

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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<b>PUBLIC INTEREST LEGAL</b>	:	
<b>FOUNDATION,</b>	:	
	:	<b>Case No. 1:21-cv-00929-JMB-SJB</b>
<b>Plaintiff,</b>	:	
	:	<b>Hon. Jane M. Beckering</b>
<b>v.</b>	:	
	:	
<b>JOCELYN BENSON,</b>	:	
	:	
<b>Defendant.</b>	:	
<hr/>	:	

**NON-PARTY ELECTRONIC REGISTRATION INFORMATION CENTER, INC.’S  
BRIEF IN OPPOSITION TO PLAINTIFF’S APPEAL  
OF ORDER GRANTING MOTION TO QUASH**

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## **I. INTRODUCTION**

In granting non-party the Electronic Registration Information Center's ("ERIC's") motion to quash the Subpoena served by plaintiff Public Interest Legal Foundation ("PILF"), Magistrate Judge Berens did not merely find that PILF's arguments lacked merit. The Magistrate Judge pointedly expressed concern that PILF's Subpoena was so "patently overbroad" as "to be potentially an abuse of [] process." PageID.1956-1957. This concern was well founded given the overwhelming, uncontroverted evidence that PILF, in serving the Subpoena, sought to advance an agenda unrelated to the merits of this lawsuit. Nevertheless, PILF has doubled down on its gambit, filing this appeal.

But PILF fails to identify any basis for disturbing the Magistrate Judge's carefully considered discovery ruling, which was issued after reviewing extensive briefing, evaluating a record some "two and a half inches" thick, PageID.1953, and hearing oral argument. PILF misapprehends the applicable standard of review, misstates key facts (ignoring the Magistrate Judge's well-supported factual findings), and paints a distorted, incomplete picture of the Magistrate Judge's thorough analysis. Magistrate Judge Berens acted well within her substantial discretion, and her Order should be affirmed.

## **II. FACTS AND PROCEDURAL HISTORY**

### **A. ERIC and Its Reports**

ERIC is a non-profit, non-partisan membership organization governed by its members, which comprise more than half of the 50 states (including Michigan) and the District of Columbia. Page ID 882-883. Its mission is to provide its members with information that can help them maintain more accurate voter rolls, reach out to potentially eligible but unregistered voters, and detect possible illegal voting. PageID.882, 885. ERIC provides its member jurisdictions with various reports at their request. There are four "list maintenance reports," including a

“[d]eceased [r]eport” that lists the names of registered voters who appear to have died.

PageID.885. ERIC prepares the deceased reports through a sophisticated data-matching analysis that compares voter-registration data securely obtained from a particular member jurisdiction with data from the Social Security Administration’s Limited Access Death Master File (“LADMF”). PageID.887-888. ERIC’s staff—only three full-time employees—and budget are commensurate with these limited operations. PageID.884.

Although ERIC has provided list-maintenance reports since 2012, and Section 8 of the National Voter Registration Act (“NVRA”)—which contains the statutory provisions under which PILF filed this action against Michigan—has existed since 1993, *see* 52 U.S.C. § 20507, ERIC had never before been served with a subpoena nor been a party to litigation. PageID.896.

**B. PILF’s Targeting of ERIC**

For many years, ERIC was not an object of political attention, let alone controversy. Recently, however, ERIC has become a target of disinformation campaigns that, following the 2020 election, have sought to undermine trust in many routine aspects of election administration. These campaigns have put ERIC in the crosshairs of some who have baselessly “claimed that [ERIC] is actually a left-wing vehicle that shares sensitive voter data with liberal groups ... and enables the very fraud it is intended to stamp out.” PageID.1047-1050. Ignoring that ERIC is exclusively member-funded, the same voices have labeled it a “Soros-backed operation.” *Id.* Although ERIC has worked to dispel these myths, PageID.895, several states recently announced their withdrawal from ERIC, citing some of these unfounded concerns, *id. See generally* PageID.1052-1074.

PILF has actively encouraged the skeptics. In remarks quoted on a website at the forefront of the disinformation campaign against ERIC, PILF’s President, J. Christian Adams, asserted that ERIC is a “smoke screen”; he baselessly speculated that ERIC may “manipulat[e]

the process” and “interfac[e] all [its] data with ... [a] massive Democrat database organization.” PageID.1078-1079. Adams also recently mused about the prospect of “an effective replacement” of ERIC. PageID.1092. Ken Blackwell, PILF’s Treasurer, PageID.1100, has encouraged ERIC members to withdraw from the organization, citing, without evidence, concerns about “compromised data” and “partisan funding,” PageID.1106. Cleta Mitchell, Chair of PILF’s Board of Directors, PageID.1099, has called ERIC a “very insidious organization” and also called on members to withdraw. PageID.866.

PILF has also been engaged in a years-long campaign to obtain ERIC’s list-maintenance reports. In recent years, PILF sent letters to at least 16 of ERIC’s members, demanding that they produce the deceased reports ERIC provided them. PageID.895, 961-989. When they refused—citing, *inter alia*, federal law protecting disclosure of LADM data—PILF sued four of the members, contending that the reports were public records under the NVRA. PageID.897, 961-1029, 1112-1221.

Nor have PILF’s efforts been restricted to ERIC’s reports. In May 2022, PILF purported to serve a demand on ERIC under Florida’s public-records law. PageID.1031-1032. Several of the requests in the Florida demand overlap with those of the Subpoena here. *Compare id.* (Florida public records request) *with* PageID.1370 (Subpoena, Matters for Examination Nos. 3-4, 6). PILF did not pursue the effort after ERIC pointed out that it is not subject to Florida’s public-records law.

**C. PILF’s Lawsuit Against Michigan and Its Subpoenas to ERIC**

PILF filed the underlying NVRA litigation against Michigan in late 2021. The Complaint argues that Michigan’s program for removing deceased registrants from its voter rolls is unreasonable, in violation of the NVRA. PageID.1223-1242 (Complaint). PILF primarily relies for this conclusion on its allegation that PILF has commissioned a third-party report purportedly

identifying over 25,000 deceased registrants on Michigan's voter rolls, and that Michigan has taken no action to rectify this situation. PageID.1230-1237.

As a form of merits relief, the Complaint seeks access under the NVRA's public-records provision to, *inter alia*, the deceased reports that ERIC has provided to Michigan. PageID.1233, 1241. Rather than awaiting adjudication of that claim, however, PILF served a discovery request on Michigan asking it to produce the deceased reports that Michigan has received from ERIC. PageID.1305 (Request for Production No. 8). Michigan subsequently produced all of the ERIC deceased reports in its possession except for those reports created within the last three years—objecting, as to the most recent reports, that, *inter alia*, those reports were protected from disclosure under federal law because they contain information from the LADMF.<sup>1</sup> PageID.1314 (Michigan's Response to Request for Production No. 8), PageID.1962.

On March 3, 2023, following Michigan's objection to PILF's request, PILF served ERIC with a non-party document and deposition subpoena. PageID.1337-1344. The subpoena principally sought documents and deposition testimony relating to ERIC's communications with Michigan, including the deceased reports. *Id.* ERIC served written objections to the document requests under Rule 45(d)(2)(B). PageID.1346-1354. Among other specified objections, including ones based on statutory protection of LADMF data and lack of relevance, ERIC noted that almost all of the documents and information could be obtained from Michigan, a party to the lawsuit. *Id.*

PILF responded to these objections by withdrawing its initial subpoena and replacing it with one *significantly broader*. PageID.1364-1365, 1367-1374. The second subpoena (the "Subpoena" at issue here) expanded—and made more nebulous and less particularized—the

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<sup>1</sup> See 42 U.S.C. § 1306c; 15 C.F.R. § 1110.102.



document requests. PageID.1376-1377 (comparison of requests in two subpoenas). The Subpoena also added a host of new deposition topics “regarding ERIC’s origin, funding, purposes, bylaws, membership agreement, board, research advisory board, privacy and technology board, vendors, contractors, partners, et cetera.” PageID.1956; *see* PageID.1370, 1376.

On April 14, 2023, ERIC served timely written objections to the Subpoena’s document requests. PageID.1395-1404. On April 18, 2023, ERIC moved to quash the Subpoena.<sup>2</sup> On June 14, 2023, after briefing and oral argument, Magistrate Judge Berens issued an order granting ERIC’s motion.

### III. STANDARD OF REVIEW

“[A] district court may reconsider a magistrate judge’s decision on a non-dispositive [matter]”—including an order quashing a subpoena—“only if it is clearly erroneous or contrary to law.” *Bisig v. Time Warner Cable, Inc.*, 940 F.3d 205, 219-22 (6th Cir. 2019) (citing 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a)) (internal quotation marks omitted); *see Chesher v. Allen*, 122 F. App’x 184, 185-88 (6th Cir. 2005). “This standard requires the District Court to review findings of fact for clear error and to review matters of law de novo.” *Bisig*, 940 F.3d at 219 (citations omitted). A factual finding is clearly erroneous only when “the court, upon reviewing the record in its entirety, is left with the definite and firm conviction that a mistake has been committed.” *Seven Bros. Painting, Inc. v. Painters Dist. Council No. 22*, No. 09-12506, 2010 WL 3385313, at \*2 (E.D. Mich. Aug. 24, 2010).

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<sup>2</sup> PILF has never moved to overrule ERIC’s objections to the document requests. For that reason alone, PILF cannot obtain the documents sought. *See Castoro v. Planet Fin. Grp. LLC*, No. 18-1566, 2018 WL 11466784, at \*1 (M.D. Fla. Dec. 13, 2018); *Mobile Med. Int’l Corp. v. Advanced Mobile Hosp. Sys., Inc.*, No. 07-231, 2013 WL 6238631, at \*1 n.1 (D. Vt. Dec. 3, 2013).

“[A] court has broad discretion over discovery matters, ... and in deciding discovery disputes, a magistrate judge is entitled to that same broad discretion.” *Id.* Where the magistrate judge’s decision rests on determinations of relevance or “the weighing of benefit, burden, and proportionality inherent in routine discovery rulings,” this Court reviews for abuse of discretion. *Giuffre v. Dershowitz*, No. 19-3377, 2021 WL 6052116, at \*1 (S.D.N.Y. Dec. 21, 2021); *accord, e.g., O’Dell v. Hope Network W. Mich./Mich. Educ. Corps*, No. 20-11192, 2022 WL 866394, at \*2-4 (E.D. Mich. Mar. 23, 2022). An abuse of discretion exists only “when the reviewing court has a definite and firm conviction that the [court below] committed a clear error of judgment.” *Layton v. Gen. Motors Corp.*, 22 F. App’x 369, 370 (6th Cir. 2001). This is a “highly deferential standard of review,” and “a party seeking to overturn a discovery order bears a heavy burden.” *Offor v. Mercy Med. Ctr.*, No. 15-2219, 2018 WL 4100484, at \*1 (E.D.N.Y. Aug. 28, 2018). PILF falls well short of carrying that burden here.

#### IV. ARGUMENT

A. **As the Magistrate Judge Properly Held, the Subpoena Seeks Discovery That Is Irrelevant, Disproportionate to the Needs of the Underlying Case, and Unduly Burdensome to a Non-Party**

Magistrate Judge Berens properly quashed the Subpoena on the ground that it sought material that is neither “relevant to any party’s claim or defense” in the underlying action, nor “proportional to the needs of the case, considering ... whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). As the Magistrate Judge recognized, the Subpoena sought three categories of discovery from ERIC: (1) all communications and information exchanged between ERIC and Michigan, including principally

the deceased reports<sup>3</sup>; (2) the processes and methods used by ERIC in generating its reports<sup>4</sup>; and (3) unbounded information about virtually anything touching ERIC, including its relationships, past and present board members, structure, and funding.<sup>5</sup> Conspicuously, however, PILF's appeal does not quote or refer to any of the specific discovery requests in the Subpoena, let alone attempt to defend each request.

The last category of requests—which comprises the majority of the Subpoena's deposition topics—has no colorable relevance to any claim or defense in the underlying case. As Magistrate Judge Berens held, these requests are “patently overbroad” and at best “a fishing expedition.” PageID.1956-1957. Indeed, the Magistrate Judge recognized that these requests are “so far outside the core of this case” as to suggest “potentially an abuse of the process before this Court,” PageID.1957, noting that “it's difficult not to see this entire subpoena in light of that,” PageID.1956. Tellingly, PILF's appeal does not even acknowledge these requests, let alone attempt to defend them.

As to the first category, the content of deceased reports ERIC has provided Michigan, PILF admits that Michigan has already given PILF all such reports that are more than three years old. As noted above, ERIC and Michigan objected to PILF's demand for production of these reports to the extent they list individuals who have died within the last three years, as federal law protects such information from disclosure. 42 U.S.C. § 1306c; 15 C.F.R. § 1110.102; *see* PageID.876-878; *see also* *PILF v. Boockvar*, 431 F. Supp. 3d 553, 561-64 (M.D. Pa. 2019)

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<sup>3</sup> PageID.1374 (Requests for Production Nos. 1 & 2); PageID.1370 (Matters for Examination Nos. 9-11).

<sup>4</sup> PageID.1374 (Requests for Production Nos. 3 & 4); PageID.1370 (Matter for Examination No. 6).

<sup>5</sup> PageID.1370 (Matters for Examination Nos. 1-5, 7 & 8).

(PILF cannot invoke NVRA to obtain information protected by a data-privacy statute). ERIC also pointed out that, even if this information were discoverable, PILF would have to seek it from Michigan, a party to the lawsuit, rather than seeking to circumvent Michigan's objections by subpoenaing a non-party. *See Baumer v. Schmidt*, 423 F. Supp. 3d 393, 408-09 (E.D. Mich. 2019) (citing cases). These issues, which PILF's appeal fails to address, independently bar the Subpoena's requests.

Moreover, Magistrate Judge Berens correctly deemed these reports to be irrelevant, or at least disproportionate to the needs of the case. The issue in the underlying lawsuit is whether Michigan has made "a reasonable effort" to remove the names of deceased registrants from its voter rolls, as required by the NVRA. 52 U.S.C. § 20507(a)(4)(A). PILF's Complaint is premised on allegations that over 25,000 deceased registrants remain on Michigan's voter rolls, and that Michigan took no action in response to learning this information. The content of ERIC's deceased reports is plainly not probative of the veracity of these allegations. More fundamentally, the proper focus of the underlying lawsuit is not on the *specific content* of the data that Michigan receives but on what Michigan *does* with the information available to it. As Magistrate Judge Berens noted, even if PILF could prove its allegation "that there are 25,000 deceased individuals on Michigan's voter rolls, ... the question then is whether Michigan should have done more to identify those individuals, not whether any particular database is insufficient." PageID.1955. Other courts faced with NVRA lawsuits have similarly examined the actions and procedures of specific states, rather than the specific content of data. *See, e.g., United States v. Missouri*, 535 F.3d 844, 849 (8th Cir. 2008) ("Under the plain language of the statute, states must *take specific actions* ...") (emphasis added).

The second category of discovery requests listed in the Subpoena—ERIC’s processes and methods for generating deceased reports—is one step further removed from the underlying question: whether Michigan’s voter list maintenance program is reasonable. Here, Magistrate Judge Berens correctly deemed these materials to be irrelevant, and certainly disproportionate and unduly burdensome, without some threshold “demonstration that the information that ERIC was providing was not reliable and should not be relied on by Michigan.” PageID.1978. This conclusion, again, was well supported. ERIC’s reports play “only a small part” in Michigan’s list maintenance program, PageID.1955, and are not Michigan’s primary source of information about potentially deceased registrants. Yet PILF has not sought discovery regarding the “processes and methods” employed by any of the other third-party sources of information on which Michigan relies; it has apparently targeted only ERIC, notwithstanding that PILF has no evidence of any deficiency in ERIC’s processes.<sup>6</sup> See PageID.1955. Indeed, accepting PILF’s argument for discovery would set a dangerous precedent. According to PILF’s theory, merely by filing an NVRA claim, a plaintiff becomes entitled to plenary discovery into *any* third-party source of information that a state uses to identify potentially ineligible registrants—regardless of whether any evidence suggests that information is unreliable. Such a rule would be inimical to principles of proportionality and the well-established imperative to avoid burdening non-parties.

Apart from these dispositive issues, PILF has failed to identify any information about ERIC’s “processes and methods” that it does not already have. ERIC has already disclosed

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<sup>6</sup> Indeed, far from presenting any basis to *doubt* the reliability of ERIC’s data-matching “processes,” PILF recently agreed to *resolve* a similar NVRA claim it filed against Pennsylvania—a jurisdiction that did not use ERIC’s deceased reports to help identify deceased registrants—*based on Pennsylvania’s agreement to use information in ERIC’s deceased reports*. See Settlement Agreement and Release ¶¶ 7-10, *PILF v. Degraffenreid*, No. 20-1905 (M.D. Pa.), available at <https://publicinterestlegal.org/pilf-files/Settlement-Agreement-Executed-by-PILF-and-secretary.pdf>.

copious information about how its reports are created, both on its public website and in the 100-paragraph, 16-page Declaration filed by its Executive Director. PageID.881-896. It is difficult to see what information remains to discover other than the confidential and proprietary details of ERIC's data-matching technology (*e.g.*, ERIC's proprietary algorithm and customized settings), which (a) are not discoverable, *see* PageID.864-865, 878-879, and (b) PILF has expressly disclaimed seeking, *see* Page ID.1529.

Throughout months of litigation, PILF's only argument as to why ERIC's reports and "processes"—and all other discovery PILF sought from ERIC—are relevant to this case has been the baseless assertion that Michigan "outsourc[es] ... its list maintenance to ERIC," PageID.578, 582. PILF repeats this refrain throughout its appeal, asserting that "a sovereign [Michigan] [has] outsource[d] a sovereign function" to ERIC. PageID.1990. Indeed, PILF places all of its eggs in this single, factual basket, offering no other rationale as to why the requested discovery from ERIC is relevant.

But PILF is misstating the facts, as the Magistrate Judge recognized. Under Michigan law, it is state election officials, not ERIC, who are responsible for maintaining Michigan's voter rolls. *See, e.g.*, Mich. Comp. Laws §§ 168.609o, r, z, aa, dd. The record confirms that, far from outsourcing its list maintenance obligations to ERIC, Michigan primarily relies on information wholly independent of ERIC to identify and remove the names of deceased registrants from its voter rolls. Most notably, Michigan receives its own set of death records on a weekly basis from the Social Security Administration and the Department of Health and Human Services; Michigan's motor vehicle department ("MVD") database ingests these records, and where the information of a decedent matches that of an MVD record, the state cancels the MVD record and then automatically also cancels that person's voter registration. Additionally, members of the

public may submit information such as a death certificate of a relative, which would result in the cancellation of that person's voter registration. *See* PageID.1424-1426 (interrogatory response); *see generally* Page ID.1316-1335 (deposition testimony of Michigan election officials), PageID.871-872 (additional sources cited in ERIC's opening brief below).

Michigan also receives a deceased report from ERIC approximately once every two months that—based also on a comparison with the LADMF—identifies potentially deceased voters on Michigan's voter rolls. But Michigan does not rely on ERIC's reports as a substitute for its own voter list maintenance methods. Instead, Michigan uses these reports as but one tool to confirm that its methods have been successful. And in using the deceased reports as a cross-check, Michigan does not rely on them uncritically; after receiving a deceased report from ERIC, Michigan election officials frequently undertake an independent review of the persons named therein—including a comparison of the data in the ERIC report to the data in Michigan's voter record, as well as, where appropriate, a review of obituaries—in determining whether to cancel voter registrations. *See* PageID.1424-1426 (interrogatory response); *see also* PageID.1322-1326; PageID.1333-1335 (deposition testimony of Michigan election officials).

Based on this factual record, Magistrate Judge Berens correctly found that “there's rather a lengthy process that Michigan uses to determine whether someone on its voter rolls has died, and the information from the ERIC program is only a small part of that.” PageID.1955. PILF offers no reason to doubt these findings—and *certainly* no reason to deem them clearly erroneous.<sup>7</sup>

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<sup>7</sup> The record does not establish, as PILF contends, that ERIC reports are the only method that Michigan uses to maintain the voter registrations of people who do not have driver's licenses. *See* PageID.1979 (Magistrate Judge Berens finding that this factual question is “up for grabs at this point”). In any event, the number of voters in that category is small, as counsel for PILF conceded at oral argument, PageID.1960. Accordingly, PILF's argument would do nothing

On appeal, PILF does little more than double down on its earlier misstatements. For example, in order to exaggerate ERIC's role in Michigan's list maintenance program, PILF's brief selectively quotes from one of Michigan's interrogatory responses, reproducing the paragraph that discusses ERIC but omitting *more than a page of preceding exposition* that discusses Michigan's other list maintenance methods. PageID.1991 (quoting Michigan's Response to Interrogatory No. 1). Strikingly, PILF's brief below included the *exact same* selective quotation, PageID.1519, which ERIC corrected, PageID.1900. PILF cannot carry its heavy burden by rehashing its misguided arguments below.

PILF next incorrectly argues that Magistrate Judge Berens erred by placing the burden on PILF to demonstrate the relevance of the requested discovery from ERIC. The Magistrate Judge simply observed that she might have weighed the factors of relevance, burden, and proportionality differently had PILF made some showing that “the information that ERIC is giving [Michigan] is unreliable.” PageID.1978. Far from placing an inappropriate burden on PILF, this observation was a straightforward application of the rule that a subpoena should not be used for a fishing expedition. *See Superior Prod. P'ship v. Gordon Auto Body Parts Co., Ltd.*, 784 F.3d 311, 320-21 (6th Cir. 2015). PILF's approach here—speculating that certain discovery *might* bear on its claims, without providing any basis whatsoever to conclude it is likely to do so—is the hallmark of a fishing expedition. *See Schindewolf v. City of Brighton*, No. 14-12161, 2015 WL 13650762, at \*2 (E.D. Mich. Feb. 4, 2015).

PILF objects that it is impractical for it to identify “defects in ERIC's processes ... *before* discovery,” PageID.1990, but as noted above, Michigan has already produced to PILF all of the

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to undermine Magistrate Judge Berens' conclusion that ERIC's reports are only one of several sources of information used by Michigan's list maintenance program—and not the primary source of information about deceased registrants.



ERIC deceased reports in Michigan's possession except for those created within the last three years. PILF also has access to extensive information that ERIC has placed in the public record about how it produces its deceased reports. *See generally* PageID.885-895. In addition, PILF has deposed Michigan election officials, none of whom suggested, or provided any basis to infer, that ERIC's work is unreliable. It was thus entirely proper for the Magistrate Judge to consider PILF's inability to point to any evidence of a defect in ERIC's reports. To allow PILF to conduct *further* discovery into ERIC based on sheer speculation that it *might* uncover some as-yet unknown and unarticulated problem with ERIC's reports is, again, the definition of a fishing expedition.

Finally, PILF's arguments on appeal focus only on the issue of relevance. But under Fed. R. Civ. P. 26(b)(1), relevance is a necessary but not sufficient condition for discovery. *See Helena Agri-Enters., LLC v. Great Lakes Grain, LLC*, 988 F.3d 260, 273-74 (6th Cir. 2021). In quashing the subpoena, Magistrate Judge Berens properly considered not only relevance, but also proportionality and burden. PILF's document requests are broad and nebulous. PILF's deposition topics are even broader, making it onerous to prepare a Rule 30(b)(6) witness. Additionally, and even more concerning, there is the burden that would be imposed by the precedent PILF seeks to establish, whereby ERIC would be subject to similarly expansive discovery in every NVRA case filed against one of its members, to the same degree as if it were the defendant itself. The Magistrate Judge determined that, even if there were "potentially some relevancy" in certain of the Subpoena's requests, these requests would nevertheless be "unduly burdensome" to ERIC—a non-profit organization with limited resources and just three full-time employees—and not "proportional to the litigation." PageID.1978. PILF provides no basis whatsoever to overturn those findings, which this Court reviews for abuse of discretion, *Giuffre*, 2021 WL 6052116, at

\*1. Accordingly, even if PILF's arguments about relevance were correct (as they are not), they would provide no basis to overturn the decision below.

**B. The Subpoena's Gross Overbreadth Provides an Additional Basis to Affirm**

Even where some portion of the information sought might be relevant and proportional, courts routinely grant motions to quash if the subpoena as a whole is substantially overbroad. *See, e.g., Hendricks v. Total Quality Logistics, LLC*, 275 F.R.D. 251, 255-56 (S.D. Ohio 2011) (granting motion to quash where subpoenas were "too broad," even though certain requests were "not patently irrelevant"); *Bridgestone Americas, Inc. v. Int'l Bus. Mach. Corp.*, No. 13-1196, 2016 WL 11786198, at \*4-8 (M.D. Tenn. May 16, 2016) (quashing subpoenas as overly broad and unduly burdensome despite some "potential relevance and admissibility"). This holds particularly true where the target of the subpoena is a non-party. *See, e.g., Tolliver v. Abuelo's Int'l, LP*, No. 20-3790, 2021 WL 3188420, at \*2-3 (S.D. Ohio July 28, 2021) ("[C]oncern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs.").

This principle provides an independent basis to affirm the decision below. As Magistrate Judge Berens correctly found, the numerous deposition topics relating to "ERIC's origin, funding, purposes, bylaws, membership agreement, board, research advisory board, privacy and technology board, vendors, contractors, partners, et cetera" are "patently overbroad." PageID.1956-1957. The Magistrate Judge observed that these requests are "so far outside the core of this case" as to suggest "an abuse of the process before this Court," PageID.1957. She further noted that "*it's difficult not to see this entire subpoena in light of that,*" given "the other legal process that PILF has undertaken to get information from ERIC." PageID.1956 (emphasis added). Even if the Magistrate Judge had concluded (as she did not) that she could re-write the Subpoena to salvage some small portion that would be both relevant and proportional, she was

under no obligation to do so. Indeed, doing so would only encourage “patently overbroad,” “abus[ive]” subpoenas of the sort PILF served here. For this reason, too, the Subpoena was properly quashed.

**V. CONCLUSION**

For the foregoing reasons, this Court should affirm the Magistrate Judge’s Order.

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Dated: July 12, 2023

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Civil Rules 7.3(b) and 72.3(a), I hereby certify that the foregoing brief is 4,270 words, per the word count function in Microsoft Word 2016, and does not exceed the limit set forth in Local Civil Rule 7.3 of 4,300 words.

Dated: July 12, 2023

/s/ Robert A. Wiygul  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2023, I caused a copy of the foregoing to be served on all counsel of record by filing on CM/ECF.

Dated: July 12, 2023

/s/ Robert A. Wiygul  
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