

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

The PUBLIC INTEREST LEGAL	)	
FOUNDATION,	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 4:18-CV-00981
	)	
ANN HARRIS BENNETT, in her official	)	
capacity as Voter Registrar for Harris County,	)	
Texas,	)	
	)	
<i>Defendant.</i>	)	
	)	
<b>Serve: Ann Harris Bennett</b>	)	
1001 Preston St.	)	
Houston, Texas 77002	)	
_____	)	

**FIRST AMENDED VERIFIED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Public Interest Legal Foundation (“the Foundation”), by and through undersigned counsel, brings this action for violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. 20507.

**INTRODUCTION**

This is a public records case. Plaintiff has repeatedly requested, but been denied access to, records that federal law entitles Plaintiff to see and duplicate. The governing law—section 20507(i) of the NVRA—is a federal freedom of information law that mandates the public disclosure of records related to voter registration activities. Upon request, this section requires election administration officials to “make available for public inspection . . . 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) (hereafter, the “Public Disclosure Provision”).

Like the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, the Public Disclosure Provision confers on the Foundation and every individual “a public right to information.” *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 703 (E.D. Va. 2010).<sup>1</sup> “[A] statutory right to information is substantive” in kind, *Landrum v. Blackbird Enters., LLC*, 214 F. Supp. 3d 566, 571 (S.D. Tex. 2016), and thus a violation of that right creates an informational injury sufficient to establish Article III standing, *FEC v. Akins*, 524 U.S. 11, 21 (1998) (“[A] plaintiff suffers an ‘injury in fact’ when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute”).

As recently articulated by the Southern District of Florida, Congress intended that the NVRA’s right to information would allow the public to monitor the activities of government as they concern the right to vote:

[The NVRA’s Public Disclosure Provision is] available to any member of the public . . . and convey[s] Congress’s intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials’ list maintenance programs. [52 U.S.C. § 20507(i)]. Accordingly, election officials must provide full public access to all records related to their list maintenance activities, including their voter rolls. *Id.* This mandatory public inspection right is designed to preserve the right to vote and ensure that election officials are complying with the NVRA. *Project Vote v. Long*, 682 F.3d. 331, 335 (4th Cir. 2012).

*Bellitto v. Snipes*, No. 16-cv-61474, ECF No. 244 at 8 (S.D. Fla., March 30, 2018).<sup>2</sup>

Defendant Ann Harris Bennett, the voter registrar for Harris County, Texas, is not complying with the NVRA’s Public Disclosure Provision. Despite repeated requests, Defendant

---

<sup>1</sup> Summary judgment granted in part by *Project Vote/Voting for Am., Inc. v. Long*, 813 F. Supp. 2d 738 (E.D. Va. 2011), affirmed by *Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012).

<sup>2</sup> Available at <https://publicinterestlegal.org/files/Broward-Trial-Order.pdf>.

Bennett refuses to make her records available to the Foundation. By denying the Foundation access to the requested records, Defendant Bennett is causing a concrete injury to the Foundation in violation of the Foundation's right to information conferred by the NVRA and is frustrating the Foundation's organizational mission.

To remedy its injury, the Foundation seeks declaratory and injunctive relief from this Court. Specifically, the Foundation seeks a declaration that all of Defendant Bennett's records related to voter registration list maintenance, including but not limited to those explicitly requested by the Foundation, are subject to public inspection without encumbrance by any state public disclosure laws. The Foundation also seeks an order compelling Defendant Bennett to comply with the NVRA's Public Disclosure Provision through an order commanding her to permit inspection and duplication of all records concerning the maintenance of registration lists.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States. This Court also has jurisdiction under 52 U.S.C. § 20510(b), as the action seeks injunctive and declaratory relief under the NVRA.

2. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1), because Defendant resides in this district, and under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

### **PARTIES**

3. The Public Interest Legal Foundation, Inc., (the "Foundation") is a non-partisan, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation seeks to promote the integrity of elections nationwide through research, education, remedial programs, and litigation. The Foundation regularly utilizes the NVRA's Public Disclosure

Provision and state and federal open records laws that require government records be made available to the public. Using records and data compiled through these open records laws, the Foundation produces and disseminates reports, articles, blog and social media posts, and newsletters in order to advance the public education aspect of its organizational mission.

4. Defendant Ann Harris Bennett is the Voter Registrar of Harris County, Texas. As such, she is charged with the administration of federal and state election laws, including registration of voters, the maintenance of the official lists of eligible voters of Harris County, together with the preservation of all records related to the activities involved in maintenance of those lists. *E.g.*, Tex. Elec. Code Ann. § 12.001, Tex. Elec. Code Ann. § 15.022(a)-(b), and Tex. Elec. Code Ann. § 31.043; 52 U.S.C. § 20507(a)-(d).

5. Under 52 U.S.C. § 20507(i), Defendant Bennett is required to maintain all records related to her list maintenance activities for a period of two years, at a minimum, and must permit public inspection of all of these records.

### **STATUTORY FRAMEWORK**

6. The NVRA's Public Disclosure Provision provides,

Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, 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, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

52 U.S.C. § 20507(i)(1); *see also Project Vote v. Long*, 682 F.3d 331, 337 (4th Cir. 2012) (“First, the statute clearly states that ‘all records’ falling under Section 8(i)(1) must be publicly disclosed, not just those explicitly listed in Section 8(i)(2).”) (emphasis in original).

7. The only records exempted from the NVRA’s Public Disclosure Provision are “records relate[d] to a declination to register to vote or the identity of a voter registration agency through which any particular voter is registered.” 52 U.S.C. § 20507(i)(1).

8. The NVRA’s civil enforcement provision allows for a private right of action by any person “aggrieved by a violation” after providing “written notice of the violation to the chief election official of the State involved.” 52 U.S.C. § 20510(b).

If the violation is not corrected within 90 days after receipt of a notice . . . or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

52 U.S.C. § 20510(b)(2).

9. A person is “aggrieved” by a violation of the Public Disclosure Provision if the person is denied access to records to which he is entitled under the NVRA.

### FACTUAL ALLEGATIONS

#### **The Foundation Requested and Was Denied Access to Records Covered by 52 U.S.C. § 20507(i).**

10. On December 1, 2017, the Foundation submitted a written request to Defendant Bennett asking to inspect records related to Defendant Bennett’s activities and programs concerning the registration and removal of non-citizens. Exhibit A (“December 1 Request”). The December 1 Request explicitly stated that the request for inspection and disclosure of records was made pursuant to federal law—the NVRA’s Public Disclosure Provision. *Id.*

11. The December 1 Request sought four categories of records:

1. Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security, Texas Department of Public Safety, and from the Texas Secretary of

State since January 1, 2006. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. This request extends to electronic records capable of compilation.

2. All documents and records of communication received by your office from registered voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility. Please include any official records indicating maintenance actions undertaken thereafter.
3. All documents and records of communication received by your office from jury selection officials—state and federal--since January 1, 2006 referencing individuals who claimed to be non-U.S. citizens when attempting to avoid serving a duty call. This request seeks copies of the official referrals and documents indicating where your office matched a claim of noncitizenship to an existing registered voter and extends to the communications and maintenance actions taken as a result that were memorialized in any written form.
4. All communications regarding your list maintenance activities relating to #1 through 3 above to the District Attorney, Texas Attorney General, Texas State Troopers/DPS, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation.

Exhibit A at 1-2.

12. The December 1 Request also requested inspection of any related records. Exhibit A at 2.

13. The December 1 Request sought to arrange for inspection or production of the requested records and provided the Foundation's contact information. Exhibit A at 3.

14. The December 1 Request informed Defendant Bennett, "[I]f you fail to make these records available for public inspection, you will be in violation of the NVRA and subject to an action to enforce the public records provisions of the NVRA." Exhibit A at 3.

15. The Foundation received a response from the office of the Harris County Attorney dated December 14, 2017, Exhibit B (“December 14 Clarification Request”), which purported to seek clarification regarding the Foundation’s December 1 Request. The December 14 Clarification Request did not acknowledge or mention the NVRA at all. Exhibit B. Instead, it stated that the Foundation’s request was being addressed under the Texas Public Information Act (“TPIA”), Tex. Gov’t Code § 552.001 *et seq.*

16. The Foundation responded in writing to the Defendant’s December 14 Clarification Request by letter dated December 18, 2017. Exhibit C (“December 18 Clarification Response”). The Foundation’s response addressed each of the Defendant’s requests for clarification and explained, again, that the Foundation’s request was made pursuant to the NVRA’s Public Disclosure Provision, 52 U.S.C. § 20507(i), not the TPIA. Exhibit C at 1. The December 18 Clarification Response further informed the Defendant that the NVRA’s Public Disclosure Provision, as a federal statute, is not subject to the restrictions of the TPIA. Exhibit C at 2.

17. Defendant Bennett did not produce or offer inspection of any of the requested records.

18. The Foundation received no further direct correspondence from Defendant Bennett after delivering the December 18 Clarification Response.

19. The next communication the Foundation received was a copy of a letter and memorandum from the Harris County Attorney to the Attorney General of Texas, dated January 4, 2018. Exhibit D (“January 4 AG Submission”). The January 4 AG Submission ignored and rejected the Foundation’s NVRA request and instead sought permission from the Attorney

General of Texas to withhold the records responsive to the Foundation's request under exceptions found in the TPIA. *Id.*

20. Therefore, on January 4, 2018, Defendant Bennett denied the Foundation's request for records under the NVRA.

21. On January 11, 2018, the Harris County Attorney, on Defendant Bennett's behalf, submitted a memorandum to the Attorney General of Texas in support of Defendant's decision to withhold the requested records under exceptions found in the TPIA. Exhibit E ("January 11 Memo"). The Foundation received a copy of the January 11 Memo. The January 11 Memo yet again makes no mention of the NVRA whatsoever.

22. In her January 11 Memo, Defendant Bennett explains, in relevant part, her belief that the TPIA "clearly prohibits the Harris County Voter Registrar from producing" all of the records requests by the Foundation. Exhibit E at 3. The January 11 Memo also describes Defendant Bennett's intention to withhold and redact important and relevant information from certain responsive records. *See, e.g.*, Exhibit E at 7 ("[W]e seek to withhold the identity of the complainant on the basis on the basis of the informer's privilege.").

23. In a letter dated January 18, 2018, the Foundation informed Defendant Bennett in writing that she is in violation of the NVRA for denying the Foundation's request to inspect voter registration list maintenance records. Exhibit F ("NVRA Violation Letter"). The NVRA Violation Letter stated, for the third time, that the Foundation's request was made pursuant to the NVRA and is "not a request pursuant to the Texas Public Information Act." Exhibit F at 1. As explained in the NVRA Violation Letter, the provisions of the TPIA are superseded by the NVRA's Public Disclosure Provision.



24. As required by the NVRA's private-right-of-action provision, 52 U.S.C. § 20510(b)(1), the Foundation provided written notice to Texas' chief election officer—the Secretary of State of Texas—of Defendant Bennett's violation of the NVRA's Public Disclosure Provision. Exhibit F at 2.

25. Defendant Bennett has not responded to the Foundation's NVRA Violation Letter.

26. On or around March 15, 2018, the Attorney General of Texas responded in writing to Defendant Bennett's January 11 Memo. Exhibit G ("AG Response"). The AG Response makes no mention of the NVRA. The AG Response states that, under the TPIA, certain records requested by the Foundation are exempt from disclosure in full while other records must be redacted prior to disclosure.

27. On March 29, 2018, Defendant Bennett filed a Petition for Declaratory Judgment in Texas's 459<sup>th</sup> District Court, seeking relief from the AG Response, and seeking to withhold the records requested by the Foundation under exemptions found in the TPIA. *Bennett v. Paxton*, No. D-1-GN-18-001583 (filed March 29, 2018).

28. Defendant Bennett has not made the requested records available for public inspection, but has intentionally and repeatedly denied the Foundation access to the request records.

29. True and correct copies of all communications described in the preceding paragraphs are attached as Exhibits to this Verified Amended Complaint.

**Defendant Has Violated the NVRA by Denying the Foundation's NVRA Inspection Request**

30. The Public Disclosure Provision explicitly and unambiguously requires that the requested records be made available for public inspection because the request records are records

“concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the official lists of eligible voters. . . .” 52 U.S.C. § 20507(i)(1).

31. Accordingly, pursuant to the Public Disclosure Provision, Defendant Bennett is obligated to make the requested records available for public inspection and photocopying. Defendant Bennett has not done so and is therefore in violation of law.

32. Defendant Bennett’s violation of the NVRA’s Public Disclosure Provision occurred on January 4, 2018, at the latest, a date that was within 120 days of the Texas primary election for federal office held on March 1, 2018. Accordingly, the NVRA afforded Defendant Bennett 20 days to take action to remedy her violation of the Public Disclosure Provision. 52 U.S.C. § 20510(b)(2). As outlined above, Defendant Bennett did not take any remedial action with the 20-day period prescribed by the NVRA or at any time thereafter. Instead, Defendant Bennett continues to deny the Foundation its federal right to inspect records under the NVRA.

### **Defendant’s Violations of Law Have Harmed the Foundation and the Public**

33. The NVRA’s Public Disclosure Provision confers on the Foundation a substantive, federal right to information. Defendant Bennett has violated that right by refusing to comply with the NVRA’s disclosure mandate.

34. As the Supreme Court explains, “[A] plaintiff suffers an ‘injury in fact’ when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute.” *FEC v. Akins*, 524 U.S. 11, 21 (1998); *see also Grant v. Gilbert*, 324 F.3d 383, 387 (5th Cir. 2003) (“The ‘inability to obtain information’ required to be disclosed by statute constitutes a sufficiently concrete and palpable injury to qualify as an Article III injury-in-fact.” (quoting *FEC v. Akins*, 524 U.S. 11, 21 (1998))).

35. The Foundation is suffering a concrete “injury in fact” because it has been denied access to information in Defendant Bennett’s possession that “must be disclosed pursuant to the [NVRA].” *Akins*, 524 U.S. at 21.

36. Where Congress confers a right to information via a statute like the NVRA, “a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (citing *FEC v. Akins*, 524 U.S. 11, 20-25).

37. However, Defendant Bennett’s actions are also causing injury to the Foundation’s organizational mission.

38. As an integral part of its public interest mission, the Foundation gathers and disseminates information about compliance by state and local officials with federal election statutes, including election integrity statutes like the NVRA.

39. The Foundation regularly utilizes the NVRA’s Public Disclosure Provision and state and federal open records laws that require government records be made available to the public. After the Foundation obtains the records it has requested, it analyzes them and disseminates its findings to the public through various educational and outreach programs, including its website, social media platforms, and newsletters.

40. Using records and data compiled through use of the NVRA’s public inspection provision, the Foundation has produced written reports concerning the data it has inspected in order to advance the public education aspect of its organizational mission.

41. The Foundation has disseminated its research to federal, state, and local election officials and to the public through media and press sources.

42. The Foundation plans to analyze the requested records and educate the public regarding Defendant Bennett's "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).

43. By denying the Foundation access to the requested records Defendant Bennett has impaired and will impair the Foundation from carrying out its mission.

44. Defendant's violation has not been remedied within 20 days after receipt of the Foundation's January 18, 2018, notice of violation for failure to provide inspection of records. 52 U.S.C. § 20510(b)(2).

45. The Foundation has spent considerable time and financial resources in an effort to obtain the requested records.

### **COUNT I**

#### **(Violation of Federal Law – NVRA)**

42. Plaintiff realleges the preceding paragraphs as if fully stated herein.

43. Defendant has failed to permit inspection and duplication of records concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters, in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i). *See Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. 2012).

44. Defendant's violation occurred within 120 days of an election for federal office in Texas. *See* 52 U.S.C. § 20510(b)(2).

45. Defendant's violation has not been corrected within 20 days of her receipt of the Foundation's notice of the violation on January 18, 2018. *See* 52 U.S.C. § 20510(b)(2).

46. The NVRA confers upon Plaintiff a right to information, and by denying that information to the Plaintiff, the Defendant has caused a concrete injury to the Plaintiff. *Public Citizen v. United States DOJ*, 491 U.S. 440, 449 (1989); *FEC v. Akins*, 524 U.S. 11, 21 (1998).

47. Defendant's violation also prevents the Plaintiff from engaging in the research and educational aspects of its organizational mission.

48. Plaintiff will continue to be injured by the Defendant's violations of Section 8 of the NVRA unless and until the Defendant is enjoined from continuing to violate the law.

49. The Supremacy Clause of the United States Constitution, Art. VI, Cl. 2, states in part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

46. The NVRA and its Public Disclosure Provision place binding obligations on election officials to make records available for public inspection. To the extent that any state law, including the TPIA, conflicts with the NVRA, such law is preempted and superseded by the NVRA as a federal statute.

47. The Foundation brings this action to enforce its private right of action and rights under the NVRA and, where necessary, challenge Defendant Bennett's unlawful application of the TPIA.

48. Plaintiff has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of Section 8 of the NVRA;

2. Declaring that the inspection provisions of the NVRA, 52 U.S.C. § 20507(i), preempt state laws and are not subject to limitations or restrictions by state laws.
3. Ordering the Defendant to provide to the Plaintiff the records concerning Defendant's implementation of programs and activities to ensure the accuracy and currency of voter registration lists;
4. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and
5. Granting Plaintiff further relief that this Court deems just and proper.

Respectfully submitted,

For the Plaintiff Public Interest Legal  
Foundation:

Dated: June 13, 2018

Andy Taylor SBN: 19727600  
Southern District Bar No.: 10002  
Andy Taylor & Associates, P.C.  
2628 Hwy 36 South #288  
Brenham, Texas 77833  
Tel: 713-222-1817  
Fax: 713-222-1855  
andy@andytaylorlaw.com  
*Attorney-in-Charge*

J. Christian Adams\*\*  
Public Interest Legal Foundation  
1555 King Street, Suite 200  
Alexandria, VA 22314  
(317) 203-5599  
adams@publicinterestlegal.org

/s/ Noel H. Johnson  
Joseph A. Vanderhulst\*  
Noel H. Johnson\*  
Public Interest Legal Foundation  
32 E. Washington Street, Suite 1675  
Indianapolis, IN 46204  
(317) 203-5599  
jvanderhulst@publicinterestlegal.org  
njohnson@publicinterestlegal.org  
*\*Pro Hac Vice applications granted*  
*\*\*Pro Hac Vice application to be filed*  
*Filed with permission of attorney-in-charge*

**VERIFICATION**

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning the Public Interest Legal Foundation found in this Complaint are true and correct to the best of my knowledge and understanding.

Dated: this 13 day of June, 2018



Logan Churchwell  
Communications & Research Director  
Public Interest Legal Foundation  
32 E. Washington St., Ste. 1675  
Indianapolis, IN 46204