

No. 24-30593

IN THE
United States Court of Appeals
for the **Fifth Circuit**

PUBLIC INTEREST LEGAL FOUNDATION, INC.,

Plaintiff-Appellant,

v.

NANCY LANDRY, in her official capacity as Secretary of State for the State of
Louisiana,

Defendant-Appellee.

**On Appeal from the United States District Court for the Middle District of
Louisiana, Case No. 3:22-cv-00081 (Hon. John W. deGravelles)**

**APPELLANT PUBLIC INTEREST LEGAL FOUNDATION'S
MOTION TO DISMISS APPEAL AS MOOT AND
VACATE UNDERLYING DECISION**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant

Appellant Public Interest Legal Foundation, Inc. is a non-profit, 501(c)(3) organization. It is not a publicly held corporation and no corporation or other publicly held entity owns more than 10% of its stock.

Appellant's Counsel

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Appellee

Appellee Nancy Landry is the Secretary of State for the State of Louisiana.

Appellee's Counsel

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INTRODUCTION AND SUMMARY OF THE RELIEF REQUESTED

Movant-Appellant Public Interest Legal Foundation, Inc. (“Foundation”) respectfully moves this Court to dismiss this appeal as moot and vacate the underlying District Court decision. Where, as here, a civil case becomes moot before an appeal can be fully heard, well-established authority dictates that the Court should reverse or vacate the judgment below to ensure fairness to the party that is unable, through no fault of its own, to secure appellate review of an adverse decision. *See, e.g., United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *Murphy v. Fort Worth Indep. Sch. Dist.*, 334 F.3d 470, 471 (5th Cir. 2003) (“If a claim becomes moot after the entry of a district court’s judgment and prior to the completion of appellate review, we generally vacate the judgment and remand for dismissal”). That is precisely the case here.¹

This appeal concerns access to public records under the National Voter Registration Act of 1993 (“NVRA”). The NVRA requires each state to “maintain for at least 2 years” and “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

¹ The Foundation’s counsel conferred with the Secretary’s counsel prior to filing this motion. The Secretary does not object to the relief requested in this motion. No opposition will be filed.

the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). Pursuant to the NVRA, the Foundation requested copies of records showing who the Secretary removed from the voter roll and why she removed them. The Secretary denied the request and the Foundation filed this action to compel production of the requested records.

The Secretary moved to dismiss the Amended Complaint, arguing that the Foundation has not suffered an injury that can support standing. The Foundation opposed the motion, arguing that it plausibly alleged an informational injury that caused multiple downstream consequences—among them, the inability to do the very things Congress envisioned when it passed the NVRA: monitor and scrutinize the Secretary’s voter list maintenance program and speak about the problems (or lack of problems) the Foundation finds.

On August 28, 2024, the District Court granted the Secretary’s motion to dismiss, holding that the Foundation “has failed to allege sufficient downstream consequences to satisfy Article III’s injury-in-fact requirement.” (ECF 64 at 9.) The Foundation timely appealed the District Court’s decision. (ECF 65.)

While this appeal was pending, the Secretary produced to the Foundation the records the Foundation requested.² This case is therefore moot. Because the

² The Secretary produced some responsive records while the case was pending in the District Court but did not produce all requested records until January 9, 2025.

Foundation did not cause or contribute to the mootness of its appeal, this Court should follow well-established practice and dismiss the appeal as moot and vacate the underlying decision that is the subject of this appeal.

ARGUMENT

I. The Court Should Dismiss the Appeal and Vacate the Underlying Decision Because the Appeal Has Become Moot Through No Fault of Appellant.

A case becomes moot “when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 295 (2023) (citations and quotations omitted). Generally speaking, in the context of a public records case, a case becomes moot when the government produces the requested records. *See Calhoun v. FBI*, 546 F. App’x 487, 490 (5th Cir. 2013) (“[T]he district court correctly determined that Calhoun’s action was rendered moot when the FBI produced responsive records[.]”). In this case, the Secretary has produced all requested records. Without effective relief to offer, this Court should dismiss this appeal as moot.

See Exhibit A at 1 (“This production concludes the Secretary of State’s response to your August 11, 2021, NVRA public disclosure request.”).

When a civil case becomes moot on appeal, “[t]he established practice ... in the federal system ... is to reverse or vacate the judgment below and remand with a direction to dismiss.” *Munsingwear, Inc.*, 340 U.S. at 39. Ultimately, the “*Munsingwear* doctrine is an equitable one, justified as a means of avoiding the unfairness of a party’s being denied the power to appeal an unfavorable judgment by factors beyond its control.” *Goldin v. Bartholow*, 166 F.3d 710, 719 (5th Cir. 1999); *see also Freedom from Religion Found., Inc. v. Abbott*, 58 F.4th 824, 836 (5th Cir. 2023) (“[O]ur precedents demonstrate that vacatur depends on the equities of the case ... and that there is no hard and fast rule ... in fashioning a remedy for mootness.”) (internal citations and quotations omitted).

The Supreme Court has “identified two equitable considerations as particularly relevant to the vacatur analysis.” *Id.* “First, a court must consider ‘whether the party seeking relief from the judgment below caused the mootness by voluntary action.’” *Id.* (quoting *United States Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 24 (1994)). “And second, ‘[a]s always when federal courts contemplate equitable relief, [the] holding must also take account of the public interest.’” *Freedom from Religion Found., Inc.*, 58 F.4th at 836 (quoting *Bancorp*, 513 U.S. at 26). Accordingly, “in cases mooted by the voluntary actions or inactions of a party, [the Fifth Circuit] ha[s] decided the vacatur question in favor

of the party that did not cause the case to become moot.” *Staley v. Harris County*, 485 F.3d 305, 311 n.2 (5th Cir. 2007) (collecting cases).

The circumstances of this appeal warrant vacatur. This appeal was mooted solely by the Secretary’s decision to produce the requested records, not by any action of the Foundation. Yet the Secretary’s decision prevents review of the District Court’s order dismissing the case on standing grounds.

The District Court’s order—if it stands without appellate review—threatens significant harm to the Foundation. The Foundation regularly utilizes the NVRA’s public records provision to further its organizational mission. Using records and data compiled through the NVRA, the Foundation analyzes the programs and activities of state and local election officials 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 educate and speak about its work and to offer solutions to election officials and other government leaders.

As a result of the District Court’s order, election officials across Louisiana can simply deny the Foundation’s NVRA requests relying on one district judge’s opinion that the Foundation does not have standing to compel compliance

through legal action.³ The public, too, will suffer harm because there will be less scrutiny of the government's decisions about who can and cannot vote. Fewer mistakes will be discovered. Fewer mistakes will be corrected. Voting rights may be lost. *See Freedom from Religion Found., Inc.*, 58 F.4th at 836 (acknowledging that courts must take account of the public interest when evaluating vacatur).

Principles of fairness dictate that the Foundation and the public should not suffer the long-term impact of the District Court's decision, while that decision remains insulated from review due to the Secretary's unilateral actions. Because the Foundation has been prevented from appealing the District Court's decision at no fault of its own, vacatur should be granted.

CONCLUSION

This appeal was mooted by decisions beyond the Foundation's control. This Court should dismiss the appeal as moot and vacate the underlying District Court decision.

³ The District Court's decision is an outlier. Three other federal courts denied motions to dismiss the Foundation's actions to compel production of identical records. *Pub. Interest Legal Found., Inc. v. Dahlstrom*, No. 1:22-cv-00001-SLG, 2023 U.S. Dist. LEXIS 86783 (D. Alaska May 17, 2023); *Pub. Int. Legal Found., Inc. v. Griswold*, Civil Action No. 21-cv-03384-PAB-MEH, 2023 U.S. Dist. LEXIS 176231, at *18 (D. Colo. Sep. 29, 2023); Doc. 28, *Pub. Interest Legal Found. v. Evans*, 1:21-cv-03180-ACR (order denying motion to dismiss; Dec. 4, 2023).

Dated: January 13, 2025.

Respectfully submitted,

For the Appellant Public Interest Legal Foundation:

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2025, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

/s/ Noel H. Johnson
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January 9, 2025

Via email: [lchurchwell@publicinterestlegal.org](mailto:churchwell@publicinterestlegal.org)

Logan Churchwell

Research Director

Public Interest Legal Foundation

RE: NVRA public disclosure request

Dear Mr. Churchwell:

The attached ERIC Deceased Report for December 2021 is produced as an update to our January 27, 2023, production¹ and contains information of individuals whose date of death is more than three years since November 29, 2021. *See* 42 U.S.C.A. § 1306c(C). This production concludes the Secretary of State's response to your August 11, 2021 NVRA public disclosure request.

The following is summary of all documents produced by the Secretary of State in response to your request:

Date	Items Produced	Format
Request No. 1		
January 27, 2023	ERIC Deceased Report – 2019 Q1 (01/03/19)	PDF
	ERIC Deceased Report – 2019 Q2 (04/05/19)	PDF
	ERIC Deceased Report – 2019 Q3 (07/15/19)	PDF
	ERIC Deceased Report – 2019 Q4 (10/03/19)	PDF
	ERIC Deceased Report – January 2020 (01/05/20)	PDF
April 12, 2023	ERIC Deceased Report – 2019 Q1 (01/03/19)	TXT
	ERIC Deceased Report – 2019 Q2 (04/05/19)	TXT
	ERIC Deceased Report – 2019 Q3 (07/15/19)	TXT
	ERIC Deceased Report – 2019 Q4 (10/03/19)	TXT
	ERIC Deceased Report – January 2020 (01/05/20)	TXT
October 4, 2023	ERIC Deceased Report – February 2020 (02/10/20)	TXT
	ERIC Deceased Report – March 2020 (03/05/20)	TXT
	ERIC Deceased Report – April 2020 (04/03/20)	TXT
	ERIC Deceased Report – May 2020 (05/04/20)	TXT

¹ The records produced on January 27, 2023, were provided in PDF format. On April 12, 2023, we provided you with the same records in native format.

	ERIC Deceased Report – June 2020 (06/03/20)	TXT
	ERIC Deceased Report – July 2020 (07/02/20)	TXT
	ERIC Deceased Report – August 2020 (08/04/20)	TXT
	ERIC Deceased Report – September 2020 (09/18/20)	TXT
	ERIC Deceased Report – October 2020 (10/05/20)	TXT
November 3, 2023	ERIC Deceased Report – November 2020 (11/04/20)	TXT
December 5, 2023	ERIC Deceased Report – December 2020 (12/14/20)	TXT
April 8, 2024	ERIC Deceased Report – January 2021 (01/08/2021)	TXT
	ERIC Deceased Report – February 2021 (02/04/2021)	TXT
	ERIC Deceased Report – March 2021 (03/03/2021)	TXT
	ERIC Deceased Report – April 2021 (04/05/2021)	TXT
May 24, 2024	ERIC Deceased Report – May 2021 (05/05/2021)	TXT
July 16, 2024	ERIC Deceased Report – June 2021 (06/03/2021)	TXT
	ERIC Deceased Report – July 2021 (07/06/2021)	TXT
August 26, 2024	ERIC Deceased Report – August 2021 (08/16/2021)	TXT
October 11, 2024	ERIC Deceased Report – September 2021 (09/03/2021)	TXT
	ERIC Deceased Report – October 2021 (10/08/2021)	TXT
November 19, 2024	ERIC Deceased Report – November 2021 (11/05/2021)	TXT
January 9, 2025	ERIC Deceased Report – December 2021 (12/07/2021)	TXT
Request No. 2		
January 27, 2023	Voter Cancellation Report 2019	PDF
	Voter Cancellation Report 2020	PDF
	Voter Cancellation Report 2021	PDF
November 3, 2023	Voter Cancellation Report 2019 (month and day of birth unredacted)	PDF
	Voter Cancellation Report 2020 (month and day of birth unredacted)	PDF
	Voter Cancellation Report 2021 (month and day of birth unredacted)	PDF

As previously advised, the Louisiana Secretary of State agreed to waive the costs of producing these documents.

Sincerely,

SHOWS, CALI & WALSH, L.L.P.

/s/ **Mary Ann M. White**

Mary Ann M. White

Cc: Nancy Landry, Louisiana Secretary of State; Celia Cangelosi; Noel H. Johnson; Katie Price

EXHIBIT A