



VIA EMAIL

May 17, 2023

ATTN: Scott T. Nago, Chief Election Officer
State of Hawaii Office of Elections
802 Lehua Avenue
Pearl City, HI 96782
Email: elections@hawaii.gov

RE: NVRA Request

Dear Chief Nago:

Background

On April 6, 2023, we requested the opportunity to inspect or receive a copy of Hawaii's complete SVRS voter roll extract containing all data fields ("Voter File") pursuant to the records inspection rights of the National Voter Registration Act of 1993 ("NVRA").

As explained in our letter, the NVRA requires each state to "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). The requested Voter File is within the NVRA's scope and is therefore a public record. *See Pub. Interest Legal Found., Inc. v. Bellows*, No. 1:20-cv-00061-GZS, 2022 U.S. Dist. LEXIS 38875, at *13-14 (D. Me. March 4, 2022); *Pub. Interest Legal Found., Inc. v. Matthews*, No. 20-cv-3190, 2022 U.S. Dist. LEXIS 40640, at *27 (C.D. Ill. Mar. 8, 2022); *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 446 (D. Md. 2019).

On May 8, 2023, Jamie Kataoka of Voter Services responded to our request, stating, "Thank you for your email. For a list of registered voters, please contact the County Elections Divisions. Any further related questions may be directed to the County Elections Divisions."

On May 8, 2023, we sought clarification from Ms. Kataoka: "Thank you for your response. To clarify, are County Elections Divisions the only ones with access to the official lists of registrants – or does your office also maintain a master file comprised of all county lists?"

Ms. Kataoka did not provide an answer to our question. Instead, on May 10, 2023, Ms. Kataoka responded, stating, "Thank you for your email. As noted in our prior email, for a list of

registered voters, please contact the County Elections Divisions. Likewise, any related questions may be directed to the County Elections Divisions.”

Notice of NVRA Violations

This letter serves to notify you that **your office is in violation of the National Voter Registration Act** for failure to permit inspection and duplication of records as required by 52 U.S.C. § 20507(i). These violations are explained below.

1. Failure to maintain and provide access to Voter File.

The Help America Vote Act requires each state to have a “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, **maintained, and administered at the State level** that contains the name and registration information of every legally registered voter in the State” 52 U.S.C. § 21083(a)(1)(A). This “computerized list” must “contain[] the name and registration information of every legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A)(ii). As explained, the NVRA requires each state to maintain and provide for inspection of “all” voter list maintenance records. 52 U.S.C. § 20507(i).

Your office is violating the NVRA because it is refusing to provide access to the Voter File, a record your office is required to maintain and administer at the State level.

To the extent Hawaii law requires requestors to go county to county to collect pieces of the Voter File that law is without force because the NVRA, as a federal enactment, is superior to conflicting state laws under the Constitution’s Elections and Supremacy Clauses. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013); *see also ACORN v. Edgar*, 880 F. Supp. 1215, 1222 (N.D. Ill. 1995); *Project Vote/Voting for Am., Inc. v. Long*, 813 F. Supp. 2d 738, 743 (E.D. Va. 2011); *Bellows*, No. 1:20-cv-00061-GZS, 2022 U.S. Dist. LEXIS 38875, at *14 (“Having concluded that the Voter File falls within the ambit of the NVRA’s Public Disclosure Provision, the Court concludes that Plaintiff has pleaded sufficient facts that, when taken as true, establish a plausible claim of obstacle preemption.”); *Matthews*, No. 20-cv-3190, 2022 U.S. Dist. LEXIS 40640, at *27 (“The Foundation has also shown that Section 5/1A-25 conflicts with, and is preempted by, the Public Disclosure provision insofar as Section 5/1A-25 prohibits the photocopying and duplication of the same list.”).

2. Failure to provide access to “all” Voter File data.

Even at the county-level, Hawaii law restricts access to the Voter File to certain preferred entities for preferred purposes. While “[a] voter’s full name, district/precinct designation, and voter status” is available to the public, “**all other personal information**, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91.” H.R.S. § 11-97(a).

The Public Interest Legal Foundation is a 501(c)(3), non-profit, law firm. My organization does not—and, in fact, cannot—engage in candidate election-related activities. Hawaii law thus

seemingly prohibits our organization from receiving the Voter File and using it for research, commentary, and voter list maintenance purposes.

Hawaii law conflicts with the NVRA because it restricts access to records and information that is public under the NVRA. State laws that conflict with federal laws are superseded and invalid.

It is our hope that you will work quickly to provide for disclosure of the requested records. If not, according to federal law, a lawsuit under the NVRA will be filed within 90 days of your receipt of this notice. 52 U.S.C. § 20510(b). For lawsuits initiated by a private party, an award of attorney's fees, expenses, and costs incurred are available under 52 U.S.C. § 20510(c).

Should further clarification be required, send email to lchurchwell@publicinterestlegal.org.

Thank you for your assistance in advance.

Sincerely,

A handwritten signature in black ink, appearing to read "Logan Churchwell", with a stylized flourish at the end.

Logan Churchwell
Research Director
Public Interest Legal Foundation