

# PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

May 9, 2019

North Carolina State Board of Elections  
c/o Josh Lawson, General Counsel  
430 N. Salisbury St.  
Raleigh, NC 27603-5918  
Email: [joshua.lawson@ncsbe.gov](mailto:joshua.lawson@ncsbe.gov)  
cc: [kim.strach@ncsbe.gov](mailto:kim.strach@ncsbe.gov), [Legal@ncsbe.gov](mailto:Legal@ncsbe.gov), [pcox@ncdoj.gov](mailto:pcox@ncdoj.gov)

**RE: NVRA Violation and Inspection Visit**

Dear Mr. Lawson:

We have received your response to our letter notifying the North Carolina State Board of Elections (“NCSBE”) that it is in violation of the National Voter Registration Act of 1993 (“NVRA”) for failure to permit inspection of voter list maintenance records. As explained more fully below, your response is not sufficient to remedy the violations identified in our previous letter and the NCSBE thus remains in violation of the NVRA. To attempt to resolve this matter without court intervention, our representative will visit your office at 430 N. Salisbury St., Raleigh, NC 27603, on the **morning of Thursday, May 16, 2019**, to inspect and retrieve copies of the requested records.

Your letter explains that the NCSBE will not make the requested records available for inspection due to its belief that its agreement with DHS and USCIS regarding use of the SAVE Program (the “MOA”) and the Driver’s Privacy Protection Act (“DPPA”) prohibit disclosure of those records. Those are not valid bases to deny access to public list maintenance records.

The MOA explicitly disavows all conflict with the NVRA. Paragraph (J) of Section VI of the MOA states, “Nothing in this MOA is intended or should be construed to limit or affect the duties, responsibilities, and rights of the User Agency under the National Voter Registration Act.” Even if this provision did not exist, it would make no difference. The government cannot abrogate by contract the rights conferred upon the public by the NVRA.

The DPPA likewise does not conflict with or limit the NVRA’s records inspection requirements. In *Public Interest Legal Foundation v. Reed*, No. 16-cv-01375 (E.D. Va., filed Oct. 31, 2016), the United States District Court for the Eastern District of Virginia confronted and rejected the NCSBE’s position that the DPPA overrides the records inspection rights of the NVRA with respect to a request for nearly identical records. A copy of that order is attached to this letter.

The NVRA is known as “Motor Voter” because one of its primary purposes was to provide for voter registration at motor vehicle agencies. In fact, the NVRA requires that an application for a driver’s license must “serve as an application for voter registration.” 52 U.S.C. § 20504(a)(1). It

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would plainly frustrates the intended transparency of the NVRA to interpret the DPPA to shield from disclosure all list maintenance records that can trace their heritage to any nexus with a state motor vehicle agency. The DPPA protects motor vehicle records, not the list maintenance records the Foundation has requested.

While we appreciate your directing us to the list maintenance and voter history files made available on the NCSBE's website, those records do not satisfy our request. Our request seeks *all* records concerning registrants who were identified as potentially not satisfying the citizenship requirements for registration since January 1, 2006. **We continue to seek all such records because the NVRA requires that they be made available for public inspection.** *Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012).

As we explained in our original request, sent on September 10, 2018, such records would include, but not be limited to the following:

- records showing registered voters cancelled or flagged for investigation for reasons of non-U.S. citizenship, including records derived from use of the SAVE Program and DMV data;
- voter registration applications belonging to those registrants;
- notices, affirmations of citizenship, and other correspondence sent to and received from those registrants (*see, e.g.*, correspondence at pages 42-46 of your response);
- voting history for those registrants;
- correspondence sent to and received from registered voters, legal counsel, claimed relatives, or other agents requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship;
- records related to registered voters who indicated on juror forms that they were not U.S. citizens; and,
- responsive records maintained or created by the North Carolina State Elections Information Management System (SEIMS).

The Post-Election Audit Report for the 2016 General Election included in your response confirms or eludes to the existence of many records responsive to our request. *See, e.g.*, Post-Election Audit Report at 4-5. We seek access to those records and similar records for years other than 2016.

**The NCSBE remains in violation of the NVRA.** To attempt to resolve this matter without court intervention, our representative will visit your office at 430 N. Salisbury St., Raleigh, NC 27603, on the **morning of Thursday, May 16, 2019**, to inspect and retrieve copies of the requested records. We look forward to meeting with your staff.

Sincerely,

Noel Johnson  
Litigation Counsel  
Public Interest Legal Foundation

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

THE PUBLIC INTEREST LEGAL	)	
FOUNDATION, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:16-cv-01375
	)	
	)	
SUSAN REED, in her official	)	
capacity as General Registrar	)	
for the City of Manassas,	)	
	)	
Defendant.	)	

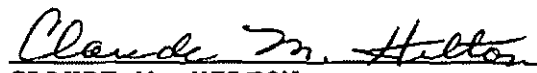
ORDER

THIS MATTER comes before the Court on Defendant Susan Reed's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 8.) Plaintiff, The Public Interest Legal Foundation, Inc., brought this suit under Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507, seeking declaratory and injunctive relief to order Defendant, in her official capacity as General Registrar for the City of Manassas, to allow Plaintiff to inspect voter records.

Defendant has moved to dismiss the Complaint on the grounds that the privacy provision of the Driver Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. §§ 2721-2725, overrides the public disclosure provision of the NVRA under the circumstances of this

case. The Court finds that the DPPA does not apply to the disclosure of the voter information requested by Plaintiff. Because Plaintiff has stated a plausible claim for declaratory and injunctive relief, it is hereby

ORDERED that Defendant Susan Reed's Motion to Dismiss is DENIED.

  
CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia  
January 27, 2017