

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

VOTER REFERENCE
FOUNDATION, LLC,

Plaintiff,

v.

ALBERT SCHMIDT, in his official
capacity as Secretary of the
Commonwealth,

Defendant.

No. 1:24-cv-294

Judge Christopher C. Conner

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT AL SCHMIDT**

Defendant Secretary of the Commonwealth Al Schmidt (“the Secretary”) respectfully submits this answer to the Complaint filed by Plaintiff Voter Reference Foundation, LLC, on February 19, 2024.

1. Admitted that Plaintiff Voter Reference Foundation, LLC (“VRF”) is a nonprofit organization. Further admitted that VRF obtains data about registered voters from states, posts such data on its website, and allows users of that website to search such data. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The Secretary is without sufficient information to

admit or deny the remaining factual allegations in this paragraph and they are therefore denied.

2. Admitted that VRF has requested data on Pennsylvania voters from the Department of State (“the Department”). The remaining allegations in this paragraph contain conclusions of law to which no response is required.

3. Denied that the Secretary has refused to make Pennsylvania voter data available to VRF. Rather, the Department has agreed to make such data available to VRF on the same terms that it is available to any other requestor. Such terms include agreement by the requestor to comply with Pennsylvania’s prohibition on publishing such data on the internet, which VRF has refused to agree to. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

4. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

5. Admitted that VRF has filed this action against the Secretary in his official capacity, and that it has requested injunctive and declaratory relief. Denied that the complaint asserts facts that warrant such

relief. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

6. Admitted only that the Court has jurisdiction over this matter. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

7. Admitted that venue is proper. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

8. Admitted that VRF is an Ohio limited liability company and subsidiary of Restoration of America, and that Restoration of America is a so-called “501(c)(4) social welfare organization.” The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, including as they relate to such matters as VRF’s intentions, the “purpose” of VRF’s actions, what VRF “believes” or “desires,” and they are therefore denied.

9. Admitted.

10. The allegations in this paragraph contain conclusions of law to which no response is required.

11. Admitted.

12. Admitted that VRF has named Secretary Schmidt as a Defendant in this action in his official capacity only.

13. The allegations in this paragraph contain conclusions of law to which no response is required.

14. Admitted that the Full Voter Export List is a compilation of records from the Public Information Lists. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

15. Admitted that the Full Voter Export list contains the listed categories of information on Pennsylvania voters.

16. The allegations in this paragraph contain conclusions of law to which no response is required.

17. The allegations in this paragraph contain conclusions of law to which no response is required.

18. The allegations in this paragraph contain conclusions of law to which no response is required.

19. The allegations in this paragraph contain conclusions of law to which no response is required.

20. The allegations in this paragraph contain conclusions of law to which no response is required.

21. The allegations in this paragraph contain conclusions of law to which no response is required.

22. The allegations in this paragraph contain conclusions of law to which no response is required.

23. The allegations in this paragraph contain conclusions of law to which no response is required.

24. The allegations in this paragraph contain conclusions of law to which no response is required.

25. Admitted that the Department has promulgated regulations relating to streets lists and public information lists. Further admitted that those regulations prohibit publishing those lists on the internet (“the internet restriction”). The remaining allegations in this paragraph contain conclusions of law to which no response is required.

26. Admitted that the Department has promulgated regulations relating to streets lists and public information lists, and that those regulations prohibit publishing those lists on the internet. The remaining

allegations in this paragraph contain conclusions of law to which no response is required.

27. The allegations in this paragraph contain conclusions of law to which no response is required.

28. Admitted that the Department's website allows users to request copies of the Full Voter Export. Further admitted that the Department's website contains the quoted language.

29. Admitted.

30. Admitted.

31. Admitted that requestors of the Full Voter Export must agree to the affirmation, including the internet restriction.

32. No response is required to this paragraph.

33. No response is required to this paragraph.

34. Admitted that the Department's website requires requestors of the Full Voter Export to affirm the following statement as part of the required affirmation: "I verify that this statement is true and correct. I understand that false statements made are subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities."

35. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

36. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

37. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

38. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

39. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

40. Admitted that Pennsylvania conducts list-maintenance activities, consistent with state and federal law. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

41. Denied. By way of further answer, the Department takes many actions to ensure that county registration commissions comply with list-maintenance requirements under state and federal law.

42. Admitted that VRF operates VoteRef.com. The Secretary is unable to assess the “purpose” or “intent” of VRF’s actions relating to its website, and the remaining allegations in this paragraph are therefore denied.

43. Admitted that VRF’s website contains information about voters from different state voter registration rolls. The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

44. Admitted that VRF’s website appears to allow anyone who accesses it to search the voter registration data it contains.

45. The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied.

46. Admitted that VRF’s website appears to allow anyone who accesses it to search the voter registration data it contains. The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

47. The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied.

48. Admitted that VRF has requested information about registered voters in Pennsylvania (“Pennsylvania voter data”). Further admitted that VRF’s website contains information about voters in other states. The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

49. Denied that the Full Voter Export made available to requestors is “unusable.” The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

50. Denied that access to voter registration data in Pennsylvania is “prohibitively expensive.” The Pennsylvania Full Voter Export is available for a fee of \$20, provided the requestor agrees to certain requirements. The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

51. Admitted that VRF has stated that it intends to publish Pennsylvania voter data on the internet. Denied that the NVRA requires the

public to perform “oversight duties.” The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied. To the extent this paragraph contains conclusions of law, no response is required.

52. The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied.

53. Admitted that VRF has requested Pennsylvania voter data from the Department and expressed its intent to publish such data on the internet. The Secretary is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied

54. The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied.

55. The Secretary is without sufficient information to admit or deny the allegations in this paragraph, and they are therefore denied.

56. Admitted that in 2022 VRF filed a request under the Pennsylvania Right-to-Know Law (“RTKL”) with the Department, and that such request is attached to VRF’s Complaint as Exhibit A (“the RTKL request”). The document speaks for itself. The Secretary is without

sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

57. Admitted that VRF filed the RTKL request with the Department. The document speaks for itself.

58. Admitted that VRF filed the RTKL request with the Department. The document speaks for itself.

59. Admitted that a document entitled “Affirmation” and signed by VRF’s Executive Director was submitted to the Department with the RTKL request. The document speaks for itself.

60. Admitted that VRF refused to comply with the internet restriction.

61. Admitted that the Department responded to the RTKL Request by letter dated March 14, 2022, and that a copy of that response is attached to VRF’s complaint as Exhibit B. The document speaks for itself.

62. Admitted that, by way of letter dated April 13, 2022, the Department denied the RTKL Request, and that a copy of such denial is attached to VRF’s complaint as Exhibit C. The document speaks for itself.

63. Admitted that, by way of letter dated April 13, 2022, the Department denied the RTKL Request, and that a copy of such denial is attached to VRF's complaint as Exhibit C. The document speaks for itself.

64. Admitted that a document entitled "Affirmation" and signed by VRF's Executive Director was submitted to the Department with the RTKL Request. The document speaks for itself. Further admitted that VRF refused to comply with the internet restriction. Further admitted that, by way of letter dated April 13, 2022, the Department denied the RTKL Request, and that a copy of such denial is attached to VRF's complaint as Exhibit C. The document speaks for itself.

65. Admitted that, by way of letter dated April 13, 2022, the Department denied the RTKL Request, and that a copy of such denial is attached to VRF's complaint as Exhibit C. The document speaks for itself.

66. Admitted that VRF appealed the Department's denial of the RTKL Request to the Office of Open Records and the Pennsylvania Commonwealth Court. Further admitted that Commonwealth Court affirmed the Department's Decision on October 20, 2023. *See Swoboda v. Pennsylvania Dept. of State*, 304 A.3d 105 (Pa. Cmwlth. 2023).

67. Admitted that, by way of a decision issued October 20, 2023, Commonwealth Court affirmed the Department's denial of the RTKL Request. *See Swoboda v. Pennsylvania Dept. of State*, 304 A.3d 105 (Pa. Cmwlth. 2023). That decision speaks for itself.

68. The allegations in this paragraph contain conclusions of law to which no response is required.

69. Admitted that Counsel for VRF sent a letter addressed to the Secretary and dated November 2, 2023, containing the subject line "Re: Notice of Violation of the National Voter Registration Act," and that a copy of such letter is attached as Exhibit D to VRF's complaint. The document speaks for itself.

70. Admitted that Counsel for VRF sent a letter addressed to the Secretary and dated November 2, 2023, containing the subject line "Re: Notice of Violation of the National Voter Registration Act," and that a copy of such letter is attached as Exhibit D to VRF's complaint. The document speaks for itself.

71. Admitted that Counsel for VRF sent a letter addressed to the Secretary and dated November 2, 2023, containing the subject line "Re: Notice of Violation of the National Voter Registration Act," and that a

copy of such letter is attached as Exhibit D to VRF's complaint. The document speaks for itself.

72. Admitted that Counsel for VRF sent a letter addressed to the Secretary and dated November 2, 2023, containing the subject line "Re: Notice of Violation of the National Voter Registration Act," and that a copy of such letter is attached as Exhibit D to VRF's complaint. The document speaks for itself.

73. Admitted that Counsel for VRF sent a second letter addressed to the Secretary dated November 2, 2023, with the subject line "Re: NVRA Notice and Request," and that a copy of such letter is attached as Exhibit E to VRF's complaint. The document speaks for itself.

74. Admitted that Counsel for VRF sent a letter addressed to the Secretary dated November 2, 2023, with the subject line "Re: NVRA Notice and Request," and that a copy of such letter is attached as Exhibit E to VRF's complaint. The document speaks for itself.

75. Admitted that Counsel for VRF sent a letter addressed to the Secretary dated November 2, 2023, with the subject line "Re: NVRA Notice and Request," and that a copy of such letter is attached as Exhibit E to VRF's complaint. The document speaks for itself. The Secretary is

unable to confirm or deny the remaining allegations in this paragraph, and they are therefore denied.

76. Admitted that counsel for the Department sent a letter dated November 16, 2024, which responded to both of the letters from counsel for VRF dated November 2, 2024, and that a copy of such letter is attached as Exhibit F to VRF's Complaint. The document speaks for itself.

77. Admitted that counsel for the Department sent a letter dated November 16, 2024, which responded to both of the letters from counsel for VRF dated November 2, 2024, and that a copy of such letter is attached as Exhibit F to VRF's Complaint. The document speaks for itself.

78. Admitted that counsel for the Department sent a letter dated November 16, 2024, which responded to both of the letters from counsel for VRF dated November 2, 2024, and that a copy of such letter is attached as Exhibit F to VRF's Complaint. The document speaks for itself.

79. Admitted that counsel for the Department sent a letter dated November 16, 2024, which responded to both of the letters from counsel for VRF dated November 2, 2024, and that a copy of such letter is attached as Exhibit F to VRF's Complaint. The document speaks for itself.

80. Admitted that counsel for VRF sent a letter addressed to the Secretary and counsel for the Department dated November 17, 2023, with the subject line “Re: Response to Department’s November 16, 2023 Correspondence and Second Notice of Violation of the National Voter Registration Act,” and that a copy of such letter is attached as Exhibit G to VRF’s complaint. The document speaks for itself.

81. Admitted that counsel for VRF sent a letter addressed to the Secretary and counsel for the Department dated November 17, 2023, with the subject line “Re: Response to Department’s November 16, 2023 Correspondence and Second Notice of Violation of the National Voter Registration Act,” and that a copy of such letter is attached as Exhibit G to VRF’s complaint. The document speaks for itself.

82. Admitted that counsel for VRF sent a letter addressed to the Secretary and counsel for the Department dated November 17, 2023, with the subject line “Re: Response to Department’s November 16, 2023 Correspondence and Second Notice of Violation of the National Voter Registration Act,” and that a copy of such letter is attached as Exhibit G to VRF’s complaint. The document speaks for itself.

83. Admitted that counsel for VRF sent a letter addressed to the Secretary and counsel for the Department dated November 17, 2023, with the subject line “Re: Response to Department’s November 16, 2023 Correspondence and Second Notice of Violation of the National Voter Registration Act,” and that a copy of such letter is attached as Exhibit G to VRF’s complaint. The document speaks for itself.

84. Admitted that VRF sent the letters attached to its complaint as Exhibits D, E, and G. The documents speak for themselves. The allegations in this paragraph otherwise contain conclusions of law to which no response is required.

85. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

86. Admitted only that the internet restriction prohibits the publication of Pennsylvania voter data on the internet. The remaining allegations in this paragraph are denied.

87. Admitted that VRF has stated its intention to publish Pennsylvania voter information on the internet. The Secretary is without

sufficient information to confirm or deny the remaining allegations in this paragraph, and they are therefore denied.

88. Admitted that VRF has stated its intention to publish Pennsylvania voter information on the internet. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

COUNT I

89. No response is required to this paragraph.

90. The allegations in this paragraph contain conclusions of law to which no response is required.

91. The allegations in this paragraph contain conclusions of law to which no response is required.

92. The allegations in this paragraph contain conclusions of law to which no response is required.

93. The allegations in this paragraph contain conclusions of law to which no response is required.

94. The allegations in this paragraph contain conclusions of law to which no response is required.

95. The allegations in this paragraph contain conclusions of law to which no response is required.

96. Admitted that the internet restriction prohibits the publication of Pennsylvania voter data on the internet. Further admitted that requestors of Pennsylvania voter data must agree to comply with the internet restriction. The allegations in this paragraph contain conclusions of law to which no response is required. The remaining allegations in this paragraph are otherwise denied.

97. Admitted that requestors of Pennsylvania voter data must agree to comply with the internet restriction. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

98. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

99. The allegations in this paragraph contain conclusions of law to which no response is required.

100. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

101. The allegations in this paragraph contain conclusions of law to which no response is required.

102. The Department lacks information to confirm or deny the allegations in this paragraph, and they are therefore denied.

103. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

104. The allegations in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Department is unable to confirm or deny the allegations in this paragraph, which are vague and hypothetical, and they are therefore denied.

105. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

106. Admitted that VRF sent the Secretary the letters attached to the complaint as Exhibits D, E, and G, which speak for themselves. The

remaining allegations in this paragraph contain conclusions of law to which no response is required.

COUNT II

107. No response is required to this paragraph.

108. Admitted that VRF sent a letter to the Secretary dated March 7, 2022, and that such letter is Exhibit A to VRF's Complaint. The document speaks for itself.

109. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

110. Admitted that the Secretary did not provide the request records to VRF, as a result of VRF's refusal to comply with the internet restriction. Further admitted that, by way of letter dated April 13, 2022, the Department denied the RTKL Request, and that a copy of such denial is attached to VRF's complaint as Exhibit C. The document speaks for itself.

111. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

112. Admitted that VRF sent the Secretary the letters attached to the complaint as Exhibits D, E, and G, which speak for themselves. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

COUNT III

113. No response is required to this paragraph.

114. Admitted that VRF sent the Secretary a letter dated November 2, 2023, and that a copy of such letter is attached to the complaint as Exhibit E. The document speaks for itself.

115. The allegations in this paragraph contain conclusions of law to which no response is required.

116. Admitted that the Secretary did not provide the requested records to VRF, as a result of VRF's refusal to comply with the internet restriction. The remaining allegations in this paragraph are denied.

117. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

118. Admitted that VRF sent the Secretary the letters attached to the complaint as Exhibits D, E, and G, which speak for themselves. The

remaining allegations in this paragraph contain conclusions of law to which no response is required.

COUNT IV

119. No response is required to this paragraph.

120. The allegations in this paragraph contain conclusions of law to which no response is required.

121. The allegations in this paragraph contain conclusions of law to which no response is required.

122. The allegations in this paragraph contain conclusions of law to which no response is required.

123. The allegations in this paragraph contain conclusions of law to which no response is required.

124. The allegations in this paragraph contain conclusions of law to which no response is required.

125. Admitted that Pennsylvania law allows political parties and other entities, including organizations like VRF, access to Pennsylvania voter data subject to certain reasonable restrictions. The remaining allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

126. Admitted that VRF informed the Department that it wished to publish Pennsylvania voter data on the internet. The allegations in this paragraph are otherwise denied.

127. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

128. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

129. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

130. The allegations in this paragraph contain conclusions of law to which no response is required.

131. The allegations in this paragraph contain conclusions of law to which no response is required.

132. Denied.

133. Denied that private, sensitive information submitted by Pennsylvanians who register to vote is “the public’s data.” The Secretary

is without sufficient information to admit or deny the remaining allegations in this paragraph, and they are therefore denied.

134. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

135. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

136. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

137. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

138. The allegations in this paragraph contain conclusions of law to which no response is required.

COUNT V

139. No response is required to this paragraph.

140. The allegations in this paragraph contain conclusions of law to which no response is required.

141. The allegations in this paragraph contain conclusions of law to which no response is required.

142. The allegations in this paragraph contain conclusions of law to which no response is required.

143. Admitted.

144. Denied to the extent this paragraph alleges that the Internet Restriction prohibits “sharing” of the Full Voter Export. Rather, the Internet Restriction permits access to the Full Voter Export, subject to certain reasonable privacy protections. Among those reasonable protections is the internet restriction. The remaining allegations in this paragraph contain conclusions of law to which no response is required.

145. The allegations in this paragraph contain conclusions of law to which no response is required.

146. The allegations in this paragraph contain conclusions of law to which no response is required. The allegations in this paragraph are otherwise denied.

147. The allegations in this paragraph contain conclusions of law to which no response is required.

148. No response is required to this paragraph.

149. The allegations in this paragraph contain conclusions of law to which no response is required.

150. The allegations in this paragraph contain conclusions of law to which no response is required.

151. The allegations in this paragraph contain conclusions of law to which no response is required.

152. The allegations in this paragraph contain conclusions of law to which no response is required.

153. The allegations in this paragraph contain conclusions of law to which no response is required.

154. The allegations in this paragraph contain conclusions of law to which no response is required.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Pennsylvania voter data requested by Plaintiff is not within the scope of the Disclosure Provision of the NVRA.

3. The internet restriction is not inconsistent with, and therefore not preempted by, the Disclosure Provision of the NVRA.

4. Secretary Schmidt is protected from any personal liability whatsoever by the doctrine of qualified immunity.

5. Defendant reserves the right to assert additional Affirmative Defenses if appropriate.

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WHEREFORE, Defendant respectfully requests that the Court dismiss this action and grant Defendant any other relief that is just and proper.

January 3, 2025

Respectfully submitted,

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Counsel for Defendant Al Schmidt

CERTIFICATE OF SERVICE

I hereby certify that I filed the above document using the Court's CM/ECF system. Service will be accomplished on all counsel of record through the CM/ECF system.

Dated: January 3, 2025

/s Michael J. Fischer
Michael J. Fischer

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