



STATE OF NEW MEXICO

MAGGIE TOULOUSE OLIVER

SECRETARY OF STATE

November 17, 2022

Via Electronic Mail Only

Logan Churchwell, Communications and Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org

RE: COST FOR REQUESTED VOTER DATA

Dear Mr. Churchwell:

The Office of the New Mexico Secretary of State (“SOS”) received your signed affidavit and the needed clarification on the voter data request related to voter history and the agents you intend to share this information with. We ran the voter file you requested and based on New Mexico law and administrative rule the cost for the requested data is \$5,479.40. This includes the entire voter file with voter history from January 2020 through the 2022 Primary election.

We understand your position is that your request for the voter file is made under the NVRA, which requires each state 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). You further state that the NVRA permits states to charge requestors only for the “reasonable cost[s]” of “photocopying” or, in this case, reproducing the digital file[s]. *Id.* Your request is for the entire voter file. Specifically, you asked for:

A copy of the most current listing of SERVIS data (active and inactive/suspense) in electronic form with voting history. [You later clarified you would like voter history from January 1, 2020 to the 2022 primary election].

Though you provided some case law which you believe is relevant to making such a request under the NVRA, none of it provides a legal basis for our office to rely on in providing the actual voter file at a lower cost than any other requester. As such, without authority in the 10th circuit, we believe that the entire voter file that you requested is not properly made under the NVRA, as the actual voter file itself is not a “record concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” The voter file is the final result of the implemented programs and activities we conduct to maintain the voter file, and not a program or activity subject to inspection under the NVRA for a reasonable cost. Based on the plain reading of the statute and the provided legal arguments in your *Notice of*

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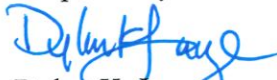
NVRA Violation Letter of November 4, 2022, we believe your request is solely governed by the New Mexico Election Code.

The New Mexico Election Code states that “the Secretary of state shall furnish voter data... however, all requesters shall be treated equally in regard to charges and furnish materials.” NMSA 1978, Section 1-4-5.5. As such, we cannot offer you a lower price for the voter file you request at this time.

We understand that the cost of this data is something that you believe is in violation of law under the NVRA, but we do not believe you have made a proper request under the NVRA for responsive documents. Therefore, at this time we can only provide you the voter file after the payment of the cost based on our fee structure in place.

If you would like to submit the \$5,479.40 to our office, we will release this voter data to you. If you have any further questions or if you can think of ways to avoid litigation of this matter, please let me know.

Respectfully,



Dylan K. Lange
General Counsel