



VIA EMAIL

August 22, 2023

ATTN: Aaron H. Schulaner, General Counsel

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 Follow-Up

Dear Chief Nago:

We are in receipt of your office's response to our NVRA violation notice. Although your letter is dated June 28, 2023, we did not receive your letter until August 17, 2023.

I. The Secretary of State May Not Delegate Production of Records He Maintains.

The statewide voter file is a record within the scope of the NVRA. *See, e.g., 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). The Help America Vote Act requires your office to maintain and administer the statewide voter file "at the State level." 52 U.S.C. § 21083(a)(1)(A). Your office may not delegate production of a record that federal law requires you to maintain, and which you do in fact maintain. Your office is violating the NVRA by refusing to make the voter file available for inspection.

II. Hawaii Administrative Rules Do Not Include Our Intended Uses.

Your letter suggests that the Foundation may have a permissible "election or government purpose[]" for the statewide voter file under HAR § 3-177-60.

Pursuant to the NVRA, PILF has three primary uses for the statewide voter file: (1) to determine whether Hawaii's voter registration records are accurate and current; (2) determine whether Hawaii and other states are complying with state and federal voter list maintenance laws; and (3), assist Hawaii and other states with voter roll errors and programmatic deficiencies.

HAR § 3-177-60 does not include any of our intended uses as permissible purposes.

While the purposes included in HAR § 3-177-60 are described as “non-exhaustive,” there is no indication of what other purposes qualify as “election or government purposes.”

The Foundation cannot presume it has an acceptable purpose under Hawaii law due to the imposition of criminal penalties for unauthorized use of the voter file. For example, the Honolulu County SVRS access application notes potential charges up to a “Class C Felony, punishable by up to 5 years imprisonment and/or \$10,000 fine.”

Please declare whether our intended uses as described herein qualify as “election or government purposes” under Hawaii law. Without such written assurances, we will have no choice but to seek guidance from the appropriate court on this issue. Please provide a response by September 5, 2023.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Logan Churchwell", written in a cursive style.

Logan Churchwell
Research Director
Public Interest Legal Foundation