No. 22-50536

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

VOTE.ORG,

Plaintiff-Appellee,
v.
JACQUELYN CALLANEN, ET AL.
Defendants
v.
KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF TEXAS; LUPE C. TORRES, IN HIS OFFICIAL CAPACITY AS THE MEDINA COUNTY ELECTIONS ADMINISTRATOR; TERRIE PENDLEY, IN HER OFFICIAL CAPACITY AS THE REAL COUNTY TAX ASSESSOR-COLLECTOR,
Intervenor Defendants-Appellants

On Appeal from the United States District Court
for the Western District of Texas, San Antonio
Division, No. 5:21-cv-00649-JKP

BRIEF OF THE TEXAS STATE CONFERENCE OF THE NAACP AND THE LOUISIANA STATE CONFERENCE OF THE NAACP AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE VOTE.ORG AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS

In accordance with Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 29(a)(4)(A), the Texas and Louisiana State Conferences of the NAACP (together "Amici") are nonpartisan, nonprofit membership organizations with no parent corporations in which any person or entity owns stock. Amici serve as statewide arms of the NAACP—a nonpartisan, nonprofit organization—the oldest civil rights organization in the country.

Under Federal Rule of Appellate Procedure 29(a)(2), the undersigned counsel of record certifies that it authored the Brief in whole and that no party, or party's counsel, or person other than Amici, its members, or its counsel in this case contributed money intended to fund preparing or submitting the Brief.

The undersigned counsel of record further certifies that all parties to this case have consented to this filing.

STATEMENT OF AMICI CURIAE

The Texas State Conference of the NAACP ("Texas NAACP") is the oldest and one of the largest organizations promoting and protecting the civil rights of Texans of color. The first Texas NAACP branches were formed in 1915 and the Texas NAACP was formally organized in 1937. Since then, the Texas NAACP has used litigation, policy advocacy, community organizing, and public education to fight for the political equality of all Texans. The Texas NAACP has more than 100 local branch units, college chapters, and youth councils, with more than 10,000 members across nearly every county in Texas. A large segment of the membership, which consists primarily of Black Texans and other people of color, are registered to vote in Texas.

The Louisiana State Conference of the NAACP ("Louisiana NAACP") was founded in 1943. The Louisiana NAACP works tirelessly through advocacy, community organizing, public education, and litigation to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination. The Louisiana NAACP has approximately 5,000 members throughout Louisiana, including Black Louisianans who are registered voters in the state. The Louisiana NAACP has more than forty branches comprised of adult members and sixteen youth and college chapters.

Amici have a direct interest in this case because it raises important voting rights issues central to Amici's ability to bring civil rights, in particular voting rights, lawsuits to protect their own interests as organizations engaged in voter education, voter registration, voter mobilization, and other civic engagement activities and to protect the interests of their members and other voters.

INTRODUCTION

Amici write in full support of Plaintiff-Appellee and urge this Court to hold in favor of Plaintiff-Appellee for all the reasons set forth in its Brief. Amici's Brief focuses on two issues (1) whether private plaintiffs may enforce the Materiality Provision using 42 U.S.C. § 1983; and (2) whether claims under the Materiality Provision require evidence of racial intent.[1]

Appellants would have this Court rule that a person injured under the Materiality Provision, (42 U.S.C. § 1971(a)(2)(B), renumbered to 52 U.S.C. § 10101(a)(2)(B)) of the Civil Rights Act of 1964, has no right to bring an action for redress of those injuries under Section 1983, (42 U.S.C. § 1983), even though Congress clearly intended to create a private right within the Materiality Provision. They would have this Court limit the scope of the Materiality Provision to voters of color even though the plain language of the Provision and its legislative history

[1] Amici note that this action addresses only organizational theories of standing, and neither the Stay Panel of the Fifth Circuit nor the parties took issue with the rights of membership associations, like the State Conferences, to sue under Section 1983. Br. of Appellee 17—19 (asserting standing only under diversion of resources theory); Br. of Appellants 23 (noting membership organizations "can sue and assert associational standing on behalf of those members" under Section 1983). In *Allee v. Medrano*, the Supreme Court firmly decided this issue and explained that "[u]nions may sue under 42 U.S.C. 1983 as persons deprived of their rights secured by the Constitution and laws." 416 U.S. 802, 819 n.13 (1974). Because Appellee has not alleged that it is a membership organization, this Court need not address this issue further. Appellee has fully briefed issues related to organizational standing, and Amici do not address those issues further. *See* Br. of Appellee 32–38.

clearly say otherwise. And they would read an "intent" element into the Provision on the basis that the Provision was enacted pursuant to the Fifteenth Amendment, even though the legislative history is crystal clear that the Provision was enacted under several bases of constitutional authority. In any event, even if the Fifteenth Amendment were the sole basis, Congress can enact laws that provide prophylactic protection for the rights created by the Reconstruction Amendments without requiring proof of intent to establish a violation.

Taken together, Appellants' arguments would overturn decades of jurisprudence and accepted practice, all in the name of trying to make it harder for voters to vindicate their civil rights. There is no reason for this Court to go down the path suggested by Appellants and compelling reasons not to.

ARGUMENT

I. PRIVATE PARTIES CAN SUE TO ENFORCE THE MATERIALITY PROVISION UNDER 42 U.S.C. § 1983.

A. Because Section 1983 Provides the Remedy, the Court Need Only Determine that the Materiality Provision Contains Rights-Creating Language.

Section 1983 allows any person to bring a civil action seeking redress against another for the deprivation of rights under the Constitution and laws of the United States. 42 U.S.C. § 1983. For decades, the Supreme Court has permitted Section 1983 suits by private actors seeking to vindicate the deprivation of civil rights under all types of federal statutes. *See Maine v. Thiboutot*, 448 U.S. 1, 4–8 (1980) (holding

Section 1983 can be used to bring claims based on violations of all federal laws); *see also Wright v. Roanoke Redevelopment and Hous. Auth.*, 479 U.S. 418, 430 (1987) (nothing in Housing Act or Brooke Amendment "evidences that Congress intended to preclude petitioners § 1983 claim"); *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 509–10 (1980) (Boren Amendment contained rights-creating language and thus enforceable under Section 1983).

The test for whether a federal statute is enforceable under Section 1983 requires searching for rights-creating language. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). The search for rights-creating language for Section 1983 mirrors the first part of the test in implied private right of action cases: "determine[ing] whether or not a statute confers rights on a particular class of persons." *Id.* A statute "phrased in terms of the persons benefited," usually confers private rights. *Id.* at 284 (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692 n.13 (1979)). A statute that "by its terms grants no private rights to any identifiable class," usually does not confer a private right. *Id.* (quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 576 (1979)).

Unlike in statutory implied right of action cases where plaintiffs must demonstrate that the statute displays an intent to create a private remedy in addition to containing rights-creating language, *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001), under Section 1983, plaintiffs need only demonstrate that the statute confers

a private right because Section 1983 provides the remedy, *Gonzaga*, 536 U.S. at 284. Thus there is a presumption of enforcement under Section 1983. *Id.*

That presumption can be rebutted if the statute expressly forbids recourse to Section 1983, *id*. at 284 n.4, or if the statute contains a "comprehensive enforcement scheme that is incompatible" with individual enforcement actions. *Id.* (quoting *Blessing v. Freestone*, 520 U.S. 329, 341 (1997)).

B. The Materiality Provision Contains Rights-Creating Language.

In this regard, the Materiality Provision is no different from the other federal civil rights statutes deemed enforceable under Section 1983. The statute contains rights-creating language because its focus is on the right of any individual to vote in any election:

> No person acting under color of law shall . . . deny the right of *any individual to vote* in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether *such individual* is qualified under State law to vote in such election.

42 U.S.C. § 1971(a)(2)(B), renumbered 52 U.S.C. § 10101(a)(2)(B) (emphasis added). Thus, the statute intends to benefit individuals who have been denied the right to vote because of immaterial errors or omissions relating to the voter's applications, registrations, or other acts requisite to voting.

This textual analysis easily meets the standards applied by the Supreme Court in determining whether a statute's text itself contains rights-creating language, because the Materiality Provision focuses on both the protected individuals and the regulated entities. *See Gonzaga*, 536 U.S. at 283 (explaining "our implied right of action cases should guide the determination of whether a statute confers rights enforceable under § 1983"); *Sandoval*, 532 U.S. at 289 (holding Section 602 of Title VI contained no rights-creating language because statute "focuses neither on the individuals protected nor even on the funding recipients being regulated, but on the regulating agencies," and contrasting statute before it with *Cannon*, 441 U.S. at 694, in which the Court held the statutory text of Title IX contains rights-creating language because it "explicitly confers a benefit on persons discriminated against on the basis of sex"); *Blessing*, 520 U.S. at 343 (no rights-creating language in statute where focus was on "aggregate services provided by the State" rather than "needs of any particular person").

The plain language of the Materiality Provision thus unambiguously confers a private right under the *Gonzaga* test. *See Gonzaga*, 536 U.S. at 283.

C. Nothing in the Materiality Provision Rebuts *Gonzaga*'s Presumption of Enforceability.

Nothing in the text and structure of the Materiality Provision explicitly forbids recourse under Section 1983. *See Gonzaga*, 536 U.S. at 284 n.4; *Johnson v. Hous. Auth. of Jefferson Parish*, 442 F.3d 356, 365–66 (5th Cir. 2006) (holding there was

"absolutely no indication in the statute that Congress intended for exclusive enforcement authority to be vested in HUD" because "[b]oth methods of enforcement may coexist if Congress so intends"). And nothing in the text and structure indicates congressional intent to foreclose the remedy provided under Section 1983. *Blessing*, 520 U.S. at 341 (showing contrary congressional intent from statute's creation of "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983").

Appellants argue that Congress's addition and strengthening of the Attorney General enforcement provisions somehow evinces congressional intent to bar individual enforcement actions under Section 1983. Appellants' Br. at 25–26. That position finds no support in the rare cases in which the Supreme Court has found an alternate remedial scheme to displace the remedy provided under Section 1983 or in the legislative history.

While Congress can displace the Section 1983 remedy in the relevant statute, such displacement has been found only in rare cases unlike this one. One example is *City of Rancho Palos Verdes v. Abrams*, where the Court held that enforcement of the statute at issue under Section 1983 "would distort the scheme of expedited judicial review and limited remedies created" under that statute. 544 U.S. 113, 127 (2005). In *Palos Verdes*, Justice Scalia, writing for the Court, noted that in only two other cases, *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n,* 453 U.S.

1, 19–20 (1981), and *Smith v. Robinson*, 468 U.S. 992, 1011–12 (1984), had the Court found remedies under Section 1983 unavailable. *Id.* at 120. Notably, in *Smith*, the Court concluded that a Section 1983 action would "render superfluous most of the detailed procedural protections outlined in the statute." 468 U.S. at 1011. And in *Sea Clammers*, the Court reasoned that the environmental statutes contained "many specific statutory remedies, including the two citizen-suit provisions," which indicated congressional intent to supplant any remedies available under Section 1983. 453 U.S. at 20. Unlike the statutes at issue in those cases, nothing in the text and structure of Section 1971 (52 U.S.C. § 10101), including the Materiality Provision, suggests that Congress intended the empowerment of the Attorney General to institute actions and inspect registration documents to supplant remedies available under Section 1983.

The legislative history also points in the same direction. Before 1957, 42 U.S.C. § 1971, renumbered 52 U.S.C. § 10101, included only a legislative declaration of the right to vote in any election without distinction as to race, color, or previous condition of servitude, without any sanctions. Until then, aggrieved parties had enforced Section 1971 through actions for the deprivation of civil rights under Section 1983. H.R. Rep. No. No. 85-291 (1957), *as reprinted in* 1957 U.S.C.C.A.N. 1966, 1977. In 1957, Congress enacted legislation that created the Civil Rights Division in the Department of Justice, conferred on the Attorney

General the authority to institute civil actions in the name of the United States or for the United States to protect existing rights and to expand the right of the franchise in federal elections, created the U.S. Commission on Civil Rights, and gave it the power to investigate civil rights violations and make recommendations. *Id.* at 1971–72.

While the 1957 amendments to Section 1971 strengthened the Attorney General's power to institute actions under the statute, nowhere did the amendments take that right away from private parties. The 1957 House Report thus noted that Section 1983 had been used "to enforce the rights legislatively declared in the existing law, as contained in 1971 of the same title" and that "recoveries have been made pursuant to that remedy for deprivation of the right to vote." H.R. Rep. No. 85-291 at 1977, *as reprinted in* 1957 U.S.C.C.A.N. 1966. The House Report cited two cases, *Chapman v. King*, 154 F.2d 460 (5th Cir. 1946), and *Brown v. Baskin*, 78 F. Supp. 933, 942 (E.D.S.C. 1948), *aff'd* 174 F.2d 391 (1949), in which private parties sued respective state officials for depriving them of their right to vote under Section 1971. Moreover, in *Brown*, in particular, the parties were able to secure injunctive relief. *Id.*

That legislation became known as the Civil Rights Act of 1957. Between 1957 and 1960, the Attorney General instituted multiple lawsuits under Subsections (a) and (b) of Section 1971. H.R. Rep. 89-439 (1965), *as reprinted in* 1965 U.S.C.C.A.N

2437, 2440. But it soon became clear that "voting discrimination suits could not adequately be prepared without full access to the relevant registration papers and documents and that, even where a suit was brought to a successful conclusion, the scope of relief had to be wider than what was being afforded by the courts at that time." *Id.* Therefore, in 1960, Congress amended the Civil Rights Act of 1957, including by granting the Attorney General full powers to inspect documents in the custody of local voting registrars. *Id.* The amendments also provided for a new procedure allowing affected persons in jurisdictions that had a discriminatory pattern or practice of rejecting voter registration applications to apply directly to a federal court or a federal voting referee for an order certifying the person to vote. *Id.* Finally, the 1960 amendments provided that an order from a federal court was binding on state and local jurisdictions for both state and federal elections. *Id.*

In 1964, Congress again amended the Civil Rights Act, prohibiting, with respect to registration conducted under State law for elections held solely or in part for Federal offices, (i) the use of voting qualifications, practices, and standards different from those applied in the past under such law to other individuals; (ii) the rejection of applicants because of immaterial errors or omissions made by applicants filling out registration forms; and (iii) the use of literacy tests as a qualification for voting unless they are administered and conducted wholly in writing. *Id.* The statute established a rebuttable presumption of literacy flowing from the completion of six

grades in any recognized school. *Id.* These voting provisions of the Civil Rights Act of 1964 appeared in Title I; famously, the other Titles of the Act prohibited discrimination in other areas of civil rights, including education, housing, public accommodations, and employment. The provision prohibiting state officials from rejecting voter registration applications for immaterial errors became known as the Materiality Provision of the Civil Rights Act of 1964. Title I or 42 U.S.C. § 1971 was later renumbered at 52 U.S.C. § 10101 but with no substantive changes.

The legislative history of the Civil Rights Act is useful because it reveals that nowhere in the history of the amendments between 1957 and 1964 did Congress intend to take away a private person's right to sue under Section 1983 to enforce Section 1971, including when the Materiality Provision was added in 1964. *See Schwier v. Cox*, 340 F.3d 1284, 1296 (11th Cir. 2003) ("[W]e hold that the district court erred by finding that Congress's provision for enforcement by the Attorney General in § 1971(c) precluded continued enforcement of § 1971 by a private right of action under § 1983."). Contrary to Appellants' contention, the Attorney General provisions of the statute do not create a comprehensive remedial scheme that evinces congressional intent to supplant the remedy under Section 1983.

II. THE MATERIALITY PROVISION APPLIES TO ANY PERSON WHOSE RIGHT TO VOTE IS DENIED DUE TO AN ERROR OR OMISSION ON ANY DOCUMENT REQUIRED FOR VOTING.

A. No Proof of Racial Discrimination Is Required to Bring a Claim Under the Materiality Provision.

"The task of statutory interpretation begins and, if possible, ends with the language of the statute." *See Franco v. Mabe Trucking Co., Inc.*, 3 F.4th 788, 792 (5th Cir. 2021) (quoting *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 486 (5th Cir. 2013)); *see also In re Nowlin*, 576 F.3d 258, 261–62 (5th Cir. 2009) (courts "must enforce the statute's plain meaning, unless absurd"). The plain language of the Materiality Provision very clearly protects the right of "any individual to vote in any election," not only those who have suffered racial discrimination, 52 U.S.C. § 10101(a)(2)(B). This should be enough to settle the matter.[2]

[2] The structure of Section 1971 also very clearly separates each of the subsections with semicolons, which reveals Congress's intent: "*Race, color, or previous condition not to affect right to vote*; uniform standards for voting qualifications; *errors or omissions from papers*; literacy tests; agreements between Attorney General and State or local authorities; definitions." 52 U.S.C. § 10101(a) (emphasis added). *See Fed. Deposit Ins. Corp. v. Belcher*, 978 F.3d 959, 962 (5th Cir. 2020) ("Rules of grammar govern statutory interpretation unless they contradict legislative intent or purpose.") (quoting *Nielsen v. Preap*, 139 S. Ct. 954, 965 (2019)); *McLeod v. Nagle*, 48 F.2d 189, 190–91 (9th Cir. 1931) (using various dictionaries to explain that semicolons are used to separate grammatically independent clauses of coordinate value that must be read separately); *In re King Mt. Tobacco Co., Inc.*, 623 B.R. 323, 330 (Bankr. E.D. Wash. 2020) (noting that compared to a comma, a "semicolon that appears in the statute is stronger punctuation establishing a separation or distinction"); *United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012) (noting "in the vertical list with separate entries separately

The legislative history confirms that the Materiality Provision applies broadly to all voters, not just those who have suffered racial discrimination. It is of course true that the Civil Rights Act, including Title I, was motivated by Congress's desire to stamp out racial discrimination. *See* H.R. Rep. No. 88-914 (1964), *as reprinted in* 1964 U.S.C.C.A.N. 2391, 2394. At the time, given the record of rampant racial discrimination in voting, Congress was clearly concerned with racial discrimination and determined that the most appropriate way to mitigate such discrimination was to provide specific protections to *all* voters. Thus, the House Report describes the Materiality Provision as "requiring the application of uniform standards, practices, and procedures to *all persons seeking to vote* in Federal elections and by prohibiting the disqualification of *an individual* because of immaterial errors or omissions in papers or acts relating to such voting," without any specific mention of race. 1964 U.S.C.C.A.N. at 2394 (emphasis added). And the House Report further explains that the Materiality Provision, as well as other provisions of Title I, "provide specific protections to the right to vote and would reduce discriminatory application of voting standards." *Id*.

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numbered and separated by semicolons, each separately numbered entry must be read as an integrated whole").

The Attorney General at the time and several legislators also echoed what was in the House Report—that the amendments to Title I, of which the Materiality Provision was one, intended to benefit "all voters." *See Hearing on H.R. 7152 before the H. Comm. on the Judiciary*. 88th Cong. 5 (1963) (Statement of Robert F. Kennedy, Attorney General) (Title I "prescribes the same registration standards to *all persons*, prohibits the rejection of applicants for immaterial errors . . ."); 110 Cong. Rec. 12689 (1964) (Statement of Sen. Leverett Saltonstall on the Dirksen-Mansfield substitute) ("Title I requires registration officials to apply uniform standards in registering voters and prohibits denial of registration because of immaterial errors or omissions on voting applications in Federal elections."). One senator observed that the Provision was aimed at ensuring that registrars were not disqualifying any voter's registration application based on immaterial errors:

> In Tangipahoa Parish, La., a 23-year-old applicant was rejected for not computing his age in years, months, and days . . . In New Orleans, La., an applicant was rejected for giving as his length of residence a time inconsistent with his answer on a previously rejected application . . . In Madison Parish, La., an applicant was rejected for stating '11' instead of 'November' as the month of his birth. In Webster Parish, La., an applicant failed to fill in a blank calling for 'residence' although the applicant answered other portions of the form calling for his address and length of residence in the parish.

110 Cong. Rec. 6715 (1964) (Statement of Sen. Kenneth Keating). These snippets taken directly from the congressional debates leading up to the passage of the Civil

Rights Act of 1964, and in particular the voting amendments that were added to Title I, confirm that Congress intended to benefit all voters.

Consistent with the clear commands of the text and extensive legislative history, federal courts have routinely analyzed the Materiality Provision to benefit voters regardless of race and have gone on to grant relief on such claims. *See, e.g.*, *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008) (determining Materiality Provision asks "whether, accepting the error as true and correct, the information contained in the error is material to determining the eligibility of the applicant") (emphasis omitted); *Schwier*, 439 F.3d at 1294 (affirming Materiality Provision is "intended to address the practice of requiring unnecessary information for voter registration with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters"); *Hoyle v. Priest*, 265 F.3d 699, 704–05 (8th Cir. 2001) (same); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308–09 (N.D. Ga. 2018) (assessing likelihood of success on Materiality Provision claim brought by voters); *Wash. Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1270 (W.D. Wash. 2006) (same); *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 826–27 (N.D. Ohio 2006) (same); *Condon v. Reno*, 913 F. Supp. 946, 949 (D.S.C. 1995) (describing Materiality Provision as part of Congress's "repeated[] attempt[s] to deal with the problem of registering as a deterrent to voting"); *Howlette v. City of*

Richmond, 485 F. Supp. 17, 22–23 (E.D. Va. 1978) (notarization requirement is material to determining qualifications of all voters), *aff'd*, 580 F.2d 704 (4th Cir. 1978).

B. Congress Has the Right to Enact Prophylactic Legislation to Implement the Guarantees of the Fourteenth and Fifteenth Amendments.

Congress has the right to adopt "prophylactic legislation that proscribes facially constitutional conduct in order to prevent and deter unconstitutional conduct," such as that "prohibited by the Fourteenth and Fifteenth Amendments in order to implement its protections." *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 727–28 (2003). Congress can, therefore, prohibit a broader swath of conduct not explicitly forbidden by the text of an Amendment. *Id.*; *see also* Br. of Appellee at 46.

The legislative history demonstrates that in enacting Section 1971, including the Materiality Provision, Congress understood that the legislation was rooted in multiple constitutional bases including the Fourteenth and Fifteenth Amendments, as well as Article I, Section 4 of the Constitution.[3] This is important because it demonstrates Congress's intent to prohibit the application, both conscious and

[3] Article I, Section 4 provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators."

unconscious, of the practice of rejecting voter registration applications for immaterial errors.

Thus, in the lead up to the passage of the Civil Rights Act of 1964, many members of Congress asserted multiple constitutional bases for Title I and the Materiality Provision. Representative Garner Shriver confirmed, for example, that "[t]he constitutionality of the various provisions of title I may be based on any one of several sources: The 14th amendment to the U.S. Constitution; the 15th amendment; article I, section 4, and the implied power of Congress to protect the purity of Federal elections." 110 Cong. Rec. 1610 (1964) (Statement of Rep. Garner Shriver); *See also* 110 Cong. Rec. 1642 (1964) (Statement of Rep. William F. Ryan) ("The voting sections of title I will aid in the continuing fight for universal suffrage and deserve our support. . . . I believe that under the 14th and 15th amendments to the Constitution the Congress has the power to apply these provisions to all elections."); 110 Cong. Rec. 6646 (1964) (Statement of Sen. Thomas Macintyre) ("So far as title I is concerned, I believe the proponents take the position that the constitutionality of this section is based not only on article I, section 4, but also on the 14th amendment, the 15th amendment, and the implied powers of Congress to protect the purity of Federal ballots.").[4]

[4] Against the weight of this evidence, Appellants offer only a handful of authorities of minimal relevance. Appellants' Br. 29–31 (citing *Broyles v. Texas*, 618 F. Supp. 2d 661, 697 (S.D. Tex. 2009) (referencing three cases dealing with Voting Rights

CONCLUSION

The Court should rule in favor of Plaintiff-Appellee Vote.Org and reject the Appellants' arguments concerning the Materiality Provision of the Civil Rights Act of 1964.

Act, not Civil Rights Act); *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 839 n.106 (S.D. Ind. 2006) (analyzing scope of the Voting Rights Act); *U.S. v. Mississippi,* 380 U.S. 128 (1965) (referencing Fifteenth Amendment without suggesting Materiality Provision was enacted only under Fifteenth Amendment); *Thrasher v. Ill. Republican Party,* No. 4:12-cv-4071, 2013 WL 442832, at *3 (C.D. Ill. Feb. 5, 2013) (acknowledging Materiality Provision passed to enforce guarantees of Fifteenth Amendment but never suggesting Provision protects against only race-based discrimination); *McKay v. Altobello*, No. CIV. A. 96-3458, 1996 WL 635987, (E.D. La. Oct. 31, 1996) (unreported two-page order denying preliminary injunction and providing no analysis of Section 1971 other than perfunctory statement)).

CERTIFICATE OF COMPLIANCE WITH FRAP 32

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 4,433 words, excluding the parts exempted by Fed. R. App. P. 32(f).

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman font in 14-point type.

s/ Christopher J. Merken
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Counsel for Amici Curiae the Texas State Conference of the NAACP and the Louisiana State Conference of the NAACP

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2022, I electronically filed the Brief of Amici Curiae with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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