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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Public Interest Legal Foundation, Inc., a
Virginia non-stock non-profit corporation,

Plaintiff,

vs.

Adrian Fontes, in his official capacity as
Secretary of State for the State of Arizona,

Defendant.

Case No. CV-25-02722-MTL

**RESPONSE TO ARIZONA
SECRETARY OF STATE'S MOTION
TO DISMISS**

(Oral Argument Request)

INTRODUCTION

This case concerns the public's right to transparency in election administration under the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507. Congress enacted the NVRA to ensure that states maintain "accurate and current voter registration rolls" and to guarantee public oversight of that process. To that end, Section 8(i) of the NVRA (the "Public Disclosure Provision") requires states to "maintain for at least 2 years and 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). This provision codifies Congress's belief that an informed and engaged public is indispensable to the integrity of American elections.

Plaintiff Public Interest Legal Foundation (the "Foundation") is a nonpartisan nonprofit organization dedicated to promoting election integrity through research,

1 education, and litigation. Consistent with its mission, the Foundation routinely seeks to
2 inspect and analyze voter list maintenance records under the Public Disclosure Provision to
3 evaluate states' compliance with the NVRA and to inform the public about election
4 administration practices.

5 In April 2024, the Foundation submitted a request to the Arizona Secretary of State's
6 Office seeking copies of Electronic Registration Information Center ("ERIC") Retraction
7 Reports ("ERIC Retraction Reports") and related records. These reports identify registered
8 voters who were erroneously flagged as deceased and enable Arizona officials to re-
9 enfranchise voters who may have lost their right to vote without lawful cause. Because these
10 reports directly concern Arizona's programs for ensuring voter roll accuracy, they fall
11 squarely within the scope of the NVRA's Public Disclosure Provision.

12 Defendant, Secretary of State Adrian Fontes, denied the Foundation's request. When
13 the Secretary failed to cure the violation within the statutory period, the Foundation filed
14 this action seeking declaratory and injunctive relief.

15 The Secretary now moves to dismiss, contending that (1) the Foundation lacks
16 standing and (2) that disclosure would violate federal regulations governing access to the
17 Limited Access Death Master File ("LADMF"). (*See e.g.*, Doc. 15 at 2–3). Neither argument
18 has merit.

19 *First*, the Foundation's injury is both concrete and particularized. Denial of
20 information that must be made public under federal statute constitutes a classic
21 "informational injury" that satisfies Article III. *See FEC v. Akins*, 524 U.S. 11, 12 (1998)
22 ("The informational injury here, directly related to voting, the most basic of political rights,
23 is sufficiently concrete."). The Supreme Court's decision in *Akins* makes clear that the
24 refusal to provide records mandated by the Public Disclosure Provision inflicts a cognizable
25 injury in fact. *See also, e.g., Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th
26 Cir. 2012) (affirming district court's decision that relied on *Akins* to find standing); *Project*

1 *Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 702. The Secretary’s refusal to
2 disclose ERIC Retraction Reports denies the Foundation records Congress has expressly
3 made public pursuant to a statute. Under *Akins*, the Foundation therefore has standing.
4 Although the Foundation need not demonstrate additional adverse effects caused by the
5 Secretary’s actions, the Foundation would still have standing, if required to. Without the
6 requested records, the Foundation cannot perform its core research and educational
7 functions, which further Congress’s stated goals, *see* 52 U.S.C. § 20501(b). Those effects
8 are traceable to the Secretary and fully redressable by an order compelling disclosure.

9 *Second*, LADMF regulations protecting Social Security death information are
10 inapplicable here because the ERIC Retraction Reports do not contain LADMF data.
11 Instead, the ERIC Retraction Reports contain data pertaining to registrants who are not dead.
12 This is not only the Foundation’s opinion; it is the opinion of ERIC’s Executive Director.
13 In fact, ERIC notified Arizona and other states that they could not use LADMF regulations
14 to withhold ERIC Retraction Reports: “To be clear, the deceased retraction reports do NOT
15 include data from the LADMF. Hence, these reports are not protected by the LADMF
16 regulations or the Membership Agreement.”¹ Hamlin, Shane, Executive Director, to ERIC
17 Board of Directors, Nov. 7, 2023 (Nov. 14, 2025) (attached hereto as **Exhibit A**).

18 Moreover, LADMF regulations protect a very limited set of data. The ERIC
19 Retraction Reports contain additional data, some of which falls outside the scope of LADMF
20 regulations, such as voter ID number. Dismissal is also unwarranted for that reason alone.
21 Which data is included in the ERIC Deceased Retraction Reports is ultimately a factual
22 question that is not properly resolved on a 12(b) motion.

23
24
25 ¹ Attached to this brief is an email correspondence where Shane Hamlin, Executive Director
26 of ERIC explicitly states that releasing “deceased retraction” reports would not violate
LADMF. Hamlin, Shane, Executive Director, to ERIC Board of Directors, Nov 7, 2023
(Nov. 14, 2025).

1 In short, the Complaint alleges a straightforward violation of federal law: Defendant,
2 the state's chief election officer, failed to maintain and disclose records concerning
3 Arizona's voter list maintenance activities as required by NVRA Public Disclosure
4 Provision. Because the Foundation has adequately alleged both Article III standing and a
5 valid cause of action under the NVRA, Defendant's Motion to Dismiss should be denied.

6 **BACKGROUND**

7 The Congress enacted the NVRA, 52 U.S.C. §§ 20501–20511, to “increase the
8 number of eligible citizens who register to vote” and to ensure that states “maintain accurate
9 and current voter registration rolls.” 52 U.S.C. § 20501(b). The Public Disclosure Provision
10 of the NVRA requires states to implement “a general program that makes a reasonable effort
11 to remove the names of ineligible voters” from the official lists of eligible voters, including
12 those who have died or changed residence. *Id.* § 20507(a)(4).

13 To ensure transparency and accountability in that process, Congress enacted Section
14 8(i), the NVRA's Public Disclosure Provision. It mandates that states “maintain for at least
15 2 years” and “make available for public inspection . . . all records concerning the
16 implementation of programs and activities conducted for the purpose of ensuring the
17 accuracy and currency of official lists of eligible voters.” *Id.* § 20507(i)(1). This provision
18 reflects Congress's determination that public oversight is essential to achieving the NVRA's
19 goals and to promoting confidence in election administration.

20 Arizona is a member of ERIC, a multi-state data-sharing organization that assists
21 states in identifying ineligible or potentially duplicate voter registrations. (Doc. 1 ¶¶ 15–26).
22 ERIC provides its member states with periodic reports that identify voters who may have
23 moved, died, or otherwise become ineligible, as well as Retraction Reports identifying
24 voters who were mistakenly included in prior death or ineligibility reports. (*Id.*)

25 Arizona election officials use these ERIC reports to maintain the accuracy of the
26 State's voter registration lists, including by confirming deaths and updating records to

1 restore registrants who were incorrectly flagged as deceased. (Doc. 1 ¶ 25). The Secretary
2 of State oversees this process as Arizona’s chief election officer. *See* A.R.S. § 16-142(A)(1);
3 52 U.S.C. § 20509. Because these reports concern the implementation of list maintenance
4 programs, they are records that must be maintained and made available for public inspection
5 under the NVRA’s Public Disclosure Provision.

6 On April 24, 2024, the Foundation submitted a written request to the Arizona
7 Secretary of State pursuant to the NVRA’s Public Disclosure Provision. (Doc. 1 ¶ 33). The
8 request sought: Copies of all “Deceased Retractions” reports received from ERIC and
9 Copies of all other records concerning “Deceased Retractions” reports, e.g.,
10 correspondence. (*Id.*) The Foundation explained that these reports directly relate to
11 Arizona’s programs for ensuring the accuracy of its voter registration lists and therefore are
12 subject to public disclosure under the Public Disclosure Provision. (*Id.* ¶ 38).

13 On September 26, 2024, the Secretary’s Office responded, denying the request. (*Id.*
14 ¶ 37). The denial letter stated that ERIC Retraction Reports “cannot be released to the
15 public” because they contain information derived from the Social Security Administration’s
16 LAMDF, which the Department of Commerce regulates under 15 C.F.R. Part 1110. (*Id.*)
17 The Secretary asserted that disclosure would violate those federal regulations and,
18 consequently, refused to provide the requested records. (*Id.*)

19 On October 1, 2024, The Foundation sent the Secretary a written notice of violation
20 pursuant to 52 U.S.C. § 20510(b), advising that his refusal to provide the requested records
21 violated the Public Disclosure Provision and affording him the statutory 20-day period to
22 cure. (Doc. 1 ¶ 38). The Secretary did not produce the requested records or otherwise
23 respond within that period. (*Id.* ¶ 39-41).

24 When the Secretary did not cure his NVRA violation, the Foundation filed this action
25 on July 31, 2025. (*See generally id.*). The Complaint alleges that the Secretary’s failure to
26 make the ERIC Retraction Reports available for inspection and copying and the failure to

1 maintain the records for two years violates the NVRA’s Public Disclosure Provision. (*Id.* ¶¶
 2 33–41). The Foundation seeks declaratory and injunctive relief compelling the Secretary to
 3 disclose the requested records and to comply with the NVRA’s Public Disclosure
 4 Requirement on an ongoing basis. (*Id.* ¶¶ 74).

5 The Secretary moved to dismiss on September 19, 2025, arguing that the Foundation
 6 lacks standing because it purportedly has not suffered a concrete and particularized injury
 7 and that disclosure is somehow precluded by federal LADMF regulations. (Doc. 15 at 4–
 8 10). The Foundation now opposes that Motion.

9 **LEGAL STANDARD**

10 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the
 11 Court’s subject-matter jurisdiction, including whether a plaintiff has Article III standing. To
 12 establish standing, a plaintiff must allege (1) an injury in fact that is concrete and
 13 particularized, (2) a causal connection between the injury and the secretary’s conduct, and
 14 (3) redressability by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61
 15 (1992). The Court accepts the complaint’s allegations as true and construes them in the light
 16 most favorable to the plaintiff. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

17 A motion under Rule 12(b)(6) tests whether the complaint states a plausible claim
 18 for relief. The Court must accept all well-pleaded facts as true and draw all reasonable
 19 inferences in the plaintiff’s favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Dismissal is
 20 proper only when the complaint lacks “enough facts to state a claim to relief that is plausible
 21 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

22 **LEGAL ARGUMENT**

23 **I. Plaintiff Have Standing Under Article III.**

24 The Secretary argues that the Foundation lacks standing because it has not suffered
 25 a concrete and particularized injury. That argument misstates the law and ignores Supreme
 26 Court precedent instructing that that the denial of records required to be disclosed by statute

1 constitutes a concrete and particularized injury. The Complaint satisfies all three elements
2 of standing—injury in fact, traceability, and redressability.

3 **A. Denial of NVRA Records Constitutes a Concrete Informational**
4 **Injury.**

5 The controlling standing framework originates with the federal Freedom of
6 Information Act (“FOIA”) jurisprudence. Over thirty-six years ago, the Supreme Court
7 confirmed that its “decisions interpreting [FOIA] have never suggested that those requesting
8 information under it need show more than that they sought and were denied specific agency
9 records.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 449 (1989) (collecting cases).
10 “Anyone whose request for specific information has been denied has standing to bring an
11 action; the requester’s circumstances—why he wants the information, what he plans to do
12 with it, what harm he suffered from the failure to disclose—are irrelevant to his standing.”
13 *Zivotofsky v. Sec’y of State*, 444 F.3d 614, 617 (D.C. Cir. 2006) (citing *Pub. Citizen*, 491
14 U.S. at 449).

15 In *Pub. Citizen*, 491 U.S. at 446–50, the Supreme Court held that FOIA’s standing
16 framework applies to the Federal Advisory Committee Act (“FACA”)—a law that, like the
17 NVRA, contains a public disclosure requirement. Reciting the standing requirements in
18 FOIA cases, the Supreme Court explained that “[t]here is no reason for a different rule here.”
19 *Id.* at 449. “As when an agency denies requests for information under [FOIA], refusal to
20 permit appellants to scrutinize the ABA Committee’s activities to the extent FACA allows
21 constitutes a sufficiently distinct injury to provide standing to sue.” *Id.*

22 In *FEC v. Akins*, the Supreme Court also applied FOIA’s standing framework to the
23 Federal Election Campaign Act of 1971 (“FECA”)—a law that also contains a public
24 disclosure requirement. 524 U.S. at 24–25. Citing *Pub. Citizen*, the Supreme Court
25 explained, “[T]his Court has previously held that a plaintiff suffers an ‘injury in fact’ when
26 the plaintiff fails to obtain information which must be publicly disclosed pursuant to a

statute.” *Id.* at 21 (citing *Pub. Citizen*, 491 U.S. at 449). Applying that standard to the case before it, the Court continued, “[t]he ‘injury in fact’ that respondents have suffered consists of their inability to obtain information ... that, on respondents’ view of the law, the statute requires that [the subject of the FECA complaint] make public.” *Id.* The *Akins* Court also cited *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), a Fair Housing Act case, in which the Supreme Court applied the same standard, concluding that the “deprivation of information about housing availability constitutes ‘specific injury’ permitting standing.” *See Akins*, 524 U.S. at 21.

Relying on these Supreme Court decisions, lower courts have applied FOIA’s simple standing framework to the NVRA’s Public Disclosure Provision, 52 U.S.C. § 20507(i)(1). For example, the Eastern District of Virginia explained that “[f]or a plaintiff to sufficiently allege an informational injury, it must first allege that the statute confers upon it an individual right to information, and then that the defendant caused a concrete injury to the plaintiff in violation of that right.” *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 702 (E.D. Va. 2010). Because “the NVRA provides a public right to information,” and there is “no dispute that the plaintiff has been unable to obtain the [r]equested [r]ecords,” “the plaintiff’s alleged informational injury is sufficient to survive a motion to dismiss for lack of standing.” *Id.* at 703-04; *see also, Pub. Int. Legal Found. v. Bennett*, No. H-18-0981, 2019 U.S. Dist. LEXIS 39723, at *8-10 (S.D. Tex., Feb. 6, 2019) (denying motion to dismiss), adopted by *Pub. Int. Legal Found., Inc. v. Bennett*, No. 4:18-CV-00981, 2019 U.S. Dist. LEXIS 38686 (S.D. Tex., Mar. 11, 2019); *Jud. Watch, Inc. v. King*, 993 F.Supp.2d 919, 923 (S.D. Ind. 2012) (citing *Akins*, 524 U.S. at 24-25).

The Complaint alleges the type of injury present in *Akins* and *Pub. Citizen*: the denial of public records. The Foundation requested access to specific records that the NVRA requires to be publicly disclosed, ERIC Retraction Reports used to correct inaccurate death data on Arizona’s voter rolls. (Doc. 1 ¶¶ 33–41). The Secretary refused, claiming that other

1 federal regulations prevent disclosure. (*Id.*) As a result, the Foundation is being denied
 2 records the NVRA makes public. That denial constitutes a concrete informational injury
 3 sufficient for standing.

4 **B. The Foundation Plausibly Alleges Additional Adverse Consequences**
 5 **Caused by the Informational Injury.**

6 Even if the Foundation must allege additional consequences stemming from its
 7 informational injury, it has done so. The Secretary’s argument to the contrary ignores the
 8 Complaint’s allegations and attempts to recast the Foundation’s injury as mere
 9 “frustrat[ion].” (Doc. 15 at 7.) The Foundation’s allegations easily satisfy the standard
 10 recognized because it identifies concrete, particularized adverse effects directly caused by
 11 the Secretary’s refusal to disclose information that the NVRA requires to be public.

12 *First*, the Secretary’s actions are impairing the Foundation’s ability to study and
 13 analyze Arizona’s voter list maintenance programs and activities. (Doc. 1 ¶¶ 52–56). The
 14 Foundation’s mission is to promote transparency and compliance with federal election law
 15 through research and public education. The Secretary’s refusal to provide the requested
 16 ERIC Retraction Reports constitutes a “refusal to permit [the Foundation] to scrutinize [the
 17 Secretary’s] activities to the extent the [NVRA] allows.” *See Pub. Citizen*, 491 U.S. at 449.
 18 The Foundation cannot carry out its statutory right to monitor whether Arizona’s list-
 19 maintenance programs are effective and lawful.

20 *Second*, the Secretary’s actions are impairing the Foundation’s ability to assess
 21 Arizona’s enforcement of state and federal voter eligibility requirements. (Doc. 1 ¶¶ 52–
 22 56). The Foundation’s request sought records reflecting how the State identifies and corrects
 23 inaccurate or obsolete voter registrations, including those of deceased registrants. (*Id.* ¶¶
 24 33–41). Without access to the requested data, the Foundation cannot determine whether
 25 Arizona is fulfilling its NVRA obligations to “make [] a reasonable effort to remove the
 26 names of ineligible voters.” 52 U.S.C. § 20507(a)(4).

1 *Third*, the Secretary’s refusal to disclose the ERIC Retraction Reports impedes the
 2 Foundation’s ability to assess Arizona’s compliance with voter list maintenance obligations
 3 and report its findings to the public. (Doc. 1 ¶¶ 51-56). The Foundation regularly publishes
 4 research reports and educational materials that inform voters, policymakers, and election
 5 officials about states’ adherence to federal election laws. (*Id.*). Absent access to Arizona’s
 6 records, the Foundation cannot evaluate the State’s list maintenance performance or
 7 disseminate accurate information to the public, a goal that Congress specifically envisioned
 8 when it passed the NVRA.

9 *Fourth*, the Secretary’s actions hinder the Foundation’s ability to propose “best
 10 practices and solutions that will assist Arizona in carrying out its voter list maintenance
 11 programs and activities and help ensure Arizona’s voter roll is accurate and current”. (*Id.* ¶¶
 12 52). The Complaint specifically alleges that, where appropriate, the Foundation uses its
 13 findings to encourage corrective action or to initiate enforcement proceedings to ensure
 14 compliance with the NVRA. (*Id.*) The Secretary’s ongoing refusal to provide the requested
 15 records deprives the Foundation of the factual basis necessary to fulfill that watchdog
 16 function.

17 *Finally*, the Foundation’s allegations concerning its intended uses of the information
 18 and the impairment of its mission are presumed true at this stage. *Leite v. Crane Co.*, 749
 19 F.3d 1117, 1121 (9th Cir. 2014). The Secretary’s claim that the Foundation has not alleged
 20 “real downstream consequences” is a factual question that is contradicted by the text of the
 21 Complaint, as well as the NVRA’s explicit transparency purpose and Supreme Court
 22 decisions recognizing informational injuries as concrete harms.

23 **C. The Injury is Traceable and Redressable.**

24 The Foundation’s injury is fairly traceable to the Secretary’s conduct. The Secretary
 25 of State is Arizona’s chief election official and the officer responsible for implementing the
 26 NVRA. 52 U.S.C. § 20509; A.R.S. § 16.142(A)(1). The Secretary’s Office denied the

Foundation's request and refused to provide the requested records. (Doc. 1 ¶¶ 33–41). Even if it were later shown that the Secretary delegates storage or handling of ERIC records to other officials, it is his refusal to disclose them that causes the injury. The NVRA imposes the duty to make these records available on "each State," and the Secretary is the proper defendant to enforce that duty. Moreover, the Complaint alleges that the Secretary maintains and has access to ERIC Retraction Reports.

An order compelling the Secretary to produce the requested records would fully redress the Foundation's injury.

Here, the relief the Foundation requests, a declaration that the Secretary violated Section 8(i) and an order requiring production of the ERIC Retraction Reports, would eliminate the informational harm by providing the records Congress made public. That is sufficient for standing under *Akins* and *Pub. Citizen*.

II. Plaintiff States a Claim Under NVRA § 8(i) and the Secretary's Reliance on 15 C.F.R. Part 1110 Fails as a Matter of Fact and Law.

The Secretary argues that Arizona's disclosure obligations under the Public Disclosure Provision of the NVRA are overridden by federal regulations governing access to the LADMF, issued under the Bipartisan Budget Act of 2013. 15 C.F.R. Part 1110. According to the Secretary, the ERIC Retraction Reports sought by Plaintiff include data derived from the LADMF and are therefore shielded from public inspection.

That position misconstrues both the scope of the LADMF regulations and the breadth of the NVRA's transparency mandate. Federal courts in Alaska, Colorado, and the District of Columbia have recently denied motions to dismiss claims for ERIC Reports brought under the NVRA's Public Disclosure Provision. *See, e.g., Pub. Interest Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1016 (D. Alaska May 17, 2023); *Pub. Int. Legal Found., Inc. v. Griswold*, Civil Action No. 21-cv-03384-PAB-MEH, 2023 WL 6376706 (D. Colo. Sep. 29, 2023); *Pub. Interest Legal Foundation v. Evans*, 1:21-cv-03180-ACR (order

denying motion to dismiss; entered Dec. 4, 2023). Each of these courts found that the Foundation stated a plausible claim for relief under the NVRA with respect to disclosure of ERIC Reports.

A. The ERIC Retraction Reports do not contain LADMF data because they list people who are not dead.

The Secretary’s argument that ERIC Retraction Reports contain LADMF death information is incorrect. Retraction Reports list people ERIC previously flagged as “deceased” but later determined were not dead. ERIC Retraction Reports therefore do not confirm a person’s death; they confirm the opposite. That fact alone is fatal to the Secretary’s Motion.

The LADMF regulations at issue govern access to federal death data. They regulate the use, dissemination, and re-dissemination of “death information”—defined as a decedent’s name, Social Security number, date of birth, and date of death—obtained from the LADMF. 15 C.F.R. § 1110.2.

But ERIC Retraction Reports do not contain “death information” at all. They do not confirm that any person listed is deceased. They do not include a Social Security number, date of birth, or date of death. Instead, they are remedial records documenting erroneous non-federal matches. As the Complaint alleges, ERIC Retraction Reports are used by the Secretary to correct, not initiate, list-maintenance actions. (Doc. 1 ¶¶ 33–41).

If ERIC determines a registrant is not dead, then no “death information” exists for that individual within the meaning of 15 C.F.R. § 1110.2. Without “death information,” the LADMF regulations do not apply. The Secretary’s Motion therefore fails at its starting point.

What’s more, this is precisely the type of detail-driven factual dispute that cannot be resolved on a Rule 12(b)(6) motion. Because the Complaint alleges—and ERIC confirms, *see* Exhibit A—that ERIC Retraction Reports do not contain LADMF death data, the Court must accept that allegation as true at this stage.

B. ERIC Retraction Reports contain numerous data fields, only some of which overlap with the limited data protected by the LADMF.

The Foundation does not seek access to the LADMF itself or to any records containing personally identifiable information from that federal database. The request is limited to Arizona’s ERIC Retraction Reports, records primarily created from State registration records, which are used to carry out Arizona’s NVRA obligation to ensure accurate voter registration lists. 52 U.S.C. § 20507(a)(4), (i)(1). These reports contain no Social Security numbers and no sensitive financial or medical data. They are derived from State election records, not federal death files.

The term “Death Master File” is a defined term. It means “information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security.” 42 U.S.C. § 1306c(d). Even if these four data points are confidential when repeated in an ERIC Report, dismissal is not warranted because ERIC Reports contain additional data points outside the definition of LADMF.

ERIC Retraction Reports always include the state-assigned voter ID number, one of the most important and actionable fields for list-maintenance work. But the voter ID number is created by the State, maintained by the State, transmitted to ERIC by the State, and not contained in federal LADMF files.

Because the voter ID number is independent, state-created data, and not within the scope of LADMF data, the LADMF regulations cannot shield it from disclosure. The same would be true of numerous other data fields.

This distinction was central in *Dahlstrom*. There, the court recognized that even if ERIC used the LADMF as one input, that did not mean the resulting reports were categorically exempt from the NVRA. *Dahlstrom*, 673 F. Supp. At 1016. The only material subject to the LADMF’s confidentiality rules is the narrowly defined set of LADMF-derived

1 personal identifiers, and even those could be redacted. *Id.* Most importantly, whether any
 2 data in the ERIC Retraction Reports falls within the LADMF's protection is a factual
 3 question that cannot be resolved at this stage.

4 **C. Information in ERIC Retraction Reports Is Independently Obtained**
 5 **and Not Subject to LADMF Restrictions.**

6 Additionally, the NVRA does not conflict with the LADMF in this context: ERIC's
 7 Deceased Retraction Reports do not contain LADMF-protected information. Federal
 8 regulations make clear that LADMF restrictions apply only to information obtained from
 9 the LADMF, not to identical data acquired independently. The regulation provides:

10 As used in this part, Limited Access DMF **does not include** an individual
 11 element of information (name, social security number, date of birth, or date of
 12 death) in the possession of a Person, whether or not certified, but obtained by
 13 such Person through a source independent of the Limited Access DMF. If a
 14 Person obtains, or a third party subsequently provides to such Person, death
 15 information (i.e., the name, social security account number, date of birth, or
 16 date of death) independently, such information in the possession of such
 17 Person is not part of the Limited Access DMF or subject to this part.

18 15 C.F.R. § 1110.2 (emphasis added).

19 Put differently, when the same piece of information exists both in the LADMF and
 20 in another independent data source, the independent version is not subject to LADMF
 21 confidentiality rules. For example, a registrant's name appears both in LADMF files and in
 22 state voter registration records; the name contained in the voter file is not confidential simply
 23 because LADMF includes it as well. This distinction matters because ERIC receives
 24 extensive voter-registration information—including names, addresses, dates of birth, and
 25 other list-maintenance data directly from Arizona and other states regularly. ERIC then
 26 compares this independently supplied state data to LADMF records and identifies which
 registered voters were likely incorrectly deceased. The resulting ERIC Retraction Reports
 reflect information Arizona itself provided, and the personally identifying details contained
 in those reports are therefore not covered by LADMF disclosure restrictions.

1 Even if ERIC's reports rely partly on LADMF data, the State's copies are not the
 2 LADMF itself. They are state-created records concerning the implementation of list-
 3 maintenance activities. Arizona's Retraction Reports fit that description precisely. They
 4 document the State's execution of § 8(a)(4)'s mandate to remove ineligible voters and are
 5 therefore paradigmatic NVRA records.

6 In any event, determining whether any specific personally identifying information in
 7 the ERIC Deceased Reports is LADMF-derived is a factual matter that can only be resolved
 8 through discovery and, if necessary, in camera review.

9 **D. What data fields are protected is a factual question not appropriately**
 10 **resolved at the motion to dismiss stage.**

11 To be sure, the Secretary's LADMF theory rests on a factual proposition—that
 12 specific fields in the ERIC Retraction Reports are derived from LADMF files. But whether
 13 any particular element was sourced from the LADMF or from Arizona's voter registration
 14 database is a quintessential factual question.

15 At least three federal courts have reached the same conclusion. Federal courts in
 16 Alaska, Colorado, and the District of Columbia have all recently declined to dismiss NVRA
 17 Public Disclosure Provision claims seeking access to ERIC Reports. *See Pub. Interest Legal*
 18 *Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1016 (D. Alaska May 17, 2023); *Griswold*,
 19 2023 WL 6376706, *Evans*, No. 1:21-cv-03180-ACR (D.D.C. Dec. 4, 2023) (order denying
 20 motion to dismiss). Each court concluded that the Foundation adequately alleged a viable
 21 NVRA claim regarding access to ERIC Reports.

22 The Secretary's motion selectively quotes *Dahlstrom* to imply that the court endorsed
 23 a categorical bar on disclosing ERIC records. The full opinion actually shows the opposite.

24 The court expressly rejected Alaska's broad nondisclosure theory, allowed the case
 25 to proceed, and held that any apparent conflict between the NVRA and the LADMF "likely
 26

1 can be harmonized” through appropriate redactions, if necessary. *Dahlstrom*, 673 F. Supp.
2 3d at 1016. Far from supporting the Secretary, *Dahlstrom* affirms the Foundation’s position.

3 ERIC-generated list maintenance data needs to be subject to § 8(i) and whatever
4 LADMF regulations exist do not alter that result. The Secretary’s reading not only
5 mischaracterizes *Dahlstrom* but also conflicts with its clear holding—the denial of Alaska’s
6 motion to dismiss.

7 Adopting the Secretary’s theory would effectively gut the NVRA. It would also hide
8 the Secretary’s mistakes. If States could withhold records simply because they believe an
9 outside dataset informed a list-maintenance decision, transparency would disappear.
10 Congress enacted § 8(i) precisely to prevent such opacity. The Court should therefore apply
11 the actual holding of *Dahlstrom*, not the selective snippets offered by the Secretary, and
12 deny the motion to dismiss.

13 Indeed, *Dahlstrom* could not be clearer. Addressing LADMF-derived information
14 directly, the court stated:

15 “The Court finds that, to the extent ERIC used the [LADMF] to create the data that
16 is at issue in this case, the Bipartisan Budget Act of 2013 prevents disclosure of that
17 data for a three-year period beginning after the death of an individual. Still, any
18 potential conflict between the NVRA and the Bipartisan Budget Act of 2013 likely
19 can be harmonized by requiring the exclusion of sensitive personal information in
20 the Death Master File from the scope of the NVRA’s disclosure provision. ... The
21 Court will allow the parties to proceed with discovery, subject to any appropriate
22 redactions.”

23 *Id.* at 1016.

24 Thus, *Dahlstrom* did not hold that ERIC records are exempt from disclosure. It held
25 that if a narrow subset of fields contains LADMF-specific personal information, those fields
26 may be redacted while the remainder must be produced. *Id.* The court denied Alaska’s
motion to dismiss and ordered the litigation to continue.

That harmonizing approach is completely consistent with the NVRA and
fundamental principles of statutory interpretation. *See Morton v. Mancari*, 417 U.S. 535,

1 551 (1974) (“Courts are not at liberty to pick and choose among congressional enactments,
2 and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly
3 expressed congressional intention to the contrary, to regard each as effective.”). This Court
4 can do the same here and require any necessary redactions while preserving the NVRA’s
5 transparency mandate.

6 Moreover, even if ERIC’s Retraction Reports contained limited LADMF-based
7 fields (and there are only four), the Foundation is not barred from receiving them. The
8 Department of Commerce may certify recipients for “legitimate fraud prevention interests”
9 and for “legitimate business purpose pursuant to a law, governmental rule, regulation, or
10 fiduciary duty.” 42 U.S.C. § 1306c(b)(2)(A). The Foundation’s mission, ensuring election
11 integrity and compliance with federal law, plainly qualifies as a legitimate business purpose.
12 In any event, whether certification is necessary is a factual question not suitable for
13 resolution on a Rule 12(b)(6) motion.

14 At this stage, the Court must accept Plaintiff’s well-pleaded allegations that Arizona
15 has withheld records covered by § 8(i). Because those allegations state a plausible violation
16 of the NVRA, dismissal is improper.

17 CONCLUSION

18 Defendant’s Motion to Dismiss offers no basis for departing from the statute’s plain
19 text or the uniform body of precedent applying it. The denial of information that federal law
20 requires to be public is a concrete and particularized injury, nor does the LADMF preclude
21 disclosure. For these reasons, this Court should deny Defendant’s Motion to Dismiss in its
22 entirety.

23 ...

24 ...

25 ...

26 ...

1 RESPECTFULLY SUBMITTED this 19th day of November, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2025, I filed the forgoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Brennan A.R. Bowen