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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PUBLIC INTEREST LEGAL FOUNDATION, INC.,

Plaintiff,

v.

TAHESHA WAY, in her official capacity as Secretary
of State for the State of New Jersey,

Defendant.

Civil Case No. _____

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Public Interest Legal Foundation, Inc. brings this action for declaratory and injunctive relief against Defendant for violations of the Public Disclosure Provision of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507(i)(1).

PARTY ADDRESSES

1. The street and post office address for Plaintiff Public Interest Legal Foundation is 32 E. Washington St., Suite 1675, Indianapolis, IN 46205. The street and post office address for Defendant Tahesha Way is 125 West State Street, Trenton, NJ 08625.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States. This Court also has jurisdiction under 52 U.S.C. § 20510(b), because the action seeks injunctive and declaratory relief under the NVRA.

3. This Court also has jurisdiction because Plaintiff complied with the NVRA's pre-litigation notice requirements and Defendant failed to cure her violation of law in the time the NVRA affords. *See* 52 U.S.C. § 20510(b)(1)-(2).

4. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1), because the Defendant resides in this district, and under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

5. The Public Interest Legal Foundation, Inc., ("Foundation") is a non-partisan, 501(c)(3) public interest organization incorporated and based in Indianapolis, Indiana. The Foundation promotes the integrity of elections nationwide through research, education, remedial programs, and litigation. The Foundation regularly utilizes the NVRA's Public Disclosure Provision and state and federal open records laws that require government records be made available to the public. Using records and data compiled through these open records laws, the Foundation analyzes the programs and activities of state and local election officials in order 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 produce and disseminate reports, articles, blog and social media posts, and newsletters in order to advance the public education aspect of its organizational mission.

6. Defendant Tahesha Way is the Secretary of State for the State of New Jersey, the chief election official of the state. N.J. Rev. Stat. § 52:16A-98(b). As New Jersey’s chief election official, Defendant Way is responsible for coordinating New Jersey’s responsibilities under the NVRA. 52 U.S.C. § 20509. Defendant Way is sued in her official capacity only.

BACKGROUND

The NVRA

7. Congress enacted the NVRA, *inter alia*, to “to protect the integrity of the electoral process” and “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(3)-(4).

8. The NVRA provides, in relevant part, “Each State shall maintain for at least 2 years and shall 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)(1) (hereafter, the “Public Disclosure Provision”).¹

9. The Public Disclosure Provision “embodies Congress’s conviction that Americans who are eligible under law to vote have every right to exercise their franchise, a right that must not be sacrificed to administrative chicanery, oversights, or inefficiencies.” *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 334-35 (4th Cir. 2012).

¹ The records described by the Public Disclosure Provision are commonly referred to as “voter list maintenance records.”

10. The Public Disclosure Provision is designed to “ensure that election officials are fulfilling their list maintenance duties” and is “available to any member of the public.” *Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at *12 (S.D. Fla. Mar. 30, 2018). The Public Disclosure Provision “convey[s] Congress’s intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials’ list maintenance programs. Accordingly, election officials must provide full public access to all records related to their list maintenance activities, including their voter rolls.” *Id.* at *12-13.

11. “[T]he [Public] Disclosure Provision contemplates an *indefinite* number of programs *and* activities.” *Pub. Interest Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 560 (M.D. Pa. 2019) (emphasis in original).

12. The Public Disclosure Provision requires disclosure of “records regarding the processes a state implements to ensure the accuracy and currency of voter rolls” as well as records concerning “individual applicant[s].” *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1341 (N.D. Ga. 2016).

Defendant is Denying the Foundation Access to Voter List Maintenance Records

13. On September 21, 2021, the Foundation emailed a letter to the Division of Elections at the New Jersey Secretary of State’s office. The letter requested the following records, pursuant to the NVRA’s Public Disclosure Provision:

1. Copies of all manuals, guidance, instructions, and other written procedures for identifying, merging, and/or cancelling duplicate voter registration records.

Exhibit A (hereafter, the “Request”).

14. The Division of Elections requested five (5) extensions of time to respond to the Foundation’s Request.

15. On March 25, 2022—more than six months after the Request was submitted—the Division of Elections denied the Request. Exhibit B (hereafter, the “Denial Letter”).

16. The decision to deny the Foundation’s Request was based on New Jersey law. The Denial Letter explained,

Please be advised that the documents you seek relating to the State of New Jersey’s election process is deemed confidential because its disclosure would expose critical vulnerability within the State’s election process. See N.J.S.A. 47:1A-1.1. ... The documents you request detail how the State’s election systems function and how to make discrete changes within the systems. If disclosed, this information would create a grave risk to the integrity of New Jersey’s election system.

Exhibit B.

17. The Division of Elections claimed to attach to the Denial Letter “the guide to implementing the National Voter Registration Act and the Rutgers Manual to Voting.” Exhibit B. Yet neither document was attached.

The Foundation Notified Defendant that She is Violating the NVRA

18. On April 4, 2022, the Foundation notified Defendant—New Jersey’s chief election official—in writing that she is in violation of the NVRA for failure to permit inspection of voter list maintenance records as required by 52 U.S.C. § 20507(i). Exhibit C at 1 (hereafter, the “Notice Letter”).

19. The Foundation sent the Notice Letter to Defendant via email and certified mail through the United States Postal Service.

20. The Foundation made seven attempts to send the Notice Letter via facsimile transmission, but each attempt failed.

21. The Notice Letter further notified Defendant that the requested records fall within the scope of the NVRA’s Public Disclosure Provision. Exhibit C at 2.

22. The Notice Letter further notified Defendant that litigation may commence against her if the violation about which she was notified was not cured within 20 days of her receipt of the letter. Exhibit C at 3 (citing 52 U.S.C. § 20510(b)(2)).

23. The Notice Letter explained that the statutory curative period is 20 days because the violation is occurring within 120 days of an election for federal office. Exhibit C at 3 (citing N.J.S.A. 19:2-1; N.J.S.A. 19:23-4 (“The primary election for the general election shall be held for all political parties upon the Tuesday next after the first Monday in June between the hours of 6:00 A.M. and 8:00 P.M., Standard Time.”); *see also* New Jersey 2022 Primary Election Timeline, <https://www.state.nj.us/state/elections/assets/pdf/chrons/2022-chron-primary-election-0407.pdf> (last accessed May 17, 2022)).

24. By sending the Notice Letter to Defendant—New Jersey’s chief election official—the Foundation complied with the NVRA’s pre-litigation notice requirements. *See* 52 U.S.C. § 20510(b)(1)-(2).

25. The Foundation has received no further communication from Defendant or the New Jersey Secretary of State’s office.

Defendant Did Not Cure Her Violation in the Time the NVRA Affords

26. Defendant received notice of her NVRA violation via email on April 4, 2022.

27. According to the electronic return receipt information provided by USPS, Defendant received notice of her NVRA violation via USPS certified mail on April 9, 2022.

28. The NVRA afforded Defendant 20 days to cure her NVRA violation, 52 U.S.C. § 20510(b)(2), a period that expired on **April 24, 2022** (email), and, at the latest, on **April 29, 2022** (certified mail).

29. Defendant did not cure her NVRA violation within 20 days of her receipt of the Notice Letter, and as of the date of this pleading, has still not cured her NVRA violation. This action is therefore ripe.

New Jersey Law and Defendant's Actions Are Harming the Foundation

30. The requested records are records within the scope of the NVRA's Public Disclosure Provision.

31. The Public Disclosure Provision authorizes and entitles the Foundation to inspect and duplicate, or otherwise receive the requested records.

32. Defendant's violations of the NVRA are causing the Foundation to suffer a concrete informational injury because the Foundation does not have records and information to which it is entitled under federal law. *FEC v. Akins*, 524 U.S. 11, 21 (1998) ("[A] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute.").

33. By denying the Foundation the ability to obtain the requested voter list maintenance records, Defendant is also impairing the Foundation's ability to, *inter alia*, (1) assess compliance by New Jersey with state and federal voter list maintenance obligations and (2) aid New Jersey in carrying out its voter list maintenance programs and activities.

34. Defendant's violation of the NVRA is thus frustrating, impeding, and harming the Foundation's efforts to carry out its organizational mission and thereby injuring the Foundation.

35. The Foundation intends to request similar records from Defendant in the future.

COUNT I
Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i)

36. The Foundation realleges the preceding paragraphs as if fully stated herein.

37. The requested record(s) are in the possession, custody, and control of Defendant.

38. Defendant is denying the Foundation access to records within the scope of the NVRA's Public Disclosure Provision and thereby violating the NVRA's Public Disclosure Provision.

39. N.J.S.A. 47:1A-1.1 and any other New Jersey statute, code, regulation, practice, or policy that conflicts with, overrides, or burdens the NVRA, a federal statute, is preempted and superseded under the Supremacy Clause and the Elections Clause of the Constitution of the United States. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013). Such preempted laws are invalid and unenforceable.

40. The Foundation is entitled to relief but has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of Section 8(i) of the NVRA for denying the Foundation the opportunity to inspect and copy the requested records.

2. Declaring that Section 8(i) of the NVRA preempts and supersedes N.J.S.A. 47:1A-1.1 and any New Jersey statute, code, regulation, practice, or policy that prevents the Foundation from inspecting and copying the requested records.

3. Ordering Defendant to provide the requested records to the Foundation.

4. Permanently enjoining Defendant from denying similar requests in the future.

5. Ordering Defendant to pay the Foundation's reasonable attorney's fees, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and,

6. Granting the Foundation further relief that this Court deems just and proper.

Dated: May 17, 2022.

For the Plaintiff Public Interest Legal Foundation:

/s/ Linda A. Kerns
Linda A. Kerns, Esquire (NJ Bar No. 001051999)
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1420 Locust Street – Suite 200
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Maureen Riordan*
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mriordan@PublicInterestLegal.org
* *Pro Hac Vice application forthcoming*

*Attorneys for Plaintiff Public Interest Legal
Foundation*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PUBLIC INTEREST LEGAL FOUNDATION, INC.

(b) County of Residence of First Listed Plaintiff Marion County, IN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Linda A. Kerns, LAW OFFICES OF LINDA A. KERNS,
LLC, 1420 Locust Street, Suite 200, Philadelphia, PA
19102 Tel: (215) 731-1400

DEFENDANTS

TAHESHA WAY, in her official capacity as Secretary of
State for the State of New JerseyCounty of Residence of First Listed Defendant Mercer
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	Habeas Corpus:			
	<input type="checkbox"/> 463 Alien Detainee			
	<input checked="" type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
52 U.S.C. 20507(i) and 52 U.S.C. 20510Brief description of cause:
Violation of National Voter Registration Act of 1993

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 17, 2022

/s/ Linda A. Kerns

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

September 21, 2021

New Jersey Division of Elections
20 West State Street, 4th Floor
Trenton, NJ 08608
Email: Feedback@sos.nj.gov

RE: NVRA public records request

Dear Elections Officer:

I am writing on behalf of the Public Interest Legal Foundation to request inspection (or production) of public records under the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501 *et seq.*

The Public Interest Legal Foundation is a nonpartisan, nonprofit, public-interest law firm that studies and promotes voter list maintenance procedures designed to protect the integrity of American elections.

The NVRA requires each state and the District of Columbia to 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).

Pursuant to Section 20507(i) of NVRA, we request that your office reproduce or provide the opportunity to inspect the following records:

1. Copies of all manuals, guidance, instructions, and other written procedures for identifying, merging, and/or cancelling duplicate voter registration records.

Thank you for your time and attention to this matter. Please feel free to utilize the contact information below for further correspondence.

Sincerely,



Logan Churchwell
Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org



STATE OF NEW JERSEY

DEPARTMENT OF STATE

DIVISION OF ELECTIONS

P.O. Box 304

TRENTON, NJ 08625-0304

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

TAHESHA WAY
Secretary of State

March 25, 2022

Dear Logan Churchwell:

This is in response to the OPRA request W177449 wherein you seek the following:

Copies of all manuals, guidance, instructions, and other written procedures for identifying, merging, and/or cancelling duplicate voter registration records.

Please be advised that the documents you seek relating to the State of New Jersey's election process is deemed confidential because its disclosure would expose critical vulnerability within the State's election process. See N.J.S.A. 47:1A-1.1 ("A government record shall not include . . . administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security."). The documents you request detail how the State's election systems function and how to make discrete changes within the systems. If disclosed, this information would create a grave risk to the integrity of New Jersey's election system. See Gilleran v. Bloomfield, 227 N.J. 159, 173 (2016) ("[T]he Legislature's exceptions - written without knowing the extent of the public safety challenges that the future might bring - were phrased in a way that allows flexibility in application for security purposes. They maintain the confidentiality of information categories when disclosure of the information, considering the totality of its worth, would compromise the integrity of a security system and defeat the purpose to having security exceptions in OPRA.").

Notwithstanding the foregoing, and without waiving any objections or privilege, we are including the guide to implementing the National Voter Registration Act and the Rutgers Manual to Voting, which are publically available documents.

Therefore, your request is denied and the matter is deemed closed.



VIA EMAIL, FACSIMILE, AND CERTIFIED MAIL

April 4, 2022

The Hon. Tahesha Way
New Jersey Secretary of State
Division of Elections
33 West State Street
PO Box 304
Trenton, NJ 08625-0304
FAX: 609-777-1280
Email: Joi.Robinson@sos.nj.gov | Opra.Elections@sos.nj.gov

RE: Notice of NVRA Violation

Dear Secretary Way:

Pursuant to 52 U.S.C. § 20510(b)(1), this letter serves as statutory notice to you as New Jersey's chief election official that the Office of the New Jersey Secretary of State ("NJSOS") is in violation of the National Voter Registration Act (NVRA) for failure to permit inspection and reproduction of public records as required by the NVRA, 52 U.S.C. § 20507(i)(1).

You are hereby notified that you now face federal litigation if you continue to deny access to the requested records.

Background

The NVRA requires each state and the District of Columbia to 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). The records the NVRA describes are commonly referred to as "voter list maintenance" records.

On September 21, 2021, pursuant to the NVRA, the Foundation requested from NJSOS the opportunity to inspect or receive certain voter list maintenance records, namely: "copies of all manuals, guidance, instructions, and other written procedures for identifying, merging, and/or cancelling duplicate voter registration records." A copy of the Foundation's September 21, 2021, request is enclosed with this notice.

Timeline of Correspondence from NJSOS

NJSOS has repeatedly delayed this matter well into calendar year 2022. Email records maintained by the Foundation show:

- On October 8, 2021, the NJSOS's Open Public Record Act or "OPRA" Tracking System assigned the Foundation's request to matter number "W177449."
- On January 14, 2022, NJSOS made contact to request a 7-day extension of time to respond per local statute N.J.S.A. 47:1A-5.i. The Foundation did not object.
- On January 26, 2022, NJSOS made contact to request a 7-day extension of time to respond per local statute N.J.S.A. 47:1A-5.i. The Foundation did not object.
- On February 10, 2022, NJSOS made contact to request a 15-day extension of time to respond per local statute N.J.S.A. 47:1A-5.i. The Foundation did not object.
- On February 25, 2022, NJSOS made contact to request a 15-day extension of time to respond per local statute N.J.S.A. 47:1A-5.i. The Foundation did not object.
- On March 14, 2022, NJSOS made contact to request a 15-day extension of time to respond per local statute N.J.S.A. 47:1A-5.i. The Foundation did not object.

On March 25, 2022—more than six months after the initial request—NJSOS denied the Foundation's request in full and closed the matter.

NJSOS Denies the Foundation's Request

In NJSOS's unsigned March 25 denial letter, officials deny the Foundation's request pursuant to N.J.S.A. 47:1A-1.1, arguing that disclosure "would expose [a] critical vulnerability within the State's election process." The letter adds: "A government record shall not include . . . administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security."

The NJSOS also argued that a disclosure would "detail how the State's election systems function and how to make discrete changes within the systems. If disclosed, this information would create a grave risk to the integrity of New Jersey's election system."

Violation of the National Voter Registration Act

As explained in the Foundation's September 21, 2021 request, the NVRA requires election officials to 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) (emphasis added). The requested records fall within the scope of this broad disclosure mandate—particularly because the Foundation seeks documents concerning *how* NJSOS ensures the accuracy and currency of official lists of voters. See *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1341 (N.D. Ga. 2016) (NVRA requires disclosure of "records regarding the processes a state implements to ensure the accuracy and currency of voter rolls" as well as "individual applicant records."). The NVRA exempts only two pieces of information— (1) a declination to register to vote, and (2) the identity of a voter

registration agency through which any particular voter is registered. 52 U.S.C. § 20507(i)(1). The Foundation does not seek either of those things and the NVRA exempts no other records.

Any New Jersey law that limits disclosure is inapplicable to our request because the NVRA, as a federal enactment, is superior to conflicting state laws under the Constitution's Elections and Supremacy Clauses. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12-15, 133 S. Ct. 2247, 2255-57 (2013).

Failure to permit public inspection or otherwise provide copies of the requested records is a violation of federal law for which the NVRA provides a private-right-of-action. 52 U.S.C. § 20510(b).

Secretary Way is hereby notified that her office is violating the NVRA and that litigation may commence against her if the violations described herein are not cured within 20 days of the receipt of this letter. 52 U.S.C. § 20510(b)(2). The violation must be cured within 20 days because the violation is occurring within 120 days of an election for federal office.¹ *See* 52 U.S.C. § 20510(b)(2). For lawsuits initiated by a private party, an award of attorney's fees, expenses, and costs incurred is available under 52 U.S.C. § 20510(c). The Foundation was recently awarded attorney's fees and litigation expenses as the prevailing party in actions to enforce the NVRA's public inspection rights.²

If the violation described herein is not cured in the time afford by law, we will have no choice but to pursue remedies in federal court.

Please contact me to arrange for secure transmission of the requested records, if necessary.

Thank you for your continued attention on this matter.

Sincerely,



Logan Churchwell
Research Director
Public Interest Legal Foundation

¹ *See* N.J.S.A. 19:2-1; N.J.S.A. 19:23-4 ("The primary election for the general election shall be held for all political parties upon the Tuesday next after the first Monday in June between the hours of 6:00 A.M. and 8:00 P.M., Standard Time.").

² Doc. 97, *Public Interest Legal Foundation v. Bennett*, No. 4:18-cv-0981 (entered June 30, 2021).

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

Public Interest Legal Foundation, Inc.

Plaintiff

v.

Tahesha Way, in her official capacity as Secretary of
State for the State of New Jersey

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Tahesha Way
125 West State Street
Trenton, NJ 08625

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Noel H. Johnson
32 E. Washington St., Ste. 1675
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: