

**United States District Court
District of Maryland
Northern Division**

PUBLIC INTEREST LEGAL FOUNDATION, INC.,

Plaintiff,

v.

LINDA H. LAMONE, et al.,

Defendants.

Case No. 1:19-cv-03564-DLB

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Public Interest Legal Foundation, Inc. (the “Foundation”) respectfully submits this memorandum of law in support of its motion for summary judgment against Defendants (hereafter, the “Maryland State Board of Elections”). For the reasons explained herein, there are no genuine disputes as to any material fact and the Foundation is entitled to judgment as a matter of law.

INTRODUCTION

This is a case for declaratory and injunctive relief under the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501-20511. The governing law—Section 8(i) of the NVRA—requires “[e]ach State . . . [to] 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.” 52 U.S.C. § 20507(i)(1) (the “Public Disclosure Provision”).

Judicial Watch, Inc. v. Lamone, 399 F. Supp. 3d 425 (D. Md. 2019), controls this case and compels judgment in the Foundation’s favor. *Judicial Watch* answered two legal questions:

- 1) Is a Maryland voter registration list a “record” covered by the NVRA’s Public Disclosure Provision?
- 2) Does the NVRA’s Public Disclosure Provision preempt Maryland law in so far as it requires applicants requesting voter registration lists to be Maryland registered voters?

Judicial Watch answered “yes” to both of those questions and accordingly granted summary judgment to the plaintiff, an organization similar to the Foundation that requested production of the voter registration list for Montgomery County, Maryland.¹ *Judicial Watch*, 399 F. Supp. 3d at 434-445.²

Despite the law’s invalidation, the Maryland State Board of Elections continues to enforce the registered-voter requirement. Md. Code Ann., Elec. Law § 3-506(a). The Foundation has requested production of Maryland’s statewide voter registration list, but is being denied access because the Foundation is not a Maryland registered voter. The Maryland State Board of Elections’ denial of the Foundation’s request violates the NVRA and contravenes *Judicial Watch*.

¹ The Foundation seeks the statewide voter registration list. This is a distinction without a difference under the reasoning of *Judicial Watch*.

² The *Judicial Watch* court ordered defendants to produce the voter registration list “that includes fields indicating name, home address, most recent voter activity, and active or inactive status,” but reserved judgment pending further briefing as to whether the plaintiff was entitled to birthdate information. *Judicial Watch*, 399 F. Supp. 3d at 445-46. As of the filing of this memorandum, the court has yet to rule on that issue. However, resolution of the birthdate issue should not delay relief in this action because the Foundation seeks only the voter roll information to which it is entitled by way of submission of the Application for Voter Registration Data, which does not presently include birthdate information. *See Judicial Watch*, 399 F. Supp. 3d at 443 (“[T]he Maryland State Board of Elections relies on a standardized form (ECF 49-7) for third-parties to request voter lists, like the one requested by *Judicial Watch*. *See* ECF 49-1 at 38 (‘[E]xcept for the voter’s date of birth, all of the information requested by plaintiff is available via request for a voter list under Elec. Law § 3-506.’)”).

This Court should hold what it already held in *Judicial Watch*—that (1) a Maryland voter registration list is a “record” covered by the NVRA’s Public Disclosure Provision, and (2) that Maryland’s registered-voter requirement is preempted by the NVRA and therefore invalid and unenforceable.

FACTUAL BACKGROUND

On November 13, 2019, the Foundation submitted an Application for Voter Registration Data to the Maryland State Board of Elections (the “Application”). Declaration of Logan C. Churchwell in Support of Plaintiff’s Motion for Summary Judgment ¶¶ 9, 13 (attached hereto). The Application requested production of Maryland’s statewide voter registration list. Churchwell Decl. ¶¶ 10-11.

Later that day, Defendant Dennis responded via email, advising the Foundation that the Application was incomplete because the Foundation did not provide the information required by Section One of the Application. Churchwell Decl. ¶ 14. Section One requires each applicant to provide his name, address, phone number, city, state, zip code, and the county or city in which the applicant is registered to vote in Maryland. *See* Exhibit A to Churchwell Decl. at 1.

The Foundation responded via email, explaining:

Thanks for the follow-up. Section One was left incomplete as I am not a Maryland resident/registered voter. These data are requested pursuant the National Voter Registration Act and the recent holding in *Judicial Watch, Inc. v. Lamone*, Civil Action No. ELH-17-2006, 2019 U.S. Dist. LEXIS 134151, *25-45 (D. Md. Aug. 8, 2019). I’ve provided my Florida residential address below for the sake of transparency.

Churchwell Decl. ¶ 15.

On November 15, 2019, the Foundation received an email from Defendant Dennis denying the Foundation’s Application. The email explained:

At this time we have to deny your request. The matter you are referencing is not yet final, including regarding any potential appeal, and we believe it was wrongly decided. Maryland law currently requires an applicant for voter registration data to be a Maryland registered voter.

Churchwell Decl. ¶ 16. On November 21, 2019, the Foundation emailed a letter to Defendant Lamone and Defendant Dennis (the “Notice Letter”). Churchwell Decl. ¶ 17. The Notice Letter was also sent by Certified Mail provided by the United States Postal Service. Churchwell Decl. ¶ 18. The Notice Letter notified Defendants that the “denial of our request for the statewide voter roll violates the NVRA and the *Lamone* ruling.” Churchwell Decl. ¶ 19. The Notice Letter further explained,

A special primary election to fill the vacancy in Maryland’s Seventh Congressional District is currently scheduled for February 4, 2020. Because the violations described herein occurred within 120 days of that federal election, a lawsuit may be filed against you if the violations are not corrected within 20 days of your receipt of this letter. 52 U.S.C. § 20510(b)(2).

Churchwell Decl. ¶ 20. The Foundation received no further correspondence from any defendant or any other person at the Maryland State Board of Elections. Churchwell Decl. ¶ 21. When the requested registration list was not produced within 20 days, the Foundation initiated this action, as permitted by the NVRA’s private-right-of-action provision. 52 U.S.C. § 205010(b).

STANDARD OF REVIEW

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Rule 56 “allows a motion for summary judgment to be filed at the commencement of an action.” Fed. R. Civ. P. 56, Notes of Advisory Committee on 2010 Amendments. “The nonmoving party must demonstrate that there are disputes of material fact so as to preclude the award of summary judgment as a matter of law.” *Judicial Watch*, 399 F. Supp. 3d at 433 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986)). “[I]n

resolving a summary judgment motion, a court must view all of the facts, including reasonable inferences to be drawn from them, in the light most favorable to the nonmoving party.” *Judicial Watch*, 399 F. Supp. 3d at 433 (citations omitted).

ARGUMENT

I. Maryland’s Statewide Voter Registration List is a “Record” Covered By the NVRA’s Public Disclosure Provision.

After reviewing the relevant statutes, relevant case law, and defendants’ objections, the *Judicial Watch* court concluded that a Maryland voter registration list is a “record” subject to the public inspection and copying requirements of the NVRA’s Public Disclosure Provision. *Judicial Watch*, 399 F. Supp. 3d at 434-442. The court observed,

In Maryland, State and local officials rely on voter registrations to register new voters and to remove ineligible voters, thereby “ensuring the accuracy and currency of official lists of eligible voters.” [*Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012)] (internal citation omitted). And, the voter registrations are clearly records that concern the implementation of the program and activity of maintaining accurate and current eligible voter lists. After all, they contain the information on which Maryland election officials rely to monitor, track, and determine voter eligibility.

Judicial Watch, 399 F. Supp. 3d at 439. Because “a voter list is simply a pared down compilation of voter registrations,” *id.* at 440, the court reasoned, it is likewise a “record” covered by the NVRA’s Public Disclosure Provision, *id.* at 440-442.

Under *Judicial Watch*, and the authorities on which it relied, Maryland’s statewide voter registration list is “record” subject to the public inspection and copying requirements of the NVRA’s Public Disclosure Provision.

II. The NVRA’s Public Disclosure Provision Preempts Section 3-506(a) of Maryland’s Election Law.

Maryland law provides that, upon “written application,” a “copy of a list of registered voters shall be provided to a Maryland registered voter.” Md. Code Ann., Elec. Law § 3-506(a).

The *Judicial Watch* court found that this registered-voter requirement “is an obstacle to the accomplishment of the NVRA’s purposes” and accordingly held, “It follows that the State law is preempted in so far as it allows only Maryland registered voters to access voter registration lists.” *Judicial Watch*, 399 F. Supp. 3d at 445.

Notwithstanding the ruling in *Judicial Watch*, the Maryland State Board of Elections continues to enforce its registered-voter requirement against the Foundation. Churchwell Decl. ¶ 16. By denying the Foundation the ability to obtain records it otherwise could obtain under the Public Disclosure Provision of the NVRA, Md. Code Ann., Elec. Law § 3-506(a) conflicts with federal law. Under *Judicial Watch*, and the authorities on which it relied, Md. Code Ann., Elec. Law § 3-506(a) is preempted, invalid, and unenforceable. *Judicial Watch*, 399 F. Supp. 3d at 442-445.

CONCLUSION

For the foregoing reasons, the Foundation respectfully request that this Court grant its motion for summary judgment.

Dated: December 16, 2019.

For the Plaintiff Public Interest Legal Foundation:

/s/ Richard L. Costella
Richard L. Costella, Esquire
Federal Bar No.: 14095
Glenn E. Bushel, Esquire
Federal Bar No.: 00936
Tydings & Rosenberg LLP
One East Pratt Street, Suite 901
Baltimore, Maryland 21202
Direct Phone: (410) 752-9700
Facsimile: 410.727.5460
Email: rcostella@tydingslaw.com
Email: gbushel@tydingslaw.com

Of counsel:

J. Christian Adams* (Virginia Bar #42543)
Public Interest Legal Foundation, Inc.
1555 King St., Ste. 200
Alexandria, VA 22314
Tel: (317) 203-5599
Fax: (888) 815-5641
adams@PublicInterestLegal.org

Noel H. Johnson* (Wisconsin Bar #1068004)
Public Interest Legal Foundation, Inc.
32 E. Washington St., Ste. 1675
Indianapolis, IN 46204
Tel: (317) 203-5599
Fax: (888) 815-5641
njohnson@PublicInterestLegal.org

* *Motion for admission pro hac vice forthcoming*

Attorneys for Plaintiff Public Interest Legal Foundation