jurisdiction.

The district court also erred in holding that the civil-rights removal statute did not apply, a ruling even Plaintiffs concede this Court can review *de novo*. Because Plaintiffs ask the State Board to violate the National Voter Registration Act, a federal law that Congress enacted in part to eliminate racially discriminatory voter purges, the State Board is entitled to a federal forum for Plaintiffs' suit. Plaintiffs repeat the district court's conclusion that the NVRA is not a law concerning equal rights, but they do not respond to any of the State Board's arguments about why the district court's conclusion was wrong.

And, finally, even if the district court had discretion to remand Count Two to state court, it abused that discretion by remanding without

considering the ongoing election, the need for prompt resolution, or its own familiarity with this case.

For these reasons and the reasons stated in the State Board's opening brief, this Court should reverse the district court's remand order.

ARGUMENT

I. This Court Has Appellate Jurisdiction To Consider Whether the District Court Had Original Jurisdiction Over Count Two.

This Court has appellate jurisdiction over the entire remand order, both because *Baltimore* expressly says so and because the order falls outside of the general prohibition on appellate review.

Plaintiffs concede that this Court has appellate jurisdiction to review the district court's analysis with respect to § 1443(2) and supplemental jurisdiction. Resp. Br. 17, 27. But they insist the court's analysis under § 1441 falls outside the scope of this Court's jurisdiction. Plaintiffs are incorrect.

A. Plaintiffs misread *Baltimore*.

Plaintiffs first argue that this Court cannot consider the district court's original-jurisdiction analysis because *Baltimore*'s holding applies only when a district court rejected *all* of a defendant's grounds for removal. To support their argument, Plaintiffs pluck one sentence from the Supreme

Court's analysis: "[W]hen a district court's removal order rejects all of the defendants' grounds for removal, § 1447(d) authorizes a court of appeals to review each and every one of them." Resp. Br. 20 (quoting *Baltimore*, 593 U.S. at 237). Plaintiffs zero in on this sentence's prefatory clause and argue that it imposes a prerequisite to an appellate court's review of a full remand order: If, and only if, "a district court's removal order rejects all of the defendants' grounds for removal," Plaintiffs say, an appellate court can review each of those grounds. Resp. Br. 19-20. Clever—but wrong.

To start, Plaintiffs' reading of *Baltimore* finds no support in the text of § 1447(d). If the scope of appellate review under § 1447(d) were actually dependent on whether a district court rejected some or all of a defendant's grounds for review, one might expect the text of the statute itself to mention that significant caveat. But § 1447(d) says nothing of the sort, and instead indicates the opposite: So long as a defendant removes its case "pursuant to section 1442 or 1443," the "*order* remanding [the] case" "shall be reviewable by appeal." 28 U.S.C. § 1447(d) (emphasis added). "By allowing appellate courts to review a district court's 'order,'" Congress "allowed review of any issue fairly encompassed within it." *Baltimore*, 593 U.S. at 241-42.

Plaintiffs' reading also runs counter to other statements within the *Baltimore* opinion. The Court declares, for example, that, in cases removed pursuant to §§ 1442 or 1443, "[section] 1447(d) permits appellate review of the district court's remand order—without any further qualification." *Id.* at 239. Yet what is Plaintiffs' creative prerequisite, if not a "further qualification"?

Consider as well: "[Section 1447(d)] allows courts of appeals to examine the whole of a district court's 'order,' not just some of its parts or pieces." *Id.* at 237. Contrary to Plaintiffs' position, this statement says nothing to suggest that whether an appellate court can review a full remand order hinges on how comprehensively the district court rejected a defendant's grounds for removal.

And one more, for good measure: "Once [the defendants' notice of removal cited one of the § 1447(d) statutes] and the district court ordered the case remanded to state court, the whole of its order became reviewable on appeal." *Id.* at 238. If Plaintiffs' view were correct, one would expect this statement to mention that the rule applies only where a district court rejected all of a defendant's grounds for removal. But it says nothing to that effect.

It is true, of course, that usually when a case is remanded, a district court *has* rejected all of a defendant's grounds for removal. Federal jurisdiction, after all, "is not optional," so a district court's acceptance of a removal ground often forecloses remand. *Id.* at 237. But that reality does not compel the conclusion that in the rare circumstances when a district court accepts removal for one claim, but simultaneously remands another, appellate review of the remand order is circumscribed.

Outside of the one sentence from *Baltimore*, Plaintiffs offer no justification for limiting broad appellate review to their preferred context. And indeed, limiting appellate review in that way would make little sense. Plaintiffs' proposed rule would mean that defendants who raise *meritorious* grounds for removal would be rewarded with a narrower set of appellate rights than defendants who raise *meritless* grounds for removal. Surely Congress could not have intended such a perverse result.

B. Plaintiffs otherwise fail to show that 28 U.S.C. § 1447(d) bars this Court's review.

Even if Plaintiffs are correct about *Baltimore*, this Court still has appellate jurisdiction to consider the full remand order. Plaintiffs do not dispute that a remand order is a final judgment under 28 U.S.C. § 1291. Nor do Plaintiffs dispute that such final judgments are ordinarily fully

reviewable on appeal. Yet Plaintiffs still insist that this Court lacks jurisdiction over the entire remand order. *Carlsbad*, they point out, says nothing to the contrary. Resp. Br. 22.

This argument turns the doctrine on its head. Under federal law, appellate jurisdiction ordinarily extends to the entirety of a final judgment. 28 U.S.C. § 1291. Section 1447(d) establishes a narrow exception to that rule, barring appellate review of remand orders that are based on subject-matter jurisdiction. *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 349-52 (1976). For final judgments that fall outside the scope of § 1447(d), however, the default rule applies, and appellate courts retain authority to review the full decision. 28 U.S.C. § 1291; *cf. Harriman v. Assoc. Indus. Ins. Co.*, 91 F.4th 724, 728 (4th Cir. 2024) ("[A]ppellate courts review 'judgments, not statements in opinions.'" (quoting *Black v. Cutter Lab'ys*, 351 U.S. 292, 297 (1956))).

The same rejoinder applies to Plaintiffs' claim that reviewing the entire remand order here would allow supplemental jurisdiction to "abrogate the general rule" under § 1447(d) that remand orders are not reviewable on appeal. Resp. Br. 25-26. By Plaintiffs' own admission, the Supreme Court has held that § 1447(d) is *not* a "general rule." Resp. Br. 25-

26. In Plaintiffs' words, that provision "*only* bars appellate review of remand orders that are based on subject matter jurisdiction." Resp. Br. 21 (emphasis added). The remand order here falls outside of § 1447(d)'s narrow scope. It is therefore just like any other final judgment under 28 U.S.C. § 1291—fully reviewable on appeal.

Plaintiffs are left to try to distinguish *Carlsbad* on its facts. But Plaintiffs' arguments on this score are wholly unpersuasive. In *Carlsbad*, as in this case, the district court declined to exercise jurisdiction over state-law claims, while keeping a federal claim. 556 U.S. at 636-37. On appeal, the Federal Circuit held that it lacked appellate jurisdiction to review such a remand order. The Supreme Court then reversed, but did not decide whether the district court had been correct to remand in the first instance. *Id.* at 637-38. Because it was merely reversing and remanding the case for further proceedings, the Court naturally "did not even consider" whether the district court could exercise original jurisdiction over the state-law claims. Resp. Br. 22; *Carlsbad*, 556 U.S. at 641. This posture certainly does not mean that the Supreme Court implicitly limited the scope of the Federal Circuit's review of the remand order. In fact, on remand, the Federal Circuit *did* consider *de novo* the district court's original jurisdiction

and ultimately reversed, holding that certain state-law claims should not have been remanded. *HIF Bio, Inc. v. Yung Shin Pharma. Indus. Co.*, 600 F.3d 1347, 1352-55 (Fed. Cir. 2010).

II. Count Two Arises under Federal Law.

Plaintiffs' arguments underscore that federal courts are the appropriate forum to adjudicate Count Two. Plaintiffs allege a vote-dilution claim based on "ineligible voters remaining on the voter rolls and potentially voting." Resp. Br. 41. That claim necessarily relies on an interpretation of HAVA and, as a result, unequivocally turns on an analysis of federal law. Federal courts are therefore in the best position to decide this claim.

A. Count Two raises an actually disputed and substantial question of federal law.

Plaintiffs' devote a short portion of their brief to arguing that Count Two does not raise a "necessarily presented, substantial, or disputed federal question." Resp. Br. 42-44. Their brevity is telling.

To begin, Count Two necessarily raises a federal issue. Although Plaintiffs still have not connected the dots between the State Board's refusal to conduct a voter purge and a violation of Article I, Section 19, their vote-dilution allegations necessarily require an interpretation of

federal law. *See Old Dominion Elec. Coop. v. PJM Interconnection, LLC*, 24 F.4th 271, 280 (4th Cir. 2022) (citation omitted). According to Plaintiffs' own complaint, the constitutional violation arises out of the State Board's refusal to purge these voters, which Plaintiffs allege is a violation of "Section 303(a) of HAVA" and N.C. Gen. Stat. § 163-82.11(c). Resp. Br. 40; J.A. 39. But there is little content in § 163-82.11(c) other than its invocation of HAVA. That state law reads, in full, "Compliance With Federal Law. – The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1." N.C. Gen. Stat. § 163-82.11(c). Given this clear text, Plaintiffs have understandably agreed that there is no way to decide whether the State Board's actions violated this provision without interpreting HAVA. J.A. 638 at 64:10-14 ("THE COURT: Okay. But to violate the state statute, you have to say 'Did you follow the'—the registration form and requirements come from HAVA and are imported into state law, right? MR. STRACH: Well, that's under 82.11.").

To escape this conclusion, Plaintiffs belatedly attempt to shoehorn in a constitutional claim based on § 163-82.4(a), a state statute that Plaintiffs never cite in their complaint. Indeed, the very first time this statute was mentioned at all was *at the hearing* in the district court. J.A. 656-657 (MR. WAXMAN: Now, Mr. Strach cited to the Court another section, 163-82.4(a)(11). I could be wrong, but I don't believe that that statute was cited anywhere in the complaint in this case. . . . THE COURT: It's not in the complaint. I looked earlier today."). Plaintiffs are the masters of their complaint, and here they chose to rely on a theory that the State Board violated the North Carolina Constitution by failing to comply with § 163-82.11(c). They cannot fundamentally change the basis of their claim at this late date.

Plaintiffs also insist that "there is no *substantial* federal question involved" in Count Two. Resp. Br. 44 (emphasis added). But Plaintiffs' argument merely collapses the inquiry into whether the claim turns on a question of federal law. Plaintiffs do not dispute that resolution of this issue will have considerable impact on federal elections in North Carolina or that Congress intended courts to interpret HAVA to ensure national uniformity. *See* Opening Br. (Dkt. 49) 34-36.

As a fallback, Plaintiffs insist that the fact that the State Board changed its voter-registration form last year neutralizes the need for any court to consider HAVA and that the issue of HAVA compliance is undisputed. Resp. Br. 44. But, as the district court observed, Plaintiffs have not stated a statutory violation based solely on whether the voter registration form unambiguously requires a voter's driver's license or social security number. J.A. 575 n.5. The complaint, as the district court observed, "captures a singular course of conduct where Defendants violated state law by registering voters without collecting information required by HAVA and then by refusing to consider removal of those improperly registered voters." J.A. 579 n.5. Consistent with this observation, Plaintiffs' claim is that the State Board's *refusal to conduct a voter purge* violates HAVA's voter-registration requirements. And on that point, there is clearly a disagreement.

Because Plaintiffs' constitutional claim turns on whether the State Board's refusal to purge voters violates HAVA, it presents a necessary, substantial, and actually disputed federal question.

B. Plaintiffs' argument that federal-court jurisdiction over Count Two would disrupt the federal-state balance is unpersuasive.

Plaintiffs argue that federal jurisdiction over Count Two is inappropriate mainly because "the interpretation of state constitutional rights is quintessentially the province of state courts." Resp. Br. 39. In a vacuum, that may very well be a sensible rule of thumb. But that is not true in cases—like this one—where a state constitutional claim depends on an interpretation of federal law. None of the cases that Plaintiffs rely on say otherwise. *Cf. Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940) (underscoring, to the contrary, that "state courts will not be the final arbiters of important issues under the federal constitution"); *Martin v. Hunter's Lessee*, 14 U.S. 304, 342 (1816) (instead, establishing power of the Supreme Court over state courts on issues of federal law); *Pressl v. Appalachian Power Co.*, 842 F.3d 299, 304-05 (4th Cir. 2016) (resolution of the claim did not require interpretation of federal law); *State v. Kelliher*, 873 S.E.2d 366, 383 (N.C. 2022) (affirming state courts' "independent authority to interpret state constitutional provisions" in a case that did not involve removal).

In Plaintiffs' view, it automatically upsets *Gunn's* federal-state balance any time a federal court interprets state constitutional rights. Resp. Br. 37-39. But that position is unsupported. Neither this Court nor others have held that the invocation of state constitutional principles reflexively immunizes those claims from federal review. *See, e.g.*, *Isaac v. N.C. Dept. of Transp.*, 192 F. App'x 197, 199 (4th Cir. 2006) (federal jurisdiction proper where claim arose out of Article I, Section 19 of the North Carolina Constitution but was intertwined with federal-law issues); *Bracey v. Bd. of Educ.*, 368 F.3d 108, 116 (2d Cir. 2004) (federal-state balance is not upset where, though the claim arose out of a state constitutional provision, "a federal question was implicated on the face" of the complaint).

Rather, federal courts are particularly within their right to exercise jurisdiction over claims raising federal issues where Congress has evinced an intention for them to do so. And that, as the State Board explained in its opening brief, is what Congress has done with HAVA. Opening Br. 39-40. Plaintiffs have no response. On top of that, it is actually *Plaintiffs'* view that would upset the federal-state balance by opening federal jurisdiction up to manipulation through pleading. All a plaintiff would need to do to

circumvent Congress's intent is to attach a claim based on federal law to a state constitutional provision. That view not only sets up perverse pleading incentives but undermines principles of comity and supremacy as well.

Nor, as the State Board explained in its opening brief, is it a given that any court would have to interpret the State Constitution to resolve Count Two at all. Opening Br. 38-39. If Plaintiffs have not alleged a HAVA violation, their constitutional claim falls apart. But even if a court did reach the constitutional question, Plaintiffs' insistence that their claim is novel is unconvincing. Resp. Br. 40-41. The North Carolina Supreme Court's decision in *Harper* forecloses Plaintiffs' theory. In *Harper*, the North Carolina Supreme Court rejected the availability of relief under the Equal Protection Clause (Article I, Section 19) of the North Carolina Constitution for partisan gerrymandering claims because those are not claims for the right to vote "on equal terms" through the "one person, one-vote concept." *Harper v. Hall*, 886 S.E.2d 393, 440-41 (N.C. 2023). Plaintiffs' attempt to recast *Harper* as a holding limited only to partisan gerrymandering claims is unavailing—it should apply with equal force here. And here, Count Two is not a claim that seeks to vindicate the right

to vote on equal terms. North Carolina courts have therefore already foreclosed the relief Plaintiffs seek.

Plaintiffs have failed to show that there is anything about Count Two that would render exercising federal jurisdiction in this case offensive to the federal-state balance. This Court should reverse.

III. The State Board Properly Removed Count Two under the Civil-Rights Removal Statute.

The State Board properly removed Count Two under 28 U.S.C. § 1443(2). Plaintiffs concede that this Court has appellate jurisdiction to review that decision *de novo*. Resp. Br. 31. The district court's § 1443 analysis cannot survive that scrutiny.

The refusal clause of § 1443(2) allows state officials to remove to federal court any suits brought against them for refusing to take an action that is inconsistent with a "law providing for equal rights." Plaintiffs question only whether the NVRA, which prohibits the State Board from systematically removing voters fewer than 90 days before an election, is such a law.[1] *See* 52 U.S.C. § 20507(c)(2)(A). It plainly is.

[1] At the beginning of their brief, Plaintiffs insist that the State Board "hyperbolic[ally] characteriz[ed]" their complaint as "seek[ing] to 'purge nearly a quarter million voters from the State's voter rolls.'" Br. 2. But that

As the Board explained in its opening brief, Opening Br. 43-44, for purposes of § 1443(2), a "law providing for equal rights" is a law that concerns racial equality. *Vlaming v. W. Point Sch. Bd.*, 10 F.4th 300, 309 (4th Cir. 2021) (citing *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). By its plain text, the NVRA addresses "discriminatory and unfair registration laws and procedures" that "disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. § 20501(a)(3). This language clearly communicates the NVRA's focus on racial equality. The

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is what the complaint does. J.A. 40 ("Plaintiffs respectfully request that this Court . . . [d]irect Defendants . . . to take all actions necessary to remedy their violations of state law and HAVA, specifically, identifying all ineligible registrants and *removing them from the state's voter registration lists* . . . .") (emphasis added)).

In any event, Plaintiffs' brief then pivots to convincing this Court that kicking 225,000 registered voters off the rolls in the middle of an election—the very relief they purport to disclaim—would not violate the NVRA. Br. 31 n.3. Plaintiffs are wrong. The NVRA permits systematic removal of "ineligible voters" within 90 days of an election only in three circumstances: registrant request, criminal conviction or mental incapacity, or death. 52 U.S.C. §§ 20507(a)(3)(A)-(B), (4)(A), (c)(2)(A)-(B). If the State Board removed voters, as Plaintiffs request, it would violate the NVRA and risk suit from the United States. *See United States v. Alabama*, No. 2:24-cv-1329, 2024 WL 4510476 (N.D. Ala. Oct. 16, 2024) (order enjoining Alabama from removing 3,251 voters from rolls 84 days before election); *United States v. Virginia*, No. 1:24-cv-1807, Dkt. 112 (E.D. Va. Oct. 25, 2024) (ordering Virginia's elections officials to restore the registrations of any purported noncitizens who were removed within the 90-day quiet period this year).

State Board's refusal was therefore based on a "law providing for equal rights," and removal under § 1443(2) was proper.

Plaintiffs make two attempts to avoid this conclusion. Neither is persuasive.

1. Plaintiffs repeat the district court's view that removal under § 1443(2) is unavailable here because the NVRA's 90-day quiet period provision is itself not "stated in terms of racial equality." Resp. Br. 28-30. As Plaintiffs (and the district court) see things, state officials can remove only when the specific section of the U.S. Code that they invoke in refusing to act is explicitly "stated in terms of racial equality."

As the State Board previously explained, that reading of § 1443(2) is mistaken. *See* Opening Br. 46-49. For one thing, it ignores § 1443(2)'s text, which simply requires that the refused act be inconsistent with "*any* law providing for equal rights." 28 U.S.C. § 1443(2) (emphasis added). That broad language likely refers to the general statute on which an official relies as a whole, not a specific provision within the broader act. Opening Br. 46. For another, Plaintiffs' reading conflicts with the Supreme Court's ruling in *City of Greenwood v. Peacock*, which held that 52 U.S.C. § 10101(b)—a provision within the Civil Rights Act that was itself stated in

generally applicable terms—was nevertheless a law concerning racial equality for purposes of § 1443(1).[2] Opening Br. 47-48 (citing 384 U.S. 808, 811 n.3, 825 & n.24 (1966)). And for still another, Plaintiffs' reading would produce incongruous results, like the conclusion that a federal law prohibiting States from employing literacy tests as a prerequisite to voting is not a law concerning racial equality. Opening Br. 48-49.

Plaintiffs make no attempt to refute any of these arguments. Instead, Plaintiffs argue that *Rachel*'s holding that the Fourteenth Amendment was not a law concerning equal rights for purposes of § 1443 means that the NVRA cannot be a law concerning equal rights either.[3] Resp. Br. 30. Plaintiffs are mistaken. Concluding that the NVRA is a law concerning equal rights, even when the Fourteenth Amendment is not, is entirely consistent with *Rachel*. Again, *Rachel* held that, to qualify under § 1443, a law must specifically address *racial* equality, as opposed to civil rights more broadly. 384 U.S. at 792. The Fourteenth Amendment makes no mention of race and is phrased in generally applicable terms like "[a]ll

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[2] The same statutes qualify as laws concerning civil rights under both § 1443(1) and § 1443(2). *Vlaming*, 10 F.4th at 310-11.

[3] Although *Rachel* rejected the Fourteenth Amendment as a basis for removal under § 1443, it then held that the Civil Rights Act of 1964 supported removal. 384 U.S. at 792-94.

persons born or naturalized in the United States" or all "citizens." U.S. Const. amend. XIV, § 1. The NVRA, meanwhile, textually and specifically expresses a desire to eliminate voting practices that harm "racial minorities." 52 U.S.C. § 20501(a)(3). With that language, the NVRA satisfies *Rachel*'s definition of a law concerning equal rights even if the 14th Amendment does not.

Relatedly, Plaintiffs argue that the NVRA cannot support § 1443 removal because it does not *exclusively* address racial discrimination. Resp. Br. 29-30. According to Plaintiffs, because the NVRA seeks to eliminate discriminatory election practices that harm "racial minorities," among other "various groups," the NVRA cannot be a law providing for equal rights. Resp. Br. 29-30.

Rachel flatly contradicts Plaintiffs' assertion. *Rachel* itself concluded that the Civil Rights Act of 1964's guarantee of equal access to public accommodations was a proper basis for removal. 384 U.S. at 793-94. That statute protects access to public accommodations not just for "racial minorities," but also "various other groups," like noncitizens and religious minorities. *See* 42 U.S.C. § 2000a(a) (prohibiting discrimination on the basis of "race, color, religion, or national origin"). Several other courts, too,

have held that statutes that seek to eliminate various forms of discrimination are "laws concerning equal rights" for purposes of § 1443, so long as eliminating racial discrimination is also one of their purposes. *See, e.g.*, *Fenton v. Dudley*, 761 F.3d 770, 773 (7th Cir. 2014) (Fair Housing Act, 42 U.S.C. § 3617); *Hill v. Pennsylvania*, 439 F.2d 1016, 1019 (3d Cir. 1971) (Federally Protected Activities, 18 U.S.C. § 245(b)). Plaintiffs' invented exclusivity requirement is simply not the law.

2. Plaintiffs alternatively argue that even if the NVRA is a law providing for equal rights, removal under § 1443(2) is still unavailable because the State Board has not identified a racially discriminatory state law that it is refusing to enforce. Resp. Br. 30-31. This, too, grafts a new requirement onto § 1443(2). The State Board is not required to identify a racially discriminatory state law to remove under § 1443(2). The text of § 1443(2) permits removal when a requested state *act*—not a state *statute*—is inconsistent with a civil-rights law. *See Common Cause v. Lewis*, 358 F. Supp. 3d 505, 513 (E.D.N.C. 2019), *aff'd*, 956 F.3d 246 (4th Cir. 2020) ("[T]he language of the removal statute . . . references in its text inconsistency only between *the act* being refused and federal equal

protection law."). Because the act that Plaintiffs demand the State Board take is inconsistent with the NVRA, removal under § 1443(2) is proper.

Lacking any textual support for their argument, Plaintiffs turn to precedent. They suggest that *Peacock* held that the refusal clause applies only when a state official refuses to enforce a racially discriminatory state law. Resp. Br. 31. But *Peacock* did not hold *anything* about the refusal clause because the refusal clause "ha[d] no relevance to th[e] case." 384 U.S. at 824 n.22.

Contrary to Plaintiffs' (and the district court's) view, the State Board is also not required to "make some showing that their refusal to act actually involves considerations of racial equality or discrimination." Resp. Br. 11-12, 31; J.A. 595-596. To support this assertion, the district court relied on *Davis v. Glanton*, 107 F.3d 1044 (3d Cir. 1997). *Davis*, however, was interpreting § 1443(1), not § 1443(2), in holding that the removing defendant needed to point to a discriminatory state law. 107 F.3d at 1045. Unlike § 1443(2), removal under § 1443(1) requires the removing party to make an additional showing that they have been "denied or cannot enforce" a law "providing for the equal rights of citizens" in state court. 28 U.S.C. § 1443(1). To demonstrate "a denial of [equal civil rights], or an inability to

enforce them" in state court, a removing defendant will generally need to point to something in "the Constitution or laws of the State." *Rachel*, 384 U.S. at 798-99. Thus, § 1443(1)—but not § 1443(2)—usually requires the removing party to identify a racially discriminatory state law. Aside from the district court's isolated statement, Plaintiffs have no other support for their attempt to add a new, atextual element to § 1443(2). This Court should decline to do so.

* * *

In sum, the State Board properly removed Count Two under 28 U.S.C. § 1443(2). The district court erred in rejecting removal under that statute, and Plaintiffs' arguments do not prove otherwise. Accordingly, this Court should reverse.

IV. The District Court Abused Its Discretion by Declining to Exercise Supplemental Jurisdiction.

Lastly, Plaintiffs argue that the district court was right to decline to exercise supplemental jurisdiction. Quoting Supreme Court precedent, they point out that "federal courts 'are obliged to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction,'" and argue, on that basis, that "the district court had broad discretion to decline supplemental jurisdiction." Resp. Br. 34 (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ.*

v. Doyle, 429 U.S. 274, 278 (1977)). This point falls flat. There is no "doubt" about whether the district court had federal jurisdiction to resolve Count Two—having found jurisdiction over Count One—and Plaintiffs do not argue otherwise on appeal. Likewise, the State Board does not dispute that the district courts *can* decline supplemental jurisdiction; the question is whether the court below should have.

It should not. Plaintiffs' assertion to the contrary rests largely on a mischaracterization of their second claim as a "novel issue of state law." Resp. Br. 32-33. But this argument ignores the substantial legal and factual overlap between Count One and Count Two and makes no mention of the judicial resources that would be squandered relitigating a duplicative issue before a new judge.

And there can be no question that Plaintiffs' second claim is effectively a reprise of its first. As the district court found, it likely "involves the same disputed issues pertaining to HAVA." J.A. 575 n.2. Plaintiffs do not seem to contend that it is fundamentally different either. Given this congruence, judicial economy and convenience to the parties are best served by the district court's retaining jurisdiction. *See Ketema v. Midwest Stamping, Inc.*, 180 F. App'x 427, 428 (4th Cir. 2006); *see also*

Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995). The merits of Count Two have already been fully briefed and argued before the district court—all that remains is for it to issue a decision, something it has already proved it can do with great efficiency. Remand, by contrast, would require the parties to re-brief and possibly re-argue the issues—just days prior to the election, before a judge who has yet to even review Plaintiffs' complaint. *See Peter Farrell Supercars, Inc. v. Monsen*, 82 F. App'x 293, 297 (4th Cir. 2003); *Shanaghan*, 58 F.3d at 112. The voters who are the target of this lawsuit deserve clarity about the validity of their votes as soon as possible. In this highly time-sensitive context, remanding Count Two was an abuse of discretion.

CONCLUSION

For the reasons stated above, this Court should reverse the district court's order remanding Count Two to state court and direct the district court to promptly resolve the State Board's motion to dismiss that claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B) in that it contains no more than 6,500 words as indicated by Word, the program used to prepare the brief. This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a 14-point, proportionally spaced typeface.

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will automatically serve electronic copies on all counsel of record.

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