

CAUSE NO. D-1-GN-18-001583

ANN HARRIS BENNETT,	§	IN THE DISTRICT COURT OF
HARRIS COUNTY	§	
TAX ASSESSOR-COLLECTOR	§	
AND VOTER REGISTRAR	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
HONORABLE KEN PAXTON,	§	
ATTORNEY GENERAL OF TEXAS	§	459TH DISTRICT COURT

**PETITION IN INTERVENTION BY
THE PUBLIC INTEREST LEGAL FOUNDATION, INC.**

The Public Interest Legal Foundation, Inc., files this Petition in Intervention pursuant to Rule 60 of the Texas Rules of Civil Procedure. The Public Interest Legal Foundation (the “Foundation”) seeks to intervene in this case as of right provided by Tex. Gov’t Code Ann. § 552.325. The proceeding was initiated by Petitioner Ann Harris Bennett, Voter Registrar of Harris County, Texas, pursuant to Tex. Gov’t Code Ann. § 552.324, under the Texas Public Information Act (“TPIA”), Tex. Gov’t Code Ann. §§ 552.001 et seq.

The Foundation received notice of the filing of the Voter Registrar’s Petition by certified mail on April 3, 2018. The Foundation is the purported “requestor” of the public information that is the subject of this case. As such, Section 552.325 of the TPIA provides that the Foundation is entitled to intervene here. The Voter Registrar’s Petition refers to Mr. Logan Churchwell as the requestor. But the communications between the Foundation and the Voter Registrar clearly indicate that he was not requesting public inspection on his own individual behalf, but on behalf of the Foundation.

A. This Court Lacks Jurisdiction to Hear Voter Registrar Bennett’s Petition Under the TPIA Because There Is No Pending Request for Information Under the TPIA.

Section 552.324 of the TPIA permits a governmental body to seek declaratory relief from compliance with an open records decision by the attorney general issued under Section 552.306. The Texas attorney general has jurisdiction to issue declaratory judgments regarding the applicability of the TPIA and to determine the validity of open records decisions issued pursuant to the TPIA. Venue for such a case is mandatory in Travis County pursuant to the TPIA. Bennett Petition at 2.

But in order for this Court to have jurisdiction, there must be an actual request for information under the TPIA at issue in the first place. Tex. Gov’t Code Ann. § 552.221. No request exists here. The Foundation never made a written request for information under the TPIA. Thus, there is no request under TPIA Section 552.201 to form the basis for this action under Section 522.324.

The Voter Registrar’s Petition does not accurately and fully describe the facts regarding the Foundation’s communications with the office of the Voter Registrar.

- On December 1, 2017, the Foundation submitted a request for public inspection of list maintenance records pursuant to the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20507(i). The request explicitly stated that the request was being made under the NVRA. The request made no mention of the TPIA. Exhibit 1 at 21-23.
- As provided in inspection provision of the NVRA, the Foundation offered to make provision for inspection or production of the requested list maintenance records.
- The Foundation received a response from the Voter Registrar dated December 14, 2017. Exhibit 1 at 24-26. This response asked for clarifications regarding the

Foundation's Dec. 1 NVRA request. The Voter Registrar's Dec. 14 clarification request did not mention the NVRA at all. Instead, it stated that the Foundation's request was being treated under the TPIA. The Dec. 14 clarification request asked for clarification whether the request was being made under the TPIA.

- The Foundation responded in a letter dated December 18, 2017, and stated in no uncertain terms that the request for inspection of the list maintenance records *was not* being made under the TPIA. Exhibit 1 at 27-29. Instead, the Foundation reiterated and emphasized that the request was being made under the inspection provision of the NVRA.
- Nevertheless, despite there being no pending request for information under the TPIA in existence, the Voter Registrar proceeded to submit the matter for decision to the attorney general under Subchapter G of the TPIA on January 4, 2018. Exhibit 1 at 30.
- In a letter dated January 18, 2018, the Foundation informed the Voter Registrar that she was in violation of the NVRA for rejecting the Foundation's inspection request made pursuant to 52 U.S.C. § 20507(i). In the letter, the Foundation clarified for the third time, "Our request is not a request pursuant to the Texas Public Information Act." Exhibit 1 at 39-40.
- Other than the December 14, 2017 letter asking for clarification, the Voter Registrar has made no effort to communicate with the Foundation.

B. The Public Inspection Provision of the NVRA Provides for Inspection of List Maintenance Records Apart from State Public Information Laws.

Because the underlying request for public inspection of list maintenance records was made pursuant to 52 U.S.C. § 20507(i), the provisions of the TPIA do not govern the request. Instead, Section 20507(i) of the National Voter Registration Act mandates the public disclosure

of voter registration activities. 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).

Federal courts have universally recognized that the NVRA provides that “[e]ach State shall maintain for at least 2 years and shall 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) (emphasis added). *E.g.*, *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 by the court). A similar situation arose before the United States Court of Appeals for the Fourth Circuit, in which a county election official in North Carolina sought an opinion from the state attorney general supporting a refusal to permit inspection of records under the NVRA. *Project Vote*, 682 F.3d at 333. The Fourth Circuit rejected the county’s argument and held that the inspection must be permitted under 52 U.S.C. § 20507(i) (“It is not the province of this court, however, to strike the proper balance between transparency and voter privacy. That is a policy question properly decided by the legislature, not the courts, and Congress has already answered the question by enacting NVRA Section 8(i)(1), which plainly requires disclosure of [the requested records].”).

The Public Disclosure Provision has only two exceptions: records related to (1) “a declination to register to vote”; and (2) “the identity of a voter registration agency through which any particular voter is registered.” 52 U.S.C. § 20507(i)(2). No other records or information are exempt from disclosure.

Other federal courts have followed suit and have rejected efforts to dismiss claims based on refusal to comply with the NVRA's disclosure requirement. *See, e.g., Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 217 U.S. Dist. Lexis 23565 at *6 (E.D. NC Feb. 2017) (same); *Judicial Watch, Inc. v. King*, 993 F Supp. 2d 919, 920 (S.D. Ind. 2012) (denial of motion to dismiss of case with NVRA inspection claim); *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1366 (S.D. Fla. 2016) (same).

This maintenance and disclosure provision is not dependent upon state law for its effect or enforcement. Neither is the inspection provision of the NVRA subject to limitations or restrictions through state public information or privacy laws. Before the filing of the Voter Registrar's Petition here, the Foundation had already filed an enforcement action under 52 U.S.C. 20510 in the United States District Court for the Southern District of Texas to enforce the NVRA inspection request. The pleadings in that case are attached, which included the full communications between the Foundation and Voter Registrar Bennett.

C. Conclusion

The Foundation is entitled to intervene in this case pursuant to Tex. Gov't Code Ann. § 522.325. The Foundation accordingly intervenes for the purpose of moving the Court to dismiss this action because there are no antecedent facts giving rise to a suit under Texas Gov't Code Ann. § 552.324. The Voter Registrar's Petition does not establish that there was a request for information under the TPIA to begin with.

Respectfully submitted,

For the Intervenor Public Interest Legal Foundation:

/s/ Andy Taylor
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CERTIFICATE OF SERVICE

I certify that on this 11th day of April, 2018, the above and foregoing *Petition in Intervention by the Public Interest Legal Foundation, Inc.*, was served on all parties electronically via EFileTexas.gov.

/s/ Andy Taylor _____