

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

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**PUBLIC INTEREST LEGAL FOUNDATION,  
INC.,**

*Plaintiff,*

v.

**ROBERT KYLE ARDOIN**, in his official capacity  
as Secretary of State for the State of Louisiana,

*Defendant.*

Civil Case No. \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff Public Interest Legal Foundation, Inc., by and through counsel, brings this action for declaratory and injunctive relief against Defendant for violations of the Public Disclosure Provision of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507(i)(1).

**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), because 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 the 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., (“Foundation”) is a non-partisan, 501(c)(3) public interest organization incorporated and based in Indianapolis, Indiana. The Foundation promotes 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 analyzes the programs and activities of state and local election officials in order to determine whether lawful efforts are being made to keep voter rolls current and accurate in accordance with federal and state law, and to determine whether eligible registrants have been improperly removed from voter rolls. The Foundation also uses records and data to produce and disseminate reports, articles, blog and social media posts, and newsletters in order to advance the public education aspect of its organizational mission.

4. Defendant Robert Kyle Ardoin is the Secretary of State for the State of Louisiana. Defendant has been designated “the chief election officer of the state,” La. Const. Art. IV, § 7, and is “responsible for coordination of State responsibilities under [the National Voter Registration] Act.” 52 U.S.C. § 20509. Defendant is sued in his official capacity only.

## BACKGROUND

### *The NVRA*

5. The NVRA provides, in relevant part, “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[.]” 52 U.S.C. § 20507(i)(1) (hereafter, the “Public Disclosure Provision”).<sup>1</sup>

6. The Public Disclosure Provision “embodies Congress’s conviction that Americans who are eligible under law to vote have every right to exercise their franchise, a right that must not be sacrificed to administrative chicanery, oversights, or inefficiencies.” *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 334-35 (4th Cir. 2012).

7. The Public Disclosure Provision is designed to “ensure that election officials are fulfilling their list maintenance duties” and is “available to any member of the public.” *Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at \*12 (S.D. Fla. Mar. 30, 2018). The Public Disclosure Provision “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. Accordingly, election officials must provide full public access to all records related to their list maintenance activities, including their voter rolls.” *Id.* at \*12-13. Simply, all voter list maintenance records

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<sup>1</sup> The records described by the Public Disclosure Provision are common referred to as “voter list maintenance records.”

concerning the removal of deceased registrants are subject to physical public inspection and photocopying.

***The Electronic Registration Information Center***

8. The Electronic Registration Information Center (“ERIC”) “is a non-profit organization with the sole mission of assisting states to improve the accuracy of America’s voter rolls and increase access to voter registration for all eligible citizens.” Home, <https://ericstates.org/>.

9. ERIC is imposing requirements on Louisiana that are void against public policy—namely, ERIC limits the release of public Louisiana voter list maintenance records in contravention of the NVRA.

10. ERIC is “is managed by a Board of Directors comprised of a representative from each member state – either its chief election official or their designee.” ERIC: Summary of Membership Guidelines and Procedures, <https://ericstates.org/wp-content/uploads/2019/06/ERIC-Membership-Summary-v20190603.pdf> (last accessed Feb. 3, 2022) (hereafter, “ERIC Membership Guidelines”).

11. ERIC “[m]embers pay a one-time membership fee of \$25,000” and “annual dues.” *Id.*

12. Louisiana became a member of ERIC in 2014.<sup>2</sup> *See* ERIC 2017 Annual Report at 9, <https://ericstates.org/wp->

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<sup>2</sup> According to ERIC’s website, as of October 2021, the following are members of ERIC: “Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah,

content/uploads/2019/01/FINAL\_ERIC\_2017\_Annual\_Report.pdf (last accessed Feb. 3, 2022) (hereafter, “ERIC Annual Report”).

13. On January 27, 2022, Louisiana announced it was suspending its participation in ERIC, citing “concerns raised by citizens, government watchdog organizations and media reports about potential questionable funding sources and that possibly partisan actors may have access to ERIC network data for political purposes, potentially undermining voter confidence.” Kyle Ardoin, News Release, Jan. 27, 2022 (attached as Exhibit A).

14. All members of ERIC, including Louisiana, signed the ERIC “Membership Agreement,” which “sets forth the terms and conditions of membership” in ERIC. ERIC Bylaws, Article II, Section 3 (PDF page 4), [https://ericstates.org/wp-content/uploads/2020/02/ERIC\\_Bylaws\\_01-2020.pdf](https://ericstates.org/wp-content/uploads/2020/02/ERIC_Bylaws_01-2020.pdf) (hereafter, “ERIC Bylaws”) (last accessed Feb. 3, 2022).

15. Per the ERIC Membership Agreement, voter list maintenance records concerning deceased registrants are generated by Louisiana and given to ERIC and, ERIC provides Louisiana with voter list maintenance records. Specifically, the Membership Agreement says that Louisiana provides the following to ERIC “every sixty (60) days”:

- “(1) all inactive and active voter files” and,

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Vermont, Virginia, Washington, West Virginia, and Wisconsin. The District of Columbia is also a member. (31 states plus D.C.)” FAQs, Which States Are Members of ERIC?, <https://ericstates.org/>.

- “(2) all licensing or identification contained in the motor vehicles database.”

ERIC Bylaws, Exhibit A (Membership Agreement) at Section 2(b) (PDF page 17).

16. Louisiana must also and does “use its best efforts to transmit, on a regular basis, data relating to individuals that exists in the records of other agencies within its jurisdiction that perform any voter registration functions, including, but not limited to, those required to perform voter registration pursuant to the National Voter Registration Act[.]” ERIC Bylaws, Exhibit A (Membership Agreement) at Section 3 (PDF page 17). These data are voter list maintenance records subject to public inspection under the NVRA.

17. ERIC “process[es] data that relates to the maintenance of [Members’] voter registration lists and provide[s] regular (at least on a monthly basis) reports to [each] Member.” ERIC Bylaws, Exhibit A (Membership Agreement) at Preamble (PDF page 16).

18. From ERIC, Louisiana and “[e]ach member state receives reports that show voters who have moved within their state, voters who have moved out of state, **voters who have died**, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered.” FAQs, What Reports Do States Receive From ERIC, <https://ericstates.org/> (emphasis added). These data are voter list maintenance records subject to public inspection under the NVRA.

19. “The Social Security Death Master File, sometimes referred to as the ‘Social Security Death Index,’ is used by ERIC to identify voters who have died so that they can be removed from ERIC states’ voter rolls.” ERIC Annual Report at 6.

20. Louisiana receives data from ERIC showing registrants who are deceased or likely deceased (hereafter “ERIC Deceased Data”). These data are voter list maintenance records subject to public inspection under the NVRA.

21. When Louisiana receives ERIC Deceased Data showing deceased registrants, Louisiana is required to, “at a minimum, initiate contact with th[ose] voter[s] in order to correct the inaccuracy or obtain information sufficient to inactivate or update the voter[s]’ record[s].” *Id.* at 5(b) (PDF page 20).

22. The ERIC Membership Agreement provides that Louisiana “has ninety (90) days after the data was sent to initiate contact with at least 95% of the voters on whom data indicating a record was inaccurate or out-of-date ... was provided.” *Id.*

23. The ERIC Membership Agreement provides further, “Within ten (10) business days of the ninetieth day, [Louisiana] shall provide a written certification to the Executive Director of ERIC that Member has complied or not complied with” the requirements described in paragraphs 21 and 22. *Id.*

24. Louisiana uses ERIC Deceased Data to conduct voter list maintenance programs and activities required by state law and the NVRA, including cancellation of registrations belonging to deceased individuals. *See* 52 U.S.C. § 20507(a)(4)(A). These data are voter list maintenance records subject to public inspection under the NVRA.

25. The ERIC Membership Agreement prevents Louisiana from disclosing records Louisiana is otherwise legally required to disclose without first obtaining a court order. ERIC Bylaws, Exhibit A (Membership Agreement) at Section 4(a) (PDF page 15) (“Should a Member receive a request to disclose ERIC Data and determines that it is legally obligated, in whole or in part, to comply with such request, *it shall not make the disclosure without first obtaining a court order compelling it to do so*, a copy of which shall be provided to ERIC.”) (emphasis added). A “court order” is not required for parties to exercise the right to publicly inspect voter list maintenance records that was established by Congress in the NVRA.

### ***Criticism of ERIC***

26. The accuracy of ERIC reports, on which Louisiana and other member states rely to remove registrants from the voter rolls, has been criticized. Barbara Arnwine, the former executive director of the Lawyers’ Committee for Civil Rights Under Law, stated, “ERIC should be called ERROR because it’s that erroneous and that full of flaws.” Palast, *ERIC Crow, Jim Crow’s liberal twin* (July 15, 2020), <https://www.nationofchange.org/2020/07/15/eric-crow-jim-crows-liberal-twin/>.

27. The Brennan Center for Justice reported the following in a 2019 report:

Wisconsin ... reported that although ERIC was helpful in updating more than 25,000 registration addresses in 2017 and 2018, it also resulted in more than 1,300 voters signing ‘supplemental poll lists’ at a spring 2018 election, indicating that they had not in fact moved and were wrongly flagged.



Brater et al., Purges: A Growing Threat to the Right to Vote at 9 (2019),

[https://www.brennancenter.org/sites/default/files/2019-](https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf)

[08/Report\\_Purges\\_Growing\\_Threat.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf) (last accessed Feb. 3, 2022).

28. Marc Meredith, an associate professor in the Department of Political Science at the University of Pennsylvania, stated,

While ERIC is usually correct, sometimes they're wrong, and it turns out they're more likely to be wrong in the case where the registrant is a racial or ethnic minority as opposed to a white registrant[.]

Kristen de Groot, Penn Today, The racial burden of cleaning voter rolls (Feb. 24, 2021),

<https://penntoday.upenn.edu/news/racial-burden-cleaning-voter-rolls> (last accessed Feb. 3, 2022).

29. A Yale University-led study of ERIC in Wisconsin

found that at least 4% of people listed as suspected 'movers' cast ballots in 2018 elections using addresses that were wrongly flagged as out of date. Minority voters were twice as likely as white voters to cast their ballot with their original address of registration after the state marked them as having moved, the study showed.

Yale University, Study uncovers flaws in process for maintaining state voter rolls (Feb.

26, 2021), <https://phys.org/news/2021-02-uncovers-flaws-state-voter.html> (last accessed Feb. 3, 2022).

30. The Yale study's lead author, political scientist Gregory A. Huber, stated,

The process of maintaining states' voter-registration files cries out for greater transparency[.] ... Our work shows that significant numbers of people are at risk of being disenfranchised, particularly those from minority groups. Unfortunately, we don't know enough about the process used to prune voter rolls nationwide to understand why mistakes occur and how to prevent them.

*Id.*

***Defendant is Denying the Foundation Access to Voter List Maintenance Records***

31. On August 11, 2021, the Foundation emailed a letter to the Defendant's office. The letter requested the following records, pursuant to the NVRA's Public Disclosure Provision:

1. All "ERIC Data"<sup>3</sup> received from ERIC during the years 2019, 2020, and 2021 concerning registered voters identified as deceased or potentially deceased.
2. All reports and/or statewide-voter-registration-system-generated lists showing all registrants removed from the list of eligible voters for reason of death for the years 2019, 2020, and 2021. Such lists will optimally include unique voter identification numbers, county or locality, full names, addresses, and dates of birth.

Exhibit B (hereafter, the "Request").

32. On September 26, 2021, Defendant's counsel acknowledged the Request and requested thirty (30) days to review the Request and provide a response.

33. At various times thereafter, Defendant's counsel requested extensions of sixty (60) and thirty (30) days to provide a response to the Request.

34. Thereafter, on January 13, 2022, Defendant's counsel informed the Foundation that "additional time" was required to provide a response to the Request and that counsel hoped to have a response for the Foundation later in the month of January.

35. The Foundation received no further response in the month of January.

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<sup>3</sup> The Foundation defined "ERIC Data" as the "data included in reports provided by ERIC to member states concerning deceased and relocated registrants, and other information related to voter registration list maintenance." Exhibit B at 1 (quoting ERIC Bylaws, Exhibit A (Membership Agreement) at Section 4(a) (PDF page 18)).

***The Foundation Notified Defendant that He is Violating the NVRA***

36. On January 24, 2022, the Foundation notified Defendant and his counsel that Defendant is in violation of the NVRA for failure to permit inspection of voter list maintenance records as required by 52 U.S.C. § 20507(i). Exhibit C at 1 (hereafter, the “Notice Letter”).

37. The Foundation sent the Notice Letter to Defendant via email and facsimile, and later sent a copy via certified mail through the United States Postal Service.

38. The Notice Letter notified Defendant that the requested records fall within the scope of the NVRA. Exhibit C at 2.

39. The Notice Letter further notified Defendant, “Failure to permit public inspection or otherwise provide copies of the requested records is a violation of federal law for which the NVRA provides a private right of action.” Exhibit C at 2.

40. The Notice Letter further notified Defendant that litigation may commence against him if the violation about which he was notified was not cured within 90 days of her receipt of the letter. Exhibit C at 2 (citing 52 U.S.C. § 20510(b)(2)).

41. By sending the Notice Letter to Defendant, the Foundation complied with the NVRA’s pre-litigation notice requirements. *See* 52 U.S.C. § 20510(b)(1)-(2).

***Defendant Confirms the Denial of the Request***

42. On February 3, 2022, Defendant’s counsel emailed a letter to the Foundation confirming that the Foundation’s Request is denied. Exhibit D (hereafter, “Denial Letter”).

43. The Denial Letter denied Request 1, stating, “The information you are seeking for this portion of your request is protected from disclosure not only by the ERIC Membership Agreement, but also by federal law and regulations. *See* 42 U.S.C. §1306c; 15 C.F.R. §1110.102.” Exhibit D at 1.

44. The Denial Letter stated further, “It is the position of the Department of State that the NVRA does not require disclosure of records or information when such records or information are otherwise prohibited from disclosure.” Exhibit D at 1.

45. The Denial Letter denied Request 2, in part, stating that “pursuant to La. R.S. 18:154(C)(1), the day and month of the date of birth of registrants is protected and exempt from disclosure.” Exhibit D at 2.

46. The Denial Letter also impermissibly conditioned receipt of “year of birth” information on the payment of “additional processing costs.” Exhibit D at 2.

47. Imposition of processing costs is impermissible because the NVRA permits only the imposition of the “reasonable cost” of photocopying responsive records. 52 U.S.C. § 20507(i)(1).

48. The Denial Letter further explained that the Foundation’s request for address information is denied because “that information is not included in these lists.” Exhibit D at 2.

49. Defendant provided no responsive records with the Denial Letter.

***Defendant Has Not Cured the NVRA Violation and Further Efforts to Obtain the Requested Records Would be Futile***

50. Defendant received the NVRA Notice Letter via email and facsimile on January 24, 2022.

51. The NVRA typically affords violating parties ninety (90) days to cure NVRA violations. 52 U.S.C. § 20510(b)(2). “The apparent purpose of the notice provision is to allow those violating the NVRA the opportunity to attempt compliance with its mandates before facing litigation.” *Ga. State Conference of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012).

52. The purpose of the NVRA’s notice and curative period is not served when the violating party states that he is unwilling or unable to cure the violation, as is the case here, due to the ERIC Membership Agreement, federal law and regulation, and Louisiana law. Exhibit D at 1-2.

53. Under these circumstances, it would be a futile and injurious act to wait any additional amount of time before seeking relief, much less to wait ninety days. The NVRA does not require such futile acts. *See Ass’n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997) (“[W]e agree with the district court that requiring these plaintiffs to file individual notice where Michigan had already ignored ACORN’s actual notice amounts to requiring performance of futile acts.”); *Ga. State Conference of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012) (“Just as the *Miller* court declined to require parties not named on the notice letter to send separate notice where it was clear from the circumstances that Michigan would not

comply absent litigation, this court will not require such a futile act from Peoples' Agenda in order to participate in this case.”).

54. Because Defendant received notice of the NVRA violation and has stated his inability to cure the violation, this action is ripe.

***Defendant's Actions Are Harming the Foundation***

55. The requested records are records within the scope of the NVRA's Public Disclosure Provision.

56. The Public Disclosure Provision authorizes and entitles the Foundation to inspect and duplicate, or otherwise receive the requested records.

57. Defendant's violations of the NVRA are causing the Foundation to suffer a concrete informational injury because the Foundation does not have records and information to which it is entitled under federal law. *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.”).

58. By denying the Foundation the ability to obtain the requested voter list maintenance records, Defendant is also impairing the Foundation's ability to, *inter alia*, (1) assess compliance by Louisiana with state and federal voter list maintenance obligations; (2) aid Louisiana in carrying out its voter list maintenance programs and activities; and, (3) educate the public about the same.

59. Defendant's violation of the NVRA is thus frustrating, impeding, and harming the Foundation's efforts to carry out its organizational mission and thereby injuring the Foundation.

60. The Foundation intends to request similar records from Defendant in the future.

**COUNT I**  
**Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i)**

61. The Foundation realleges the preceding paragraphs as if fully stated herein.

62. The requested record(s) are in the possession, custody, and control of Defendant.

63. Defendant is denying the Foundation access to records within the scope of the NVRA's Public Disclosure Provision and thereby violating the NVRA's Public Disclosure Provision.

64. Neither other federal laws nor federal regulations override the NVRA's Public Disclosure Provision as a matter of law.

65. Parties cannot contract to violate federal law. To the extent the ERIC Membership Agreement conflicts with the NVRA's obligation to publicly disclose voter list maintenance records, the ERIC Membership Agreement is void against public policy, invalid, and unenforceable.

66. La. R.S. 18:154(C)(1) and any other Louisiana statute, code, regulation, practice, or policy that conflicts with, overrides, or burdens the NVRA, a federal statute, is preempted and superseded under the Supremacy Clause and the Elections Clause of the Constitution of the United States. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013). Such preempted laws are invalid and unenforceable.

67. Louisiana's policy of conditioning access to year of birth information on the payment of "additional processing costs" conflicts with the NVRA and is therefore invalid and unenforceable.

68. Louisiana's policy of withholding address information conflicts with the NVRA and is therefore invalid and unenforceable.

69. The Foundation is entitled to relief but 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(i) of the NVRA for denying the Foundation the opportunity to inspect and copy the ERIC Deceased Data.

2. Declaring that Defendant is in violation of Section 8(i) of the NVRA for denying the Foundation the opportunity to inspect and copy all other requested records, and/or for placing impermissible conditions on the same opportunity.

3. Declaring that Section 8(i) of the NVRA preempts and supersedes La. R.S. 18:154(C)(1) and any statute, code, regulation, practice, policy, or agreement with ERIC that prevents the Foundation from inspecting and copying the requested records, or data contained in them.

4. Ordering Defendant to provide the requested records to the Foundation, including voter list maintenance records received from ERIC.

5. Permanently enjoining Defendant from denying similar requests in the future.



6. Ordering Defendant to pay the Foundation's reasonable attorney's fees, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and,
7. Granting the Foundation further relief that this Court deems just and proper.

Dated: February 4, 2022.

Respectfully submitted,

/s/ Mark G. Montiel, Jr.  
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