UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Public Interest Legal Foundation, Inc.,

Plaintiff,

vs.

Steve Simon,

Defendant.

Case No. 0:24-CV-01561 (SRN - DJF)

DEFENDANT'S MEMORANDUM SUPPORTING MOTION TO DISMISS

INTRODUCTION

Plaintiff Public Interest Legal Foundation, Inc. ("PILF"), alleges that Minnesota Secretary of State Steve Simon, in his official capacity, violated the National Voter Registration Act of 1993 ("NVRA") by failing to provide information it requested under the NVRA's public disclosure provision, 52 U.S.C. § 20507(i)(1). PILF lacks standing for its claim and fails to state a claim for which relief can be granted as a matter of law because Minnesota is exempted from the NVRA. Accordingly, the Court should dismiss the complaint in its entirety.

FACTS

Congress enacted the NVRA in 1993 to increase voter registration and participation in federal elections and to protect the electoral process. 52 U.S.C. § 20501(b). Congress specifically defined the purpose of the act as increasing the number of people who register and vote in elections for federal office, protecting electoral integrity, and ensuring maintenance of accurate and current voter-registration rolls. *Id.* The NVRA established

federal voter registration requirements "atop state voter-registration systems," supplementing lesser-reaching state election law and supplanting contradictory systems. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5, (2013). To increase voter registration and participation, the NVRA requires states to allow voters to register to vote in federal elections by mail, in person, and when applying for a driver's license. 52 U.S.C. § 20503(a).

Congress also provided requirements for administering the voter-registration mandates of the NVRA. *Id.* § 20507. These requirements include procedures for confirming voter registration; managing the removal, relocation, and qualifications of registered voters from lists; and publicly disclosing voter-registration activities. *Id.* In managing the administration of the required voter registration systems, the NVRA requires states to publicly disclose "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." *Id.*

Congress chose to exempt certain states from the NVRA based on the voter registration requirements that existed in those states. *Id.* § 20503. Most notably, Congress exempted states that had election-day polling-place registration on and after August 1, 1994. *Id.* § 20503(b). Minnesota is therefore exempt from the NVRA because Minnesota law has allowed election-day polling-place registration continuously since 1974. Minn. Stat. § 201.061 subd. 3 (2022); *id.* § 201.061, subd. 3 (1974).

Although it is not mandated by the NVRA, Minnesota has enacted multiple voter-registration and voter-list protections. *See* Minn. Stat. §§ 201.01-.276. Under state law,

the Secretary must "maintain a statewide voter registration system to facilitate voter registration and to provide a central database containing voter registration information from around the state." Minn. Stat. § 201.022. Like the NVRA, Minnesota law provides for the disclosure of a collection of voter data known as the public information list. Minn. Stat. § 201.091 subd. 4. To obtain a public information list, the requesting individual must be a registered Minnesota voter and "state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement." *Id.*, subds. 4-5. The public information list must be provided within ten days of receiving the request and payment for the cost of reproduction.[1] *Id.*, subd. 5.

Public Interest Legal Foundation, Inc., is a Virginia-based nonprofit organization that focuses on election issues. Doc. 1 ("Compl.") ¶ 5. In January 2024, PILF sent the Secretary a request for Minnesota's registered voter list. *Id.* ¶ 108. PILF cited the NVRA's public disclosure provision as the basis for its request. *Id.* Because the NVRA does not apply to Minnesota, the Secretary considered PILF's request to be made under the Minnesota law. *Id.* ¶ 115. The Secretary informed PILF that, under Minnesota Statutes section 201.091, only registered Minnesota voters may request the registered voter list, and therefore PILF would not be provided with responsive data based on its request. *Id.* ¶ 117.

[1] Other than requiring the attestation that the information obtained will not be used for purposes unrelated to elections, political activities, or law enforcement, nothing in section 201.091 restricts a Minnesota registered voter from obtaining the public information list on behalf of an organization or entity and distributing the information on the list to volunteers or employees of that organization or entity.

On March 5, PILF notified the Secretary that it believed he was in violation of the NVRA. *Id.* ¶ 118. Because Minnesota is exempt from the NVRA, the Secretary did not act on the notice. In April, PILF filed the instant lawsuit, alleging that the Secretary is in violation of the public disclosure provision of the NVRA, 52 U.S.C. § 20507(i)(1).

ARGUMENT

To survive a motion to dismiss under Fed. R. Civ. P. 12(b), a complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In deciding such a motion, a court assumes all facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the complainant. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). In doing so, however, a court need not accept as true wholly conclusory allegations, *Hanten v. School District of Riverview Gardens*, 183 F.3d 799, 805 (8th Cir. 1999), or a plaintiff's legal conclusions drawn from the facts alleged. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). In addition, Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). Whether a complaint states a claim is a question of law. *Morton*, 793 F.2d at 187.

The Court should grant the Secretary's motion to dismiss because PILF lacks standing and its claim fails as a matter of law. PILF asks this court to extend the NVRA

beyond the bounds established and enacted by Congress. Precedent does not support PILF's request that the Court apply a law from which Minnesota is exempt.

I. PILF LACKS STANDING.

As a threshold matter, PILF's claim must be dismissed for lack of standing. PILF has not established that it suffered an injury in fact. Further, the NVRA does not grant PILF a private right of action.[2]

Federal court jurisdiction extends only to adjudicating actual cases and controversies. U.S. Const. Art. III § 2, cl. 1. An organization invoking federal jurisdiction has the burden of showing that it has the right to assert its claim. *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011). This right requires a showing of causation, redressability, and injury in fact. *Mo. Roundtable for Life v. Carnahan*, 676 F.3d 665, 672 (8th Cir. 2012). To establish standing, an organization must demonstrate that it suffered or will suffer an injury in fact that is actual or imminent, not conjectural or hypothetical.

[2] PILF's claim against the Secretary is further barred by the Eleventh Amendment. A state and its officials are immune from suit in federal court unless the state has consented to be sued or Congress has abrogated the state's immunity by an express statutory provision. U.S. Const. amend. XI; *see also Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 253-54 (2011). Minnesota has not waived its Eleventh Amendment immunity from suit in federal court. *See DeGidio v. Perpich*, 612 F. Supp. 1383, 1388-89 (D. Minn. 1985) (recognizing Minnesota's limited waiver of sovereign immunity from tort actions in state court is not waiver of sovereign immunity in federal court). Nor has PILF pointed to any Congressional abrogation of Minnesota's sovereign immunity from suit on its claim. While the NVRA indeed provides for a private right of action for a person aggrieved by a violation of the NVRA to bring a civil claim for relief in 52 U.S. §20510(b), Minnesota is exempted from the NVRA as discussed herein. Because Minnesota meets the conditions Congress declared to render the NVRA inapplicable, Congress clearly did not intend that Minnesota could be sued for a violation of the NVRA. *See Allen v. Cooper*, 589 U.S. 248, 255 (2020) (requiring that Congress have enacted "unequivocal statutory language" abrogating the state's immunity before a federal court can entertain a suit against a nonconsenting state).

Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-61 (1992). It must show a "concrete and demonstrable injury to [its] activities which drains its resources and is more than simply a setback to its abstract social interests." *Nat'l Fed'n. of the Blind v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999). An organization cannot establish standing without stating "specific facts establishing distinct and palpable injuries." *Id.* These facts must demonstrate that a defendant's actions "have perceptibly impaired" the organization's activities. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

PILF has not stated that it has suffered or will suffer any specific injury. Instead, PILF broadly references its review of voter-registration records, its educational programming, its institutional knowledge, and its prioritization and funding of work.[3] Compl. ¶¶ 135, 139, 144, 148. PILF has not explained how its work has actually suffered or in what way it has suffered in the decades that Minnesota has been exempt from the NVRA. Additionally, Minnesota law requires the Secretary to release a public list of registered voter information and to "provide copies of the public information lists in electronic or other media to any voter registered in Minnesota within ten days of receiving a written or electronic request accompanied by payment of the cost of reproduction." Minn. Stat. § 201.091 subds. 4-5. PILF's complaint details a single unsuccessful attempt to

[3] PILF claims it must now "expend additional resources and staff to counteract Secretary Simon's actions." Compl. ¶ 149. To the extent that claim concerns this litigation, that is insufficient to confer standing. *See WaterLegacy v. USDA Forest Serv.*, Case No. 17-CV-276 (JNE/LIB), 2019 WL 4757663, at *12 (D. Minn. Sept. 30, 2019) (citing *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir 2015) and holding that an organization expending resources for litigation, in anticipation of litigation, or for advocacy is insufficient to confer standing).

request the public disclosure list through the NVRA and through Minnesota's election law as an organization.[4] Based on the Secretary's denial of this one request, PILF makes broad allegations that its work is set back by Congress's exemption of Minnesota from the NVRA. These vague claims do not amount to concrete and demonstrable injury.

Further, should the Court ultimately take as true PILF's claim, discussed herein, that the NVRA applies to Minnesota, the Act explicitly limits standing. The NVRA only "permits a private right of action for individuals who are 'aggrieved by a violation' of the statute, 52 U.S.C. § 20510(b)(1); that is, 'persons who allege that their rights to vote in an election for federal office have been impaired by a violation of the NVRA.'" *Minnesota Voters All. v. City of Minneapolis*, No. CV 20-2049 (MJD/TNL), 2020 WL 6119937 at *6 (D.Minn. Oct. 16, 2020) (citing *Dobrovolny v. Neb.*, 100 F. Supp. 2d 1012, 1031 (D. Neb. 2000) and *Krislov v. Rednour*, 946 F. Supp. 563, 566 (N.D. Ill. 1996)). Though it claims to be entitled to relief, PILF is not a person with the right to vote in an election for federal office. Under this Court's interpretation of Congress's direction, PILF therefore cannot establish standing for an action under the NVRA.

Because PILF has not established that it has suffered or will suffer an injury and because PILF cannot establish that its right to vote in an election for federal office has been impaired, PILF lacks standing to bring the instant action.

[4] PILF does not allege that it could not obtain the requested public disclosure lists through a member who is also a registered Minnesota voter and attests that the list will not be used for purposes unrelated to elections, political activities, or law enforcement. Minn. Stat. § 201.091.

II. PILF'S CLAIM MUST BE DISMISSED BECAUSE IT FAILS AS A MATTER OF LAW.

A court must dismiss a claim if no relief could be granted as a matter of law on any set of facts that could be proved consistent with the allegations, whether the legal theory it is based on is outlandish or close but unavailing. *Neitzke*, 409 U.S. at 327; *Levy v. Ohl*, 477 F.3d 988, 991 (8th Cir. 2007) (stating "[t]he court assumes as true all factual allegations of the complaint. However, the complaint must contain sufficient facts, as opposed to mere conclusions, to satisfy the legal requirements of the claim to avoid dismissal" when considering the Rule 12(b)(6) standard.) (quotations omitted). Here, the entirety of PILF's claim arises from its assertion that the Secretary violated the NVRA's public disclosure provision, 52 U.S.C. § 20507(i)(1), by failing to provide a copy of the statewide public information list to PILF. But as PILF acknowledges, the NVRA does not apply to Minnesota. Compl. ¶¶ 20-21. PILF's claim therefore fails as a matter of law.

A. Minnesota is Statutorily Exempt From the NVRA, and the Secretary Has Therefore Not Violated It.

Because the NVRA does not apply to Minnesota, PILF cannot show that the Secretary violated its public disclosure provision. When enacting the NVRA, Congress specified that the legislation did not apply to certain states. Section 20503(b) of the NVRA exempts states that (1) do not require voter registration for federal elections or (2) have continuously allowed election-day polling-place voter registration since the enactment of the NVRA. 52 U.S.C. § 20503(b). As PILF concedes, Minnesota has continuously offered election-day polling-place voter registration since the NVRA's enactment and prior to August 1, 1994. Compl. ¶ 21. Thus, the NVRA's provisions do not apply to Minnesota.

Despite this clear statutory language, PILF asks the Court to invalidate Minnesota's exemption from certain NVRA provisions, suggesting that Congress lacked authority to enact these exemptions. Compl. ¶¶ 87, 95-96. The Court should soundly reject this contention.

Congress's legislative authority extends to legislation governing the times, places, and manner of federal elections. U.S. Const Art. I § 4; *Smiley v. Holm*, 285 U.S. 355, 367 (1932). Courts have consistently applied the NVRA in the context of the Elections Clause. *See, e.g., Inter Tribal Council of Ariz.*, 570 U.S. at 2 (confirming that the "Elections Clause empowers Congress to regulate *how* federal elections are held" when applying the NVRA to Arizona election law); *Ass'n of Cmty. Orgs. for Reform Now (ACORN) v. Edgar*, 56 F.3d 791 (7th Cir. 1995) (holding that the NVRA clearly falls within the ambit of the Elections Clause's authority); *Voting Rights Coal. v. Wilson*, 60 F.3d 1411 (9th Cir. 1995); *Ass'n of Cmty. Organizations for Reform Now v. Miller*, 912 F. Supp. 976 (W.D. Mich. 1995), *aff'd*, 129 F.3d 833 (6th Cir. 1997). This Court should adopt the same application.

Federal courts cannot intrude on the powers granted to the other branches of government. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). When construing a statute, the function of the court is to enforce it according to its terms, operating from the assumption that "Congress says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). By its own terms, Congress did not intend the NVRA to apply to states, like Minnesota, that had already effectuated election-day polling-place registration. As the

NVRA exempts Minnesota, any claim asserting a Minnesota election official violated the NVRA is necessarily meritless.

When asked to do so in other contexts, courts have declined to extend the application of the NVRA beyond those states where it expressly applies. *See Colon-Marrero v. Velez*, 813 F.3d 1 (1st Cir. 2016) (holding that by limiting, by its terms, the NVRA's scope to "a State of the United States and the District of Columbia," Congress did not intend the NVRA to apply to Puerto Rico). This Court should do the same.

B. Congress Validly Exempted States With Election-Day Polling-Place Registration From the NVRA.

PILF does not challenge the facts underlying Minnesota's exemption from the NVRA – that is, PILF does not contend that Minnesota failed to offer election-day polling-place voter registration at any time since August 1, 1994. Rather, PILF claims that Minnesota's exemption from the NVRA is invalid based on *Shelby County v. Holder*, 570 U.S. 529 (2013)—a case that dealt not with the NVRA but with the Voting Rights Act of 1965.

In *Shelby County*, the Supreme Court invalidated section 4 of the Voting Rights Act, which provided a formula for determining whether a jurisdiction needed federal preclearance before changing its election procedures. The Act's preclearance formula was based on whether that jurisdiction used discriminatory voter-registration practices and had under 50% voter turnout or registration in the 1960s and 1970s. *Id.* at 557. The Court concluded that the preclearance formula was no longer valid because it placed a burden on the affected states based on historical data and practices. *Id.* at 556-57. The Supreme Court

held that circumstances had changed since the passing of the Act and that the current burdens were no longer justified by current conditions. *Id.* at 556.

Here, PILF alleges that the election-day polling-place registration exemption "does not 'make sense in light of current conditions'" in Minnesota, and that it did not make sense at the time the NVRA was enacted. Compl. ¶ 76 (quoting *Shelby Cty.*, 570 U.S. at 553). Thus, PILF contends that Minnesota should be subject to the NVRA, despite fulfilling the conditions of the exemption that Congress provided. But this assertion highlights precisely why *Shelby County* is inapplicable. The *Shelby County* Court assessed whether the Voting Rights Act's formula and its application to certain states exceeded the Fifteenth Amendment and violated states' equal sovereignty. *Shelby Cty.*, 570 U.S. at 544, 553. In its analysis, the Court was primarily concerned with what it perceived as a change in conditions that formerly justified the Act's coverage formula and preclearance remedy. *Id.* at 551. The Court held that the formula no longer "made sense" in light of those changes. *Id.* at 546-47.

Unlike in *Shelby County*, the condition exempting Minnesota from the NVRA has not changed. Polling-place registration on Election Day remains a current condition in Minnesota, and it continues to protect Minnesotans' voting rights. *See, e.g., Minn. Voters Alliance v. Ritchie*, 890 F. Supp. 2d. 1106 (D. Minn. 2012), *aff'd* 720 F.3d 1029 (8th Cir. 2013) (dismissing complaint that election-day registration violates the rights of voters who are already registered). Minnesota's provision of election-day polling-place registration is hardly irrelevant or obsolete, and it is the entire basis of the exemption from the NVRA that Congress explicitly granted to the state. To the extent that PILF attempts to argue that

Minnesota's NVRA exemption does not, and has never, "made sense," the Secretary submits that Congress said what it meant and meant what it said when it determined that states like Minnesota with election-day polling-place registration continuously available since 1994 are exempt from the NVRA. *See Hartford Underwriters Ins. Co.,* 530 U.S. at 6.

PILF further suggests the NVRA exemption is somehow invalid because Minnesota has state laws that duplicate the NVRA's purpose. Compl. ¶¶ 78-80. To the contrary, Minnesota does not subject itself to federal law in the form of the NVRA by enacting similar regulations of its own. Instead, these similarities further demonstrate the propriety of Minnesota's statutory exemption from the NVRA. The *Shelby County* Court reasoned that a state should not be subject to federal election legislation if that legislation seeks to address a condition that is already being remediated by other means. 570 U.S. at 557. Here, PILF asks this Court to apply that same reasoning to achieve the opposite result – to extend federal legislation to address concerns already being remediated by Minnesota law.

PILF's assertion that Minnesota's statutory exemption from the NVRA is invalidated by *Shelby County* fails to recognize a key difference between the NVRA and the Voting Rights Act. As PILF observes, the Court in *Shelby County* looked to principles of equal sovereignty in reasoning that "a statute's current burdens must be justified by current needs, and any disparate geographic coverage must be 'sufficiently related to the problem that it targets.'" *Id.* at 550-51 (quotation omitted); Compl. ¶ 72. The NVRA did not seek to "target a problem" within the exempted jurisdictions; instead, the NVRA's nonapplicability provision merely provides that the chapter does not apply to any state that

meets the conditions provided in 52 U.S.C. § 20503(b)(1)-(2). Any "disparate geographic coverage" that results merely reflects Congress's recognition of differences in the extant voting laws of the states.

A federal election statute like the NVRA recognizing the states' individual voter registration requirements does not impede equal sovereignty; rather, it preserves it. *See United States v. Texas*, 339 U.S. 707, 719-20 (1950) (reasoning that the equal footing clause prevents both extension and contraction of a state's sovereignty from a domain of federal power that would produce inequality among the states). Unlike jurisdictions subject to federal preclearance requirements under the Voting Rights Act, Minnesota's exemption from the NVRA does not impose a federal "burden" on Minnesota or its residents. Those jurisdictions subject to section 4 of the Voting Rights Act claimed that the preclearance formula exceeded Congress's enforcement authority under the Fourteenth and Fifteenth Amendments and violated the principle of equal sovereignty and imposed burdens no longer justified by current circumstances. *Shelby Cnty., Ala. v. Holder*, 811 F. Supp. 2d 424, 427 (D.D.C. 2011). PILF asks this Court to apply the holding from *Shelby County* in the opposite direction, burdening Minnesota with a federal requirement unjustified by the circumstances.

The reasoning of *Shelby County v. Holder* does not invalidate the nonapplicability clause of the NVRA, and thus Minnesota remains exempt from its other provisions. PILF's claim must therefore fail as a matter of law.

PILF further argues that the NVRA lacks the congruence and proportionality required when Congress legislates pursuant to section 5 of the Fourteenth Amendment.

See Compl. ¶¶ 89-96. Legislation enacted under section 5 of the Fourteenth Amendment must be congruent and proportional to the injury to be prevented or remedied. *See Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, (2001). But it is the Elections Clause, not the Fourteenth Amendment, that provides Congress' authority for the NVRA. *See* U.S. Const. art. I, § 4, cl. 1; *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008) (applying the NVRA in context of Elections Clause).

The Elections Clause "invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices." *Foster v. Love,* 522 U.S. 67, 69, (1997) (citation omitted). "The power of Congress over the 'Times, Places and Manner' of congressional elections is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith." *Inter Tribal Council of Ariz.*, 570 U.S. at 9, (quotation marks omitted). In enacting the NVRA, Congress stated the extent it wished to legislate and, in doing so, declined to apply the NVRA to states with election-day polling-place registration. 52 U.S.C. § 20503(b). As such, this Court should not accept PILF's invitation to judicially expand the ambit of a clear and expressly limited Act of Congress.

C. The NVRA Cannot Preempt Minnesota Law Because it Does Not Apply to Minnesota.

PILF alleges that the NVRA preempts Minnesota's public voter-record disclosure law, Minnesota Statutes section 201.091, subdivision 5. Compl. ¶¶ 106-07. Plaintiff is incorrect. Federal law preempts state law only when, "under the circumstances of [a]

particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, (1941). Here, where the NVRA does not apply to Minnesota by its own design, Minnesota's law cannot stand as an obstacle to the NVRA.

Further, the Elections Clause "invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices." *Inter Tribal Council of Ariz.*, 570 U.S. at 9 (quotations omitted). Congress explicitly exempted Minnesota from the NVRA, and, as such, the NVRA cannot conflict with Minnesota's public disclosure statutes. Consequently, the NVRA does not preempt Minnesota state law.

CONCLUSION

For all the reasons described above, the Secretary respectfully requests that the Court grant their motion and dismiss PILF's Complaint in its entirety with prejudice.

Dated: May 22, 2024

Respectfully submitted,

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