

**United States District Court  
District of South Carolina  
Columbia Division**

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**PUBLIC INTEREST LEGAL  
FOUNDATION, INC.**

*Plaintiff,*

v.

**HOWARD M. KNAPP**, in his official capacity  
as the Executive Director of the South Carolina  
State Election Commission

*Defendant.*

Case No. 1:24-cv-01276-JFA

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**PLAINTIFF PUBLIC INTEREST LEGAL FOUNDATION'S RESPONSE  
TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AND  
REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

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Plaintiff Public Interest Legal Foundation (“Foundation”) responds to Defendant’s cross-motion for summary judgment and replies to Defendant’s response to the Foundation’s motion for summary judgment as follows:

## **INTRODUCTION**

This is not the first time that the State of South Carolina has argued it is not required to comply with the National Voter Registration Act, 52 U.S.C. §§ 20501 *et seq.* (“NVRA”). In *Condon v. Reno*, South Carolina claimed that the procedures set forth in the NVRA were an improper intrusion into state sovereignty. *Condon v. Reno*, 913 F. Supp. 946, 948 (D. S.C. 1995). Despite the State’s protestations, the court determined that in enacting the NVRA Congress acted within its constitutional authority. *Id.* at 967. The Defendant contends that *Condon*’s holding is limited to only the narrow obligation to register voters, DMSJ ¶ 9, despite the District Court’s ruling touching on the list maintenance procedures in the NVRA, *Condon*, 913 F. Supp. at 953-955. The Defendant’s stubborn opposition to NVRA requirements again brings the parties before the Court with cross motions for summary judgment pertaining to fundamental constitutional questions implicating the expansive Congressional powers under the Elections Clause. U.S. Const. Art. I, § 4.

## **ARGUMENT**

### **I. The Foundation is Entitled to Summary Judgment.**

#### **A. The Foundation Requested the Statewide Voter Registration Database and the Defendant Denied the Foundation’s Request.**

The parties’ stipulations and the Leach affidavit supplied by Defendant support the Foundation’s motion for summary judgment. The Foundation requested, pursuant to the NVRA, a copy of South Carolina’s most recent or updated copy of its statewide voter registration list. 52 U.S.C. § 20507(i); *See* (ECF 1-1). The Defendant refused to provide the Statewide Voter

Registration List. *See* Stipulation 2 (ECF# 27). The Foundation timely gave the Defendant pre-suit statutory notice for its “... failure to permit inspection and reproduction of the Statewide Voter Registration List as required by the NVRA.” *See* Stipulation # 3 (ECF# 27). The Foundation then sued the Defendant pursuant to the NVRA to receive a copy of the Statewide Voter Registration List. (ECF# 1).

Pursuant to the requirements of the Help the America Vote Act of 2002 (“HAVA”)<sup>1</sup>, South Carolina currently maintains a single, uniform, official, centralized interactive computerized statewide voter registration system (“Computerized Registration System”), housed at the State Data Center in Columbia, South Carolina, and maintained by the SEC. Stipulation #6 (ECF# 27). State and local election officials refer to the Computerized Registration System as VREMS (the Voter Registration and Election Maintenance System). *Id.* All 46 County Boards of Voter Registration and Elections (“CBVRE”) are connected to the Computerized Registration System. Additions and changes required to maintain the accuracy of the Computerized Registration List are made by the CBVREs and the SEC to the voter registration file and the system is interactive. Stipulation # 6 (ECF# 27).

CBVREs have real-time access to the Computerized Registration System to enter new voter registrations or update a voter’s record. Stipulation # 12 (ECF# 27). The SEC undertakes many activities required by federal and state law to ensure the accuracy and currency of the official list of eligible voters, which are generally described as list maintenance procedures. Leach affidavit # 12 (ECF 29-2). When fulfilling these list maintenance activities, the SEC regularly accesses VREMS. Leach affidavit # 12. (ECF 29-2). When data is received for list maintenance it is entered into the VREMS system. The system will compare the data against the

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<sup>1</sup> Help America Vote Act, 52 U.S.C. §§ 20901 *et seq.*

voter data and when 90% of the information matches, the voter's information is changed in the system. Leach affidavit 16. (ECF 29-2). The most updated Statewide Voter Registration List is generated by the VREMS system.

The most recent updated Statewide Computer Registration List is the final, or end product, of the Defendant's list maintenance activities, which are reflected in the list the Foundation requested. Defendant refused to provide the Statewide Voter Registration List, asserting that South Carolina Code § 7-3-20(D)(13) prohibits it from providing the list to anyone who is not a registered voter of South Carolina. Defendant's reliance on a state statute that limits its obligations under the NVRA flat conflicts with federal law. The NVRA preempts any statute which restricts the Foundation from inspecting and receiving a copy of the Statewide Voter Registration list. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013). As these facts are not genuinely in dispute, the analysis should stop here.

**B. The Statewide Voter Registration List Is Still Required to be Produced, No Matter What Defendant Calls It.**

The NVRA's Public Disclosure Provision is a broad mandate, requiring public disclosure of "**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[.]" 52 U.S.C. § 20507(i)(1) (emphasis added). The Statewide Voter Registration Database—a record that captures and reflects the most current maintenance of all voter record information—falls squarely within the scope of this disclosure command. *Project Vote. Pub. Int. Legal Found. v. Bellows*, 92 F. 2d 36 (1<sup>st</sup> Cir. 2024); *Pub. Int. Legal Found. v. Matthews*, 589 F. Supp. 932 (C.D. Ill. 2022); *Jud. Watch v. Lamone*, 399 F. Supp. 425 (D. Md. 2019).

The Defendant seeks to concoct a distinction between the Foundations' request for the most recent or updated Statewide Voter Registration List and the Statewide Computer

Registration List, or its Voter List. Each of the lists cataloged by the Defendant are derived from the single, statewide “Computerized Registration System.” Stipulation # 6, (ECF# 27). Any purported distinction is immaterial.

Courts have rejected semantic games to escape disclosure obligations under the NVRA of the same sort here. “The focus is on the information sought rather than the particular language used to characterize that information... And, whether plaintiff characterized its request as one seeking a ‘voter registration database,’ a ‘voter list,’ or ‘individual voter registrations,’ defendants are well aware of the type of records that could satisfy Judicial Watch’s request.” *Jud. Watch. Inc.*, 399 F. Supp. 3d at 440.

So, what the Foundation requested, as stipulated by the parties, is a copy of the most recent *Statewide Voter Registration List* maintained by the Defendant in its single, *Statewide Voter Registration System*. The request was for the federally mandated voter registration record, which Defendant concedes it maintains, as confirmed by the Affidavit of Brian Leach, and is generated through South Carolina’s statewide voter registration system known as VREMS.

### **C. The Requested Statewide Voter Registration List is a NVRA “Record.”**

Controlling Fourth Circuit authority supports summary judgment for the Foundation that the record sought must be disclosed. The information in the VREMS system, from which the Voter List is generated, constitutes a “record[] concerning the implementation of” South Carolina’s “programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” Section 8(i) extends beyond records “of” the implementation of programs or activities. Courts have extended it to all records “concerning” implementation. *Ibid.* (emphasis added). Like its synonym “regarding,” the word “concerning” used in this context has “a broadening effect, ensuring that the scope of a provision covers not

only its subject but also matters relating to that subject.” *Patel v. Garland*, 142 S. Ct. 1614, 1622 (2022) (citation omitted).

The Statewide Voter Registration List reflects the results of South Carolina’s registration and list-maintenance activities, and therefore “concern[s]”—or relates to—the “implementation” of those activities. *See Project Vote v. Long*, 682 F.3d 331, 335 (4th Cir. 2021). Moreover, the NVRA applies its disclosure requirement to “all” such “records.” 52 U.S.C. 20507(i)(1) (emphasis added). “[T]he statute’s use of the term ‘all records’ relating to [a State’s] ‘implementation of’ the program or activity” indicates that Section 8(i) “encompasses a broad range of disclosable documents.” *Public Int. Legal Found., Inc. v. North Carolina State Bd. of Elections*, 996 F.3d 257, 266 (4th Cir. 2021); *Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331, 336 (4th Cir. 2012) (“the use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.

When considering whether the State of Maine’s computerized list of registered voters was a list maintenance record discoverable pursuant to the NVRA, the First Circuit held:

The Voter File is an electronic report generated from the ... database through which Maine carries out its voter list registration and maintenance activities. ... The Voter File can thus be characterized as the output and end result of such activities. In this way, the Voter File plainly relates to the carrying out of Maine’s voter list registration and maintenance activities and is thereby subject to disclosure under Section 8(i)(1).

*Project Vote. Pub. Int. Legal Found. v. Bellows*, 92 F. 2d 36, 47 (1<sup>st</sup> Cir. 2024).

Despite the universal weight of authority supporting the Foundation, the Defendant claims that the requested statewide voter registration list requested by the Foundation is not subject to disclosure under Section 8(i) because the Statewide Voter Registration List or the “Voter List,” as the Defendant’s strategic rebranding calls it, isn’t used for list maintenance.



The plain text of Section 8(i)(1) reaches well beyond registrant removal records. The NVRA uses the word “concerning,” not “contain[ing].” 52 U.S.C. § 20507(i)(1). “Concerning” casts a wider net than “containing.” Using the ordinary meaning of the word Congress actually used, records are subject to public disclosure if they simply “relate to” the “implementation” of a voter list maintenance activity. *True the Vote v. Hoseman*, 43 F. Supp. 3d 693, 719 (S.D. Miss. 2014). There is no requirement, in the text or context, that records “contain” information that reflects or explains the underlying activity.

The Leach affidavit also supports the Foundation here. It establishes that the State’s list maintenance procedures require that new registrations, changes to registrations, and deletions of registrations occur through operation of the statewide VREMS system. Further, the VREMS system performs a comparison of changes and when the accuracy of that information is confirmed by the VREMS system, a change is made to the voter registration record. Leach Affidavit ¶¶ 16, 17. The Statewide Voter Registration List requested by the Foundation is a mirror image of – if not the same information with a different label – as the information contained in the VREMS system. Leach Affidavit ¶ 8. As such, the Statewide Voter Registration List is recognized by the overwhelming weight of authority as a record that concerns a state’s voter list maintenance procedures. Indeed, it is the final product reflecting all the cumulative list maintenance of the state. Indeed, it would not make sense if the list, as the result of the maintenance activities, could not be viewed if the purpose of viewing the activities is to ensure the output is correct. *Matthews*, 589 F. Supp. 3d at 940-41

## **II. South Carolina Code § 7-3-20(D)(13) is Preempted.**

Congress adopted the NVRA for several purposes. Two explicit purposes are barely mentioned in Defendant’s briefing. These two explicit Congressional purposes are to “protect the

integrity of the electoral process” and “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(3)-(4), and each of these purposes have been recognized by the Fourth Circuit: “Congress enacted the NVRA in order to “increase the number of eligible citizens who register to vote” in federal elections, “enhance[ ] the participation of eligible citizens as voters,” “protect the integrity of the electoral process,” and “ensure that accurate and current voter registration rolls are maintained.” *Project Vote / Voting for Am., Inc. v. Long*, 682 F3d 331, 334 (4th Cir 2011) Among other things, the NVRA requires states to “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 death or a change in residence.” 52 U.S.C. § 20507(a)(4). *Illinois Conservative Union v. Illinois*, 2021 US Dist. LEXIS 102543, at \*2-3 (N.D. Ill. June 1, 2021, No. 20 C 5542).

Yet, Defendant claims that the list maintenance provisions are not a significant objective of the NVRA, and as such should not preempt the State’s statute preventing the Foundation from receiving the documents it requested. Def. Motion p. 22. The Supreme Court of the United States disagrees: “The Act has two main objectives; increasing voter registration and removing ineligible persons from the State’s voter registration rolls. *See* § 2, 107 Stat. 77, 52 U.S.C. § 20501 (b). *Husted v. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018)

Defendant selectively emphasizes some legislative purposes of the NVRA without any analysis or balancing of two explicit purposes which support the Foundation here. Defendant’s over reliance on the legislative history is irrelevant, as the NVRA is not ambiguous. “The starting point for any issue of statutory interpretation is of course the language of the statute itself. When the words of a statute are unambiguous, this first canon is also the last and judicial inquiry is complete. (*Project Vote / Voting for Am., Inc. v. Long*,

682 F3d 331, 332 (4th Cir 2012). *see also Pub. Interest Legal Found., Inc. v. Dahlstrom*, No. 1:22-cv-00001-SLG, 2023 U.S. Dist. LEXIS 86783, at \*18 n.81 (D. Alaska May 17, 2023) (declining to consider the NVRA’s legislative history because the NVRA’s “text,” and “object and policy” are “clear”).

Defendant’s protestation that there is nothing in the Senate Report that contemplated organizations like the Plaintiff receiving the documents required under the NVRA’s public disclosure provision, is without merit. Courts have decided this issue before. The District Court of Maryland recognized that organizations like the Foundation are entitled to receive such records. When a Maryland statute limited access to its statewide voter list to Maryland residents only, the District Court held,

Organizations such as Judicial Watch and Project Vote have the resources and expertise that few individuals can marshal. By excluding these organizations from access to voter registration lists, the State law undermines Section 8(i)’s efficacy. Accordingly, E.L. § 3-506(a) (which limited the statewide voter list to Maryland voters only) is an obstacle to the accomplishment of the NVRA’s purposes. It follows that the State law is preempted in so far as it allows only Maryland registered voters to access voter registration lists.

*Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d. 425, 445 (D. Md. 2019).

Just as the Maryland statute that limited access to its statewide voter list to only Maryland residents was determined to be pre-empted by the NVRA, the same finding is warranted here. Generally, a court presumes that Congress did not intend to preempt state law unless it was Congress’s clear purpose to do so. *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). But, this is not so with Elections Clause legislation, such as the NVRA. *Inter Tribal*, 570 U.S. at 14. The text of the Election Clause provides: “The 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 choosing Senators.” U.S. Const. Art. I, § 4, cl. 1.

The Elections Clause “empowers Congress to ‘make or alter’ state election regulations[,]” and therefore the “assumption that Congress is reluctant to pre-empt does not hold when Congress acts” under that Clause. *Inter Tribal*, 570 U.S. at 14; see *Harkless v. Brunner*, 545 F.3d 445, 455 (6th Cir. 2008) (The rule “that Congress must be explicit when it encroaches in areas traditionally within a state’s core governmental functions does not apply when Congress acts under the Elections Clause, as it did in enacting the NVRA.”) (citations omitted). Instead, when considering Elections Clause legislation, “the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent.” *Inter Tribal*, 570 U.S. at 14; *id.* at 15 (“[T]here is no compelling reason not to read Elections Clause legislation simply to mean what it says.”).

Accordingly, the NVRA preempts South Carolina Code § 7-3-20(D)(13). The Foundation is entitled to a recent copy of the Statewide Voter Registration List. When received the Foundation will pay the required fee and agree to the redaction of social security numbers.

### CONCLUSION

The NVRA means what it says - “**all records**” concerning voter list maintenance are subject to **public inspection**. That broad mandate includes South Carolina’s Statewide Voter Registration List. South Carolina Code § 7-3-20(D)(13) obstructs the purpose of the NVRA’s public disclosure provision and is preempted by the NVRA. Because there are no material facts genuinely in dispute, the Foundation is entitled to judgment as a matter of law.

### PRAYER

For the reasons stated above, the Foundations prays the Court enter judgment in its

favor, holding that the South Carolina Statewide Voter Registration List is a record subject to inspection pursuant to the NVRA, that the NVRA preempts any South Carolina law limiting access to the Statewide Voter Registration List to South Carolina registered voters, issue a permanent injunction against the Defendant denying the Foundation access to the Statewide Voter Registration List and ordering the Defendant to produce to the Foundation the records requested and such other relief to which the Foundation may be justly entitled, including statutory attorney's fees under the NVRA.

Dated: July 26, 2024

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