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

PUBLIC INTEREST LEGAL FOUNDATION, *Plaintiff*, v. ANN HARRIS BENNETT, in her official capacity as voter registrar for Harris County, Texas, *Defendant*,	)	Civil Action No. 4:18-cv-00981

PLAINTIFF'S FIRST MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF POINTS AND AUTHORITIES

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Pursuant to Federal Rule of Civil Procedure 56, Plaintiff Public Interest Legal Foundation (the "Foundation"), by and through counsel, hereby moves this Court for summary judgment on Count I of its First Amended Verified Complaint. (Doc. 21.) The Foundation respectfully submits that there are no genuine issues of material fact related to Count I and that it is entitled to judgment as a matter of law. The grounds for this motion are set forth more fully herein.

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

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 20507(i) of the NVRA—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"). Defendant Ann Harris Bennett, the Voter Registrar for Harris County, Texas ("VR Bennett"), is in violation of the Public Disclosure Provision.

The Foundation has repeatedly requested and been denied access to public election records that federal law entitles the Foundation to inspect and photocopy. VR Bennett concedes that the records at issue were requested, that she possesses responsive records, and that she has refused to make them available for inspection or copying. No genuine issue of material fact exists and the Foundation is entitled to summary judgment.

On March 29, 2018, the Foundation filed this action under the NVRA's private-right-of-action provision, 52 U.S.C. § 20510(b), to compel VR Bennett to allow inspection of the requested records. (Doc. 1.) Contemporaneously, the Foundation moved for a preliminary injunction (Doc. 3), and moved to consolidate the hearing on that motion with the trial on the

merits, (Doc. 4). On June 6, 2018, this Court dismissed the Foundation's Verified Complaint, but afforded the Foundation the opportunity to amend. (Doc. 20.) This Court granted, in part, the Foundation's motion for a preliminary injunction, ordering,

> Bennett shall not modify, alter, or destroy the records under dispute and to the extent there are internal document retention policies or any program or policy that provides for the automated archiving, destruction or overwriting of documents/records, Bennett shall take all steps necessary to ensure that she does not interfere with this document preservation order.

(Doc. 20 at 10.) The Court denied, as moot, the Foundation's motion to consolidate. (Doc. 20 at 11.)

On June 23, 2018, the Foundation filed its First Amended Verified Complaint. (Doc. 21.) In pertinent part, the Foundation's First Amended Verified Complaint identified which public election records it had requested and which public election records VR Bennett had denied access to. On June 27, 2018, VR Bennett moved to dismiss the Amended Complaint. (Doc. 23.) The Foundation opposed VR Bennett's motion. (Doc. 28.) VR Bennett's motion to dismiss is pending before the court.

This Court issued a scheduling order on September 26, 2018. The Foundation served eight requests for admission on VR Bennett on September 26, 2018. VR Bennett responded to the Foundation's requests on October 26, 2018, providing admissions or qualified admissions to several requests and objecting to the remaining requests. (*See* Appendix at 1-5.)

The Foundation now moves for summary judgment on its declaratory and injunctive claims seeking access to voter list maintenance records possessed and maintained by VR Bennett. The Foundation's motion is timely under Federal Rule of Civil Procedure 56(b). VR Bennett is denying the Foundation access to the requested records, claiming that they do not fall within the purview of the NVRA and that Texas law, specifically, the Texas Public Information

Act, forecloses the Foundation's right to access them. (*See* Appendix at 2-3, Response to Request for Admission No. 3.) Therefore, there is no genuine dispute of material facts in this case. For the reasons that follow, the Foundation is entitled to judgment as a matter of law and judgment should be entered in the Foundation's favor.

STATEMENT OF THE ISSUES TO BE RULED UPON BY THE COURT

The issues presented by this case are purely legal. The Court must decide whether the NVRA's Public Disclosure Provision, 52 U.S.C. § 20507(i), which mandates that voter list maintenance records shall be made available for public inspection, requires VR Bennett to provide access to the voter list maintenance records requested by the Foundation. As discussed below, other federal courts confronting this question have ruled with virtual unanimity that the scope of the records subject to disclosure under the plain meaning of the NVRA is broad and expansive.

APPLICABLE LAW

I. NVRA's Public Disclosure Provision

> 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).

II. NVRA's Private Enforcement Provision

The NVRA authorizes private parties to enforce its provisions. 52 U.S.C. § 20510. To invoke this private right of action, an aggrieved person may "provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1). The

purpose of the notice provision is to provide the offending party an opportunity to cure the violation. *Condon v. Reno*, 913 F. Supp. 946, 960 (D.S.C. 1995). "If the violation is not corrected" within 20 or 90 days, depending on the amount of time until the next federal election, "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).

SUMMARY OF THE ARGUMENT

The undisputed facts and relevant legal authorities establish the Foundation's entitlement to summary judgment. It is undisputed that the NVRA's Public Disclosure Provision acts like a federal freedom of information law that 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). In allowing actual physical public inspection, the Public Disclosure Provision is far more sweeping than the federal Freedom of Information Act, as the latter permits a federal agency to review, gather and duplicate responsive records as compared with NVRA's right to physically inspect them. *See* 5 U.S.C. § 552(a)(3)(B)-(D).

It is undisputed that, pursuant to the Public Disclosure Provision, the Foundation sought to inspect records in VR Bennett's possession concerning her activities related to the accuracy and currency of Harris County's voter registration lists. Who is and is not eligible to be on those lists, and who has transitioned from being an eligible voter on the list to an ineligible cancelled registrant is the *sine qua non* of "activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" under 52 U.S.C. § 20507(i)(1).

It is undisputed that VR Bennett is refusing to permit inspection or otherwise allow access to the requested records. VR Bennett has even sought relief in Texas state court in an

effort to shield responsive records from public view. *Bennett v. Paxton*, No. D-1-GN-18-001583 (459th District Court, Travis County, Tex. March 29, 2018) (filed as Doc. 12-1). The state court action cannot have any bearing on this action because the NVRA supersedes and pre-empts state law under the Constitution's Supremacy Clause. *ACORN v. Edgar*, 880 F. Supp. 1215, 1222 (N.D. Ill. 1995) ("[D]eclar[ing] that all provisions of Illinois law or regulations that conflict with the [National Voter Registration] Act are pre-empted by the [National Voter Registration] Act."); *Project Vote/Voting for Am., Inc. v. Long*, 813 F.Supp.2d 738, 743 (E.D. Va. 2011) ("[T]o the extent that any Virginia law, rule, or regulation forecloses disclosure of completed voter registration applications with the voters' SSNs redacted, the court FINDS that it is preempted by the NVRA."). These undisputed facts establish that VR Bennett has violated her legal obligations under the NVRA.

Congress made it plain and unambiguous that the NVRA entitles a requesting party to inspect *all* records related to determinations of eligibility or ineligibility in voting. The Public Disclosure Provision is a broad and essential transparency mandate by Congress that gives every member of the public the right to inspect "**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). Congress exempted only two types of records from this public right of access, neither of which were requested by the Foundation and have no role in this case. *Id*. The Public Disclosure Provision contains no other exceptions.

Courts have broadly interpreted the plain congressional language mandating that "all records" be disclosed. Records touching on any assessment of eligibility for registration and voting, such as requested here, are subject to disclosure. Records relating to eligibility concern

"whether persons belong on the lists of eligible voters, thus ensuring the accuracy of those lists." *Project Vote/Voting for Am., Inc. v. Long*, 752 F.Supp.2d 697, 703 (E.D. Va. 2010) ("*Project Vote*").[1] Records related to such assessments are, quintessentially, those that concern "programs and activities" designed to "ensur[e] the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1). They fall squarely within the NVRA's broad disclosure command because the records requested describe determinations of whether a registrant or applicant possesses a central eligibility criteria—citizenship.

VR Bennett cannot overcome the plain and unambiguous language of the NVRA. The positions VR Bennett has taken in previous filings to justify her actions are contrary to the NVRA's text, the intent of Congress, and every court decision on the issue, including a recent decision of the United States Supreme Court. In that case, the Supreme Court admonished a lower court against allowing one part of the NVRA to restrain another part and instead required courts to look at the plain meaning of the part of the NVRA at issue in the case before them, and not to extrapolate limiting features from other parts of the statutes. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1843 (2018).

Accordingly, because the Foundation has established that the requested records are covered by the NVRA's Public Disclosure Provision, and because the Foundation is statutorily entitled to access and photocopy those records, this Court should enter judgment in the Foundation's favor.[2]

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[1] *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).

[2] In a previous filing, the Foundation established its standing to assert its claims under the NVRA. (Doc. 26 at 5-15.) The Foundation incorporates those arguments by reference.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Almost one year ago, on December 1, 2017, the Foundation submitted a written request via email to VR Bennett asking to inspect or receive copies of records of VR Bennett's activities and programs related to the registration and cancellation of non-United States citizens (the "Records Request").[3] (Doc. 21 ¶ 10; Doc. 21-1.)

2. The Foundation's Records Request stated that it was made pursuant to the NVRA's Public Disclosure Provision. (Doc. 21 ¶ 10; Doc. 21-1.)

3. VR Bennett admits she is legally required to comply with the NVRA's Public Disclosure Provision. (Appendix at 2, Response to Request for Admission No. 1.)

4. Defendant has searched for and found records responsive to the Foundation's Records Request.[4] Defendant has even submitted "representative samples" of those records to the Attorney General's office. (Doc. 12-1 at 4; *see also* Appendix, Response to Request for Admission No. 3.)

5. VR Bennett has not produced to the Foundation, or permitted the Foundation to inspect or access, any of the requested records. (Appendix at 2, Response to Request for Admission No. 3 ("Defendant admits Defendant's office has not provided copies of the requested records to PILF."); Doc. 21 ¶ 17.) VR Bennett does not intend to allow such inspection or access. (*Id*. ("Defendant denies that PILF is entitled to inspect or receive copies of the records PILF requested.").)

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[3] The requested records are described in full in paragraph 11 of the Foundation's First Amended Verified Complaint (Doc. 21.)

[4] At all times relevant to this action, VR Bennett has incorrectly and inappropriately treated the Foundation's NVRA request as a request made pursuant to the Texas Public Information Act. (*See, e.g.*, Doc. 21-4, 21-5.) The Foundation therefore does not concede that the responsive records thus far identified by VR Bennett represent the entire universe of records responsive to the Foundation's request.

6. On January 18, 2018, the Foundation notified VR Bennett in writing that her office is in violation of the NVRA for denying the Foundation's request to inspect the requested records. (Doc. 21 ¶ 23; Doc. 21-6.) VR Bennett admits she received the Foundation's violation notice. (Appendix at 3, Response to Request for Admission No. 4.)

7. 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's chief election officer—the Secretary of State of Texas—of VR Bennett's violation of the NVRA's Public Disclosure Provision. (Doc. 21 ¶ 24; Doc. 21-6.)

ARGUMENT

I. Summary Judgment Standard

Federal Rule of Civil Procedure 56 provides that summary judgment is warranted when the pleadings and record show "no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The evidence considered by the Court must be viewed in the light most favorable to the nonmoving party. *United Fire & Cas. Co. v. Hixson Bros., Inc.*, 453 F.3d 283, 285 (5th Cir. 2006). "Once the moving party has initially shown that there is an absence of evidence to support the non-moving party's cause, the non-movant must come forward with specific facts showing a genuine factual issue for trial." *TIG Ins. Co. v. James*, 276 F.3d 754, 759 (5th Cir. 2002) (citations and quotations omitted).

II. The Foundation Is Entitled to Summary Judgment.

A. It Is Undisputed that VR Bennett Denied the Foundation Access to the Requested Records.

It is undisputed that VR Bennett denied and continues to deny the Foundation access to the records requested by the Foundation pursuant to the NVRA's Public Disclosure Provision. (Statement of Undisputed Facts ("SUF") ¶ 5.) In response to the Foundation's First Set of

Requests for Admission, VR Bennett stated, "Defendant admits Defendant's office has not provided copies of the requested records to PILF." (SUF ¶ 5.) VR Bennett does not intend to allow the Foundation to inspect or access the requested records. (SUF ¶ 5 ("Defendant denies that PILF is entitled to inspect or receive copies of the records PILF requested.").) Whether VR Bennett has denied the Foundation's request for records is thus not genuinely in dispute.

B. VR Bennett Violated the NVRA When She Denied the Foundation Access to the Requested Records.

1. The Plain and Unambiguous Language of the NVRA's Public Disclosure Provision Requires the Requested Records Be Made Available for Inspection.

On its face, the Public Disclosure Provision is a broad mandate, requiring public disclosure of "*all records*" concerning "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). The Foundation requested records related to VR Bennett's programs and activities concerning the registration and removal of non-United States citizens from the list of eligible voters. (SUF ¶ 1.) Records related to VR Bennett's assessment of the eligibility of these registrants falls squarely within the NVRA's broad disclosure command.

The starting point for any issue of statutory interpretation is the language of the statute itself. The Supreme Court instructs that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). "When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Id*. at 254 (citations and quotations omitted). The text of the Public Disclosure Provision is unambiguous: "Each state … 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).[5] Congress did not limit the sweeping inspection provision to programs and activities directed at subsets of registered voters. All records of activities conducted by VR Bennett to ensure the accuracy of voter lists are subject to inspection, period. The statutory language being clear and unambiguous, judicial inquiry is complete.

The comprehensive analysis by the Eastern District of Virginia and the Fourth Circuit Court of Appeals in the *Project Vote* litigation on the issues now before this Court is instructive and strongly supports the Foundation's entitlement to judgment. In *Project Vote*, a non-profit organization, like the Foundation, asked the General Registrar for Norfolk, Virginia to make certain voter list maintenance records—namely, applications for voter registration—available for public inspection pursuant to the NVRA's Public Disclosure Provision. 752 F.Supp.2d at 698-99. The General Registrar, like VR Bennett, refused to make the requested records available for inspection. *Id*. at 699-700. Accordingly, the organization filed an action in the Eastern District of Virginia, alleging that the defendants' refusal to permit inspection violated the NVRA. *Id*. at 700.

The district court analyzed the common and ordinary meaning of the Public Disclosure Provision and found that all records that relate to the "process by which the Commonwealth determines whether a person is eligible to vote" are subject to the disclosure requirements of the NVRA. *Id*. at 706. Affirming the lower court's entry of summary judgment in the requester's favor, the Fourth Circuit rightly noted that "the use of the word 'all' [as a modifier] suggests an

[5] VR Bennett concedes she is legally required to comply with the NVRA's Public Disclosure Provision and make all list maintenance records available for public inspection. (SUF ¶ 3.) Her concession is consistent with the determination of other courts—including a federal court in Texas—that county-level election officials must comply with the requirements of the NVRA. *See, e.g.*, *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 793 (W.D. Tex. 2015) (finding that county election officials in Texas "ha[ve] certain obligations under the NVRA as the designated voter registrar and state official" and holding that if a county election official "has failed to meet her obligations," an aggrieved party "can bring a civil suit against her").

expansive meaning because 'all' is a term of great breadth." *Project Vote*, 682 F.3d at 336 (citations omitted) (brackets in original); *see also Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1336 (N.D. Ga. 2016) (same). Congress used the term "all" in defining the reach of the statute here, and that decision has enormous significance.

The Fourth Circuit also ruled that the NVRA did not carve out any limits applicable here. The only limits on the Public Disclosure Provision are explicitly confined to the text of NVRA, which "identifies the information which Congress specifically wished to keep confidential." *Project Vote*, 752 F.Supp.2d at 710. Such confidential information is limited to "records relate[d] 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). The NVRA contains no other exceptions. *Project Vote*, 682 F.3d at 336. The only information relating to the lists and records pertaining to voter eligibility *not* subject to inspection under the NVRA are when a motor vehicle applicant *turned down* the offer to register to vote, or the *name of the agency* where they were registered to vote—such as the "Texas Health and Human Services Department." The Foundation seeks no information protected by these two exceptions, and thus no exemptions to disclosure apply here.[6]

The records the Foundation is seeking are records subject to inspection and disclosure by the plain text of the statute. Analyzing the remaining language of the Public Disclosure Provision, the *Project Vote* court held that "a program or activity covered by the Public Disclosure Provision is one conducted to ensure that the state is keeping a 'most recent' and

[6] The Eastern District of Virginia found that the NVRA—as opposed to state law—permitted registration officials to redact only social security numbers, to the extent they appeared in requested records. *Project Vote*, 752 F. Supp. 2d at 711-12. The Foundation has not sought access to social security numbers. (Doc. 21-1 at 2.)

errorless account of which persons are qualified or entitled to vote within the state." *Project Vote*, 752 F.Supp.2d at 706. In *Project Vote*, the plaintiff sought original voter registration forms completed by a number of individuals. Expounding on its holding, the court stated, "The process by which the Commonwealth determines whether a person is eligible to vote certainly falls within the purview of the federal statute, as such a process, by its very nature, is designed to ensure that the Commonwealth's lists are current and accurate." *Id*. The Public Disclosure Provision thus broadly requires public access to *all records* related to determinations of eligibility, including records related to those determined to be ineligible for registration, like those requested by the Foundation. (*E.g.*, Doc. 21 ¶ 11 (describing request for "Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration," including documents reflecting "actions taken regarding the registrant's registration….").

The Fourth Circuit found citizenship verification on a voter registration form to be an indispensable part of the eligibility and list maintenance process. *Project Vote*, 682 F.3d at 336 ("Without verification of an applicant's *citizenship*, age, and other necessary information provided by registration applications, state officials would be unable to determine whether that applicant meets the statutory requirements for inclusion in official voting lists." (emphasis added).) United States citizenship is also a requirement for eligibility under Texas Law. Tex. Elec. Code § 11.002(a)(2). Citizenship is thus one criterion used by VR Bennett and other Texas election officials to "evaluate[] whether persons belong on the list of eligible voters, thus ensuring the accuracy of those lists." *Project Vote*, 752 F.Supp.2d at 707. "This process of review is a 'program' because it is carried out in the service of a specified end—maintenance of

voter rolls—and it is an 'activity' because it is a particular task and deed of [Texas] election employees." *Project Vote*, 682 F.3d at 335.

Accordingly, evaluating the eligibility of voters on the basis of citizenship status (or for any reason whatsoever)—and the attendant action of cancelling ineligible registrations—squarely falls within the Public Disclosures Provision's broad disclosure command. Both putting names of individuals who have validated their citizenship on the rolls as well as the records related to cancelling ineligible voter registrations are actions "conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i). "All records" related to those "programs and activities" are subject to disclosure under the NVRA. *Id*.

When a court has denied an inspection request under the NVRA, it has been for records unquestionably having nothing to do with list maintenance or eligibility determinations. For example, in *True the Vote v. Hosemann*, 43 F.Supp.3d 693, 725 (S.D. Miss. 2014), the district court found that election day poll books were outside the scope of records related to keeping accurate voter lists. The poll books were "only partial lists of eligible voters" and were "not records that are reviewed to ensure the accuracy and currency of 'official lists of eligible voters.'" *Id*. Nor are poll books used to "update lists of eligible voters." *Id*. In contrast, the court found that the copies of Mississippi counties' voter rolls were subject to disclosure under the NVRA because "[t]he process of compiling, maintaining, and reviewing the voter roll is a program or activity performed by Mississippi election officials that ensures the official roll is properly maintained to be accurate and current." *Id*. at 723.

The Foundation's right to the records is not a close call. The plaintiff in *Project Vote* won summary judgment—and the Court of Appeals affirmed—on the right to obtain records that

concerned determinations of eligibility of the sort sought here. *Project Vote*, 813 F.Supp.2d 738 (E.D. Va. 2011), *affirmed*, 682 F.3d 331 (4th Cir. 2012).

In previous filings, VR Bennett has urged this Court ignore the plain language of the Public Disclosure Provision and judicially amend a federal statute to reach only records concerning the removal of registrants by reason of death or change in residence. (Doc. 23 at 12.) VR Bennett's proffered interpretation of the NVRA is contrary to its text, the intent of Congress, and would contravene the Supreme Court's admonition in *Husted v. A. Philip Randolph Institute* to not allow one attenuated portion of the NVRA to "cannibalize" another portion of the NVRA at issue in a case. 138 S. Ct. at 1843.

Neither the word "death" nor the phrase "change in residency" appears in the Public Disclosure Provision. "[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). Had Congress intended to limit the Public Disclosure Provision as VR Bennett has previously suggested, it would have done so. However, "Congress did not write the statute that way." *Id*.

"Public disclosure promotes transparency in the voting process, and courts should be loath to reject a legislative effort so germane to the integrity of federal elections." *Project Vote*, 682 F.3d at 339-40. This Court should accordingly reject VR Bennett's attempt to rewrite the Public Disclosure Provision in a way that Congress did not intend. The statutory language being clear and unambiguous, judicial inquiry should be complete, *Germain*, 503 U.S. at 253-54, and judgment should be entered in the Foundation's favor.

2. Public Disclosure of the Requested Records Is Consistent with the Intent of Congress.

To find that the list maintenance records requested by the Foundation are not covered by the NVRA would frustrate in the intent of Congress. As recently articulated by the Southern District of Florida, Congress intended that the NVRA's Public Disclosure Provision 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, 2018 U.S. Dist. LEXIS 103617, at *12-13 (S.D. Fla. Mar. 30, 2018) (emphasis added) (filed as Doc. 26-1). Indeed, Congress made *all* list maintenance records subject to public inspection precisely so that the general public can hold election officials accountable for their actions. *Ass'n of Cmty. Orgs. for Reform Now v. Fowler,* 178 F.3d 350, 364 (5th Cir. 1999) (private-right-of action meant to "encourage enforcement by so-called 'private attorneys general'" (quoting *Bennett v. Spear*, 520 U.S. 154, 157 (1997)). To find otherwise frustrates the provision's central purpose.

To adopt VR Bennett's interpretation of the Public Disclosure Provision would allow election officials to conceal records related to their decision to wipe the names of eligible voters from the rolls and declare them to be ineligible, unless the decision to cancel the registration related to death or residency. All of the other touchstones of eligibility would be hidden from disclosure under VR Bennett's version of the NVRA. This would include cancellations for purported felon status, age, duplication in registration, mental incapacitation, partial mental

incapacity, parole status, pardon status, supervised release, validity of registration address, or all of the other facts affecting eligibility under Texas Election Code §§ 11.001, 11.002, 11.004 and 11.005. Congress required transparency as a matter of federal law. Records related to why someone is added to the list of eligible voters or why someone is stripped of their right to vote are subject to public inspection and duplication, and VR Bennett's position is contrary to explicit federal law.

CONCLUSION

There being no genuine dispute regarding material facts, the Foundation respectfully requests that the Court enter summary judgment in its favor on Count I of its First Amended Verified Complaint against VR Bennett and declare her in violation of 52 U.S.C. § 20507(i) for failure to allow inspection of the requested records. The Foundation also respectfully requests that the Court enter an injunction requiring Defendant Bennett to provide inspection or disclosure of all records requested by the Foundation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of 52 U.S.C. § 20507(i) for failure to provide inspection of all records related to list maintenance programs;

2. Ordering Defendant to substantively and completely respond to Plaintiff's written request for records concerning her implementation of programs and activities to ensure the accuracy and currency of Harris County's voter registration list and provide access to all requested records;

3. Ordering Defendant to pay Plaintiff's reasonable attorney's fees related to Count I of the First Amended Verified Complaint, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and

4. Granting Plaintiff further relief that this Court deems just and proper.

Dated: November 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

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APPENDIX

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

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V.	§	
	§	
ANN HARRIS BENNETT , IN HER OFFICIAL CAPACITY AS VOTER REGISTRAR FOR HARRIS COUNTY	§	
DEFENDANT		

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTFF'S FIRST REQUESTS FOR ADMISSION

Introduction

Pursuant to Federal Rule of Civil Procedure 36, Defendant Ann Harris Bennett, in her official capacity as Voter Registrar for Harris County ("Defendant") serves these Objections and Responses to Plaintiff's First Set of Requests for Admissions to Defendant Ann Harris Bennett. Consistent with the Rules, Defendant reserves the right to supplement these responses as discovery progresses.

Objections to Instructions and Definitions

Defendant will comply with the Federal Rules of Civil Procedure in asserting privileges and objections, and to the extent Plaintiff's proposed "Instructions" add to or are inconsistent with those rules, Defendant objects to the "Instructions" and will not be bound by them.

Statement Concerning Nonwaiver of Privilege/Exemptions

By responding to these requests for admission, Defendant does not intend to waive any claim of privilege, exemption, or confidentiality – including without limitation the attorney-client privilege, the attorney work-product exemption, and/or the confidentiality provisions of Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.

Objections and Responses to Plaintiff's First Request for Admission

Defendant objects to Plaintiff's definition number seven for the term "voter list maintenance."

REQUEST FOR ADMISSION NO. 1: Admit that you are required to "maintain for at least 2 years and ... 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 ... " as required by the National Voter Registration Act, 52 U.S.C., Section 20507(i)(1).

RESPONSE: Defendant admits that 52 U.S.C.A. § 20507 of the National Voter Registration Act, a/k/a the Motor Voter Act, requires her to comply with the following provision:

"(1) 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.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made."

Defendant denies this request to the extent that PILF misconstrues the categories covered by this provision of the Act.

REQUEST FOR ADMISSION NO. 2: Admit that you received the Plaintiffs request, dated December 1, 2017, to inspect or receive copies of records (Dkt. 21-1).

RESPONSE: Defendant admits that Defendant's office received Plaintiffs' request via email from Logan Churchwell on December 1, 2017 as sent to email address voters@hctx.net. This email address is the Harris County Voter Registration Departments' public in-box for voter registration related inquiries.

REQUEST FOR ADMISSION NO. 3: Admit that you have not permitted the Plaintiff to inspect or receive copies of the records it has requested.

RESPONSE: Defendant admits Defendant's office has not provided copies of the requested records to PILF. Defendant denies that PILF ever attempted to inspect the records in-person. Defendant denies that PILF is entitled to inspect or receive copies of the records PILF requested. Defendant admits that copies of the records requested by PILF have not been provided to PILF for several reasons. 1) The Texas Attorney General determined that many of the records PILF requested are protected under Texas law and cannot be produced. 2) Defendant is currently awaiting a ruling from a Texas state court concerning production of some of the records PILF requested. 3) Defendant's Second Motion to Dismiss PILF's First Amended Complaint in this

federal court action is still pending. A ruling favorable to the Voter Registrar will preclude production of the requested documents and information.

REQUEST FOR ADMISSION NO. 4: Admit that you received the Plaintiff's letter dated January 18, 2018, which notified your office that it was in violation of the National Voter Registration Act (Dkt. 21-6).

RESPONSE: Defendant admits that the Office of the Harris County Attorney Vince Ryan received PILF's letter, via email, sent to Assistant County Attorney Kristen Lee on January 18, 2018. Defendant admits that the emailed letter stated "the Harris County Voter Registrar is hereby notified that it now faces federal litigation should it continue to deny access to requested records in its possession." Defendant denies that the Voter Registrar is or was "in violation the National Voter Registration Act" as alleged by PILF.

REQUEST FOR ADMISSION NO. 5: Admit that non-United States citizens have registered to vote in Harris County, Texas.

OBJECTION AND RESPONSE: Defendant objects to this request because it is not limited in scope to a relevant time-period and this request is vague, which prevents Defendant from conducting a reasonable inquiry into information known or reasonably available to Defendant. For instance, the Harris County Voter Registration Department serves over 2 million registered voters in the nation's third largest county and voter registration in Harris County dates back many years.

Defendant further objects to this request because it is misleading with regard to the Voter Registrar's duties. *See* 52 U.S.C.A. § 21083.

In Texas, the Voter Registrar maintains files containing the approved registration applications of the registered voters of the county. Before all county elections, the Voter Registrar must prepare for each county election precinct a certified list of the registered voters in the precinct. The list must contain the name of each voter whose registration is effective on the date of the first election held in the county in that voting year.

The office of the Voter Registrar is funded by the Secretary of State. Each year, the Voter Registrar must prepare and submit to the Comptroller of Public Accounts and to the Secretary of State the number of initial registrations and the number of registrations cancelled for the previous voting year. This list is to include voters who are deceased, felons, and those who have moved out of the county. The Voter Registrar is to also provide the total number of registrations for information updates.

REQUEST FOR ADMISSION NO. 6: Admit that non-United States citizens have voted in elections in Harris County, Texas.

OBJECTION AND RESPONSE: Defendant objects to this request because it is not limited in scope to a relevant time-period which prevents Defendant from conducting a reasonable inquiry into information known or reasonably available to Defendant. Defendant further objects to this request because it is vague. See also, Defendant's objections to RFA No. 5.

Defendant admits that, according to news reports, one Mexican citizen was indicted in May, 2018 on two counts of election fraud linked to the November 2016 election. This individual allegedly stole the identity of a U.S. citizen and registered to vote in Harris County.

REQUEST FOR ADMISSION NO. 7: Admit that you have conducted voter list maintenance concerning suspected or actual non-United States citizens.

OBJECTION AND RESPONSE: Defendant objects to this request because it is vague, misleading and not limited in scope to a relevant time-period. For these reasons, Defendant is unable to conduct a reasonable inquiry into information known or reasonably available to Defendant. Defendant admits that the Harris County Voter Registrar's Office performs its duties as required by law. This includes notifying suspected ineligible voters and cancelling ineligible voters for reasons that may include citizenship status.

REQUEST FOR ADMISSION NO. 8: Admit that you possess or have control over records related to voter list maintenance concerning suspected or actual non-United States citizens.

OBJECTION AND RESPONSE: See Defendant's objection and response to RFA No. 7.

Respectfully submitted,

OF COUNSEL:

/s/ Julie Countiss

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on October 26, 2018 in compliance with the Federal Rules of Civil Procedure on the following parties of record.

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/s/ Julie Countiss
JULIE COUNTISS