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

Public Interest Legal Foundation, Inc.,)
)
Plaintiff,)
)
v.)
)
Kevin Meyer, in his official capacity as)
Lieutenant Governor for the State of)
Alaska,)
)
Defendant.)
)
_____)

Case No.: 1:22-cv-00001-SLG

**REPLY IN SUPPORT OF MOTION
TO DISMISS**

In its opposition to the Division of Elections’ Motion to Dismiss, the Public Interest Legal Foundation (PILF) continues to overstate the Disclosure Provision in the National Voter Registration Act (NVRA) and misunderstands the Division’s arguments. PILF imagines a fictional scenario where the Disclosure Provision applies to “all records.”¹ It does not. The Disclosure Provision applies to “all records concerning the

¹ Doc. 44 at 2.

implementation of programs and activities conducted for [voter list maintenance].”²

Because the deceased voter reports the Division received from the Electronic Registration Information Center (ERIC) are not records concerning the Division’s implementation of its list maintenance program, they are not subject to the Disclosure Provision. The Court should apply the plain meaning of the Disclosure Provision and dismiss PILF’s claim to the deceased voter reports. If the Court finds the Disclosure Provision unclear, it should still dismiss, based on the Provision’s legislative history and other federal statutes. The Court should also dismiss any claim PILF has to the Division’s list of voters it removed from the voter list because the Division satisfied PILF’s request and PILF is not entitled to dates of birth, the only information it notified the Division was lacking.

A. The Court should reject PILF’s attempt to expand the Disclosure Provision to reach ERIC’s deceased voter reports.

PILF argues for an expansion of the Disclosure Provision that is unsupported by its text. PILF continues to emphasize the portion of the Disclosure Provision that refers to “all records,”³ while skimming over the remainder of the Provision, which limits its application to records “concerning the implementation” of specified “programs and activities.”⁴ While the phrase “all records” may appear expansive on its own, courts must first determine whether a record is a record of the implementation of a list maintenance

² 52 USC 20507(i)(1).

³ Doc. 44 at 4, 8, 20.

⁴ 52 USC 20507(i)(1).

program or activity.⁵ Each of these terms must be given effect by limiting the sorts of records subject to disclosure. Properly defined, the terms “implementation,” “program,” and “activity,” do not apply to ERIC’s deceased voter reports.

As PILF recognizes, “[t]o ‘implement’ means to ‘fulfill’ or ‘carry out.’”⁶ “Program” and “activity,” meanwhile, imply active processes a state engages in to maintain its list of registered voters. PILF takes issue with this implication, but then quotes two decisions which define “program” as “a schedule or system under which *action* may be taking towards a desired goal,” and “activity” as “a specific deed, *action*, function, or sphere or *action*.”⁷ Thus, according to the very cases PILF cites, the Disclosure Provision applies to records concerning the completion of actions a state takes to maintain its voter list.⁸ It applies to records of the things a state actually does, not each and every source the state reviews.

ERIC’s deceased voter reports are not records of the Division’s implementation of its programs. As alleged, the Division removes deceased voters from the voter list in compliance with state and federal law. The Division reviews multiple sources of

⁵ *Project Vote v. Long*, 682 F.3d 331, 335–36 (4th Cir. 2012).

⁶ Doc. 44 at 10 (quoting *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 719 (S.D. Miss. 2014) (citation omitted)).

⁷ *Id.* at 16 (quoting *Hosemann*, 43 F. Supp. 3d at 719; *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1337–38 (N.D. Ga. 2016) (citations omitted and emphasis added)).

⁸ PILF also takes issue with the Division’s one-time use of the word “contain,” rather than “concern.” Doc. 44 at 12 (citing Doc. 40 at 14). Either way, the point remains: PILF does not allege that the Deceased Reports are records of the Division’s implementation of its programs.

information, including ERIC’s deceased voter reports, which indicate voters that may have died. While the Division reviews these reports, they are not records concerning the completion of the deceased-voter program—those records are the records of deceased voters the Division actually removed, which the Division already provided to PILF. The Division’s passive review of the deceased voter reports does not turn them into records of the Division’s active list maintenance processes.

Imagine a scenario where the Division reviews a photocopy of a voter’s social security card or driver’s license to confirm the voter’s identity in the course of its list maintenance programs. Would the social security card or driver’s license itself become an implementation record subject to disclosure under the NVRA? Under the plain terms of the Disclosure Provision—not to mention other state and federal laws⁹—these records would not be subject to disclosure.

In an attempt to bring ERIC’s deceased voter reports within the Disclosure Provision, PILF argues that Alaska’s membership in ERIC is itself a list maintenance program and the Division “outsource[ed]” its list maintenance to ERIC.¹⁰ But ERIC does

⁹ See, e.g., AS 15.07.195 (protecting social security and driver’s license numbers); 5 USC 552(b)(6) (exempting from disclosure information that “would constitute a clearly unwarranted invasion of personal privacy,” like social security numbers); 18 USC 2721(a) (restricting the disclosure of personal or highly personal information in department of motor vehicle records); *Kemp*, 208 F. Supp. 3d at 1345 (noting that every court that has considered the Disclosure Provision has held that social security numbers are protected).

¹⁰ Doc. 44 at 10, 12, n.1.

not conduct any of the Division’s “list maintenance activities [on its] behalf.”¹¹ Instead, ERIC provides one source of information that the Division considers in determining whether or not voters are deceased. ERIC’s deceased voter reports do not “ultimately decide” anything.¹² It is the Division—not ERIC—that removes voters from Alaska’s voter list.

PILF cites 11 cases in an attempt to portray the Disclosure Provision as “expansive[]” and “broad.”¹³ But none of these decisions are binding and not one of them required the disclosure of records from ERIC or similar third-party reports that were not created by voters, the federal government, or states themselves and that contain sensitive personal information.¹⁴ PILF wants to expand the scope of the Disclosure Provision to

¹¹ *Id.* at 12.

¹² *Id.* at 13.

¹³ *Id.* at 6–8.

¹⁴ *Pub. Int. Legal Found., Inc. v. N. Carolina State Bd. of Elections*, 996 F.3d 257, 260 (4th Cir. 2021) (considering state and federal records); *Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 556–57 (M.D. Pa. 2019) (same); *Long*, 682 F.3d at 332–33 (considering completed voter application records); *Pub. Int. Legal Found. v. Bennett*, No. CV H-18-0981, 2019 WL 1116193, at *1 (S.D. Tex. Feb. 6, 2019) (considering state and federal records and communications), report and recommendation adopted sub nom. *Pub. Int. Legal Found., Inc. v. Bennett*, No. 4:18-CV-00981, 2019 WL 1112228 (S.D. Tex. Mar. 11, 2019); *Kemp*, 208 F. Supp. 3d at 1352 (considering state canceled, rejected, or pending voter registration applicant records); *Hosemann*, 43 F. Supp. 3d at 718 (considering state voter roll, poll books, absentee ballot applications and envelopes, and federal post card application records); *Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 434 (D. Md. 2019) (considering state voter registration list); *Jud. Watch, Inc. v. Lamone*, 455 F. Supp. 3d 209, 222 (D. Md. 2020) (same); *Illinois Conservative Union v. Illinois*, No. 20 C 5542, 2021 WL 2206159, at *3 (N.D. Ill. June 1, 2021) (considering state electronic voter registration data); *Pub. Int. Legal Found., Inc. v. Matthews*, No. 20-CV-

records that it has never reached and that are not described by its plain language. Doing so would threaten state's access to reports that include sensitive personal information and thereby decrease the accuracy of their voter lists, a danger that PILF fails to address.¹⁵

ERIC's deceased voter reports are not like the records courts considered in three other cases PILF cites. In *Project Vote v. Long*, the court determined that completed voter applications were subject to the NVRA.¹⁶ The plaintiffs were concerned that applications from students at a historically Black college had been erroneously denied.¹⁷ The court held that the completed applications were "integral" to the state's voter list because they provided "the means by which" someone registered to vote, without which no one could register.¹⁸ The state's voter registration program consisted of its approval or denial of voter applications.¹⁹ Because the state implemented its voter registration program by ruling on voter registration applications, the court concluded they were subject to the

3190, 2022 WL 696785, at *5 (C.D. Ill. Mar. 8, 2022) (considering state voter registration list); *Pub. Int. Legal Found., Inc. v. Bellows*, No. 1:20-CV-00061-GZS, 2022 WL 656762, at *2 (D. Me. Mar. 4, 2022) (same); and *Campaign Legal Ctr. v. Scott*, No. 1:22-CV-92-LY, 2022 WL 3221301, at *3 (W.D. Tex. Aug. 2, 2022) (considering state records on suspected non-citizen voters), rev'd and remanded, 49 F.4th 931 (5th Cir. 2022).

¹⁵ Doc. 40 at 26–27.

¹⁶ 682 F.3d at 337.

¹⁷ *Id.* at 333.

¹⁸ *Id.* at 336 (citation omitted).

¹⁹ *Id.*

NVRA.²⁰

In *Project Vote v. Kemp*, the court determined that voter-database records were subject to disclosure.²¹ The plaintiffs were concerned that the state was asking voters for documentary proof of citizenship and refusing to register large numbers of qualified applicants.²² The plaintiff ultimately requested records exported from the state’s voter database, along with other state records about the receipt of voter applications and letters to voters.²³ The court found that the Disclosure Provision applies both to records showing a state’s general list maintenance process and to records showing the state’s disposition a particular voter’s application.²⁴ The court held that the Disclosure Provision does not apply to “all records,” but is restricted by the term “implementation.”²⁵ Even so, the second paragraph of the Disclosure Provision implied it applies to records concerning particular voters.²⁶ Therefore, the court found that most of the records from the state’s database, along with the voter application date and voter letter records, were subject to disclosure.²⁷

²⁰ *Id.* at 340.

²¹ 208 F. Supp. 3d at 1343.

²² *Id.* at 1328–29.

²³ *Id.* at 1333–34.

²⁴ *Id.* at 1341.

²⁵ *Id.* at 1339.

²⁶ *Id.* at 1340.

²⁷ *Id.* at 1343.

In *Public Interest Legal Foundation v. North Carolina State Board of Elections*, the court considered state and federal records about voters' citizenship and determined that the records may be within the scope of the NVRA.²⁸ The state had previously determined that some of these citizenship records were highly inaccurate.²⁹ The court held "the term 'all records' . . . does not encompass any relevant record from any source whatsoever, but must be read in conjunction with the various statutes enacted by Congress to protect the privacy of individuals and confidential information held by certain governmental agencies."³⁰ The Disclosure Provision, therefore, "does not require automatic disclosure of all categories of documents requested by [PILF]."³¹ Instead, the court remanded to the district court to determine which records are subject to disclosure and, of those, what information must be redacted.³²

Here, ERIC's deceased voter reports are not equivalent to the records at issue in *Long, Kemp*, or *NCSBE*. The deceased reports are created by a third-party, not by voters, the federal government, or the state, and they do not demonstrate the implementation of the Division's list maintenance process, either generally or as to specific voters. As PILF recognizes, the Division reviews other sources of information in the course of this

²⁸ 996 F.3d at 260, 268.

²⁹ *Id.* at 261.

³⁰ *Id.* at 264.

³¹ *Id.* at 266.

³² *Id.* at 268. No discovery is necessary here, because PILF's request is narrow and the Court should dismiss on the face of the complaint and the Disclosure Provision.

program, including information from Alaska’s Bureau of Vital Statistics.³³ The deceased voter reports are just one such source. The Division would still remove deceased voters even if it never received a deceased voter report from ERIC, based on information from other state agencies and sources. Thus, the deceased voter reports are not “the means by which” the Division removes deceased voters. Completed voter applications, like data contained in a state’s voter database, constitute part a state’s list maintenance program—the substance of the program is the collection and approval or denial of voter applications and the records of those activities in the state’s database. The Division keeps this sort of record, showing when voters are removed and why, and it provided it to PILF. Neither *Long, Kemp*, nor *NCSBE* required the states to produce unofficial reports that a state reviewed but that do not constitute the state’s list maintenance program.

Because the Disclosure Provision does not stop at the phrase “all records,” some records must not be subject to the NVRA. Indeed, Vital Statistics records provide a ready example. Under Alaska law, records of vital statistics, including death records, are generally protected from disclosure.³⁴ Death records may only be disclosed 50 years after the date of death.³⁵ Congress could not have intended the NVRA as a backdoor to state records that state legislators decided required such significant protections. Notably, PILF demands ERIC’s deceased voter reports but not Alaska’s death records.

³³ Doc. 44 at 9.

³⁴ AS 40.25.120(a)(1).

³⁵ AS 18.50.310(f).

PILF's interest in ERIC's deceased voter reports is particularly unclear because the Division already provided the relevant implementation record: the list of deceased voters the Division removed from the voter list in 2019, 2020, and 2021. In its opposition, PILF all but ignores this record and does not explain why it is inadequate. PILF argues it must also have ERIC's deceased voter reports because a voter, whom the Division determined was dead but is in fact alive, "would be barred from viewing the records that led to her improper cancellation."³⁶ But such a voter would know she had been removed because the Division determined she had died, and she could review all of the information in the Division's list of deceased voters. She could simply contact the Division and have her registration restored.

Furthermore, unlike the plaintiffs in *Long*, *Kemp*, and *NCSBE*, all of whom alleged voter-registration problems relevant to the records they sought, PILF has not alleged that there are any voters the Division mistakenly determined were deceased.³⁷ Even if PILF had made these allegations, it currently has in its possession all the information necessary to check the Division's work.³⁸ If PILF believes any of these removals were in error, it has had more than a year to find out. Given the absence of "disenfranchising errors" in the Division's implementation, there cannot have been anything wrong with the Division's review of information about deceased voters, including ERIC's deceased voter

³⁶ Doc. 44 at 18.

³⁷ Doc. 1 at ¶¶ 26–30.

³⁸ Doc. 44 at 28–29.

reports. PILF's demand for these particular records, despite having the Division's list of removed voters, will not increase transparency; it will only increase states' obligations under the NVRA and decrease the efficacy of their list maintenance.

B. If there is any ambiguity in the Disclosure Provision, its context and legislative history and other federal laws confirm that PILF's interpretation is incorrect.

To be clear, the Court should dismiss PILF's claim based on the Disclosure Provision alone. The text of the Disclosure Provision is plain, and plainly does not apply to ERIC's deceased voter reports, so there is no need to resolve any ambiguity.

Nevertheless, PILF's overbroad interpretation suggests ambiguity can be read into the statute. If the Court finds the Disclosure Provision ambiguous, it may look to the context and legislative history of the NVRA, as well as other federal laws, to confirm that PILF's interpretation of the Disclosure Provision is far too broad.

The second part of the Disclosure Provision and its legislative history indicate that Congress was primarily interested in records about voters' addresses.³⁹ PILF believes this context and legislative history "has no value," yet it demonstrates Congress's intent that the Disclosure Provision apply narrowly.⁴⁰ PILF also suggests that the Division acted contrary to this intent by withholding voters' addresses.⁴¹ But PILF later admits that the

³⁹ Doc. 40 at 18–19.

⁴⁰ Doc. 44 at 19.

⁴¹ *Id.* at 20.

Division included voters' addresses in the list of deceased voters it already provided.⁴²

The Division produced this implementation record with voter's addresses, consistent not just with the plain text of the Disclosure Provision, but also with Congress's original intent.

Other federal laws, including those protecting the Limited Access Death Master File (LADMF), the Freedom of Information Act, the Privacy Act, and the Driver's Privacy Protection Act, all similarly demonstrate that the Disclosure Provision cannot be construed as broadly as PILF suggests.⁴³ If the Court nevertheless finds that ERIC's deceased voter reports are within the scope of the NVRA, these statutes and others will likely require that certain information be redacted. As PILF recognizes, the extent of the NVRA is a different question than the extent of the redactions required for records within its scope.⁴⁴ But it does not follow that *all records* are subject to disclosure, just some redactions. The fact that there are some records that are within the scope of the NVRA but that contain information that states must redact does not mean that all records are subject to the NVRA.⁴⁵ The scope of the NVRA must be limited, otherwise it would not be cabined by the terms "implementation," "programs," and "activities." If Congress had

⁴² *Id.* at 29.

⁴³ Doc. 40 at 20–25.

⁴⁴ Doc. 44 at 21.

⁴⁵ *N. Carolina State Bd. of Elections*, 996 F.3d at 268 (providing that some documents are outside the scope of the NVRA entirely, while others may be disclosed with redactions).

intended the NVRA to mandate the disclosure of all state election records, it would have passed a different law. ERIC's deceased voter reports are beyond the scope of the NVRA, regardless of the redactions that may be required if the Court holds otherwise.

The protections for the LADMF not only demonstrate the limits of the Disclosure Provision but also provide another basis to protect some of the deceased reports that PILF seeks. PILF is correct that the LADMF protections sunset three years after the date of death recorded in the LADMF.⁴⁶ At the time PILF submitted its request, all of ERIC's deceased reports were within this three-year window and covered by the protections for the LADMF. If the Court now concludes that the deceased reports are within the scope of the NVRA, the passage of time may affect what information is redacted.

PILF cannot claim that it does not seek LADMF data. The protections for this data apply to the "information" contained in the LADMF, not just to the file itself as provided by the Commerce Department.⁴⁷ It makes no difference that PILF seeks this information from the Division rather than directly from the Commerce Department. Nor does it matter that some of the LADMF data, like name or date of birth, could be obtained elsewhere. Based on the regulation PILF cites, LADMF data *includes* an element of information, like name or date of birth, that an entity obtains from the LADMF, rather than through an

⁴⁶ See 42 USC 1306c(a).

⁴⁷ 42 USC 1306c(a) (prohibiting the disclosure of "information contained on the [LADMF]); 1306c(d) (defining the LADMF to mean "information on the name, social security account number, date of birth, and date of death of deceased individuals").

independent source.⁴⁸ As alleged, ERIC’s deceased voter reports contain data obtained from the LADMF. PILF admitted as much when it offered to accept the deceased voter reports with the “redaction of all data elements contained in the [LADMF].”⁴⁹ This information is protected because it came from the LADMF. LADMF data may only be disclosed to certified entities, like ERIC, or to entities that meet the certification requirements, like the Division.⁵⁰ If PILF believes it is qualified or could be certified to receive LADMF data, that is outside the Division’s control. What PILF cannot do is circumvent the LADMF protections by using the NVRA to obtain records containing LADMF data.

As for the Drivers Privacy Protection Act (DPPA), the Division did not suggest it was an independent basis for dismissal, as PILF now claims.⁵¹ The DPPA demonstrates the limits of the Disclosure Provision and proves it is subject to other federal laws.⁵² PILF discusses three cases that deal with the NVRA and the DPPA, but fails to mention the case the Division cited, which PILF was a party to and which holds that records protected by the DPPA are not subject to the Disclosure Provision.⁵³ This shows that the Disclosure Provision is not a loophole through which plaintiffs like PILF can gain access

⁴⁸ Doc. 44 at 23 (citing 15 CFR 1110.2).

⁴⁹ Doc. 1-3 at 3.

⁵⁰ 15 CFR 1110.102(a)(4)(i).

⁵¹ Doc. 44 at 25–27.

⁵² Doc. 40 at 20, 25.

⁵³ *Boockvar*, 431 F. Supp. 3d at 563.

to information protected by other federal laws. “Congress knew of the potential interplay between the DPPA’s privacy protections and the NVRA’s disclosure mandate,” and did not intend the NVRA to be so broad that it overrode the DPPA or other federal laws.⁵⁴ These laws show that the Disclosure Provision is limited, and they directly protect some of the records PILF demands.

C. The Division satisfied PILF’s request for a deceased voter list and PILF does not demand additional information.

While PILF’s claim to ERIC’s deceased voter reports should be dismissed because they are beyond the scope of the NVRA, any claim PILF has to the Division’s deceased voter list should be dismissed because the Division provided all the information it was required to provide and PILF no longer seeks dates of birth, the only information PILF notified the Division was missing.⁵⁵ Because PILF continues to change and obscure both its first and second requests, the Court should review the evolution of each.

In the first part of its request, PILF sought ERIC’s deceased reports from 2019, 2020, and 2021.⁵⁶ In the second, PILF sought a list of the deceased voters the Division removed during those years.⁵⁷ PILF stated that this list “will optimally include unique voter identification numbers, county or locality, full names, addresses, and dates of

⁵⁴ *Id.*

⁵⁵ *See* Doc. 44 at 28 –29.

⁵⁶ Doc. 1-1 at 1.

⁵⁷ *Id.* at 2.

birth.”⁵⁸ The Division did not provide ERIC’s deceased reports but did provide a list of the deceased voters it removed. This list included the voters’ full names, addresses, and unique identification numbers called ascension numbers.⁵⁹ The Division explained that the only information it withheld was voters’ dates of birth.⁶⁰

In its “Notice of NVRA Violation,” PILF stated that its entire request could be “lawfully and amicably satisfied” if the Division produced the deceased reports “with unique voter identification numbers” and without “all data elements contained in the [LADMF].”⁶¹ PILF’s offer did not address its second request at all. While PILF acknowledged the Division had excluded dates of birth, PILF did not require this information to “lawfully . . . satisf[y]” its request.⁶² The Division maintained its denial of PILF’s first request—even though PILF’s offer had reduced its scope—and reasonably concluded that it had satisfied PILF’s second request.

Nevertheless, in its complaint, PILF resurrected the prior version of its first request and its second request. PILF demanded the deceased reports without any of the

⁵⁸ *Id.*

⁵⁹ *See* Doc. 44 at 29; Doc. 1 at ¶ 35 (alleging only that the Division’s list excluded dates of birth); Doc. 1-2 at 1 (explaining that the Division only redacted dates of birth); AS 15.07.195(a)(4), (d) (permitting the disclosure of an ascension number, which is a unique number assigned to a voter that differs from the voter’s “voter identification number”).

⁶⁰ Doc. 1-2 at 1.

⁶¹ Doc. 1-3 at 3.

⁶² *Id.* at 2, 3.

redactions it was previously willing to accept.⁶³ It also demanded the Division’s list “with voter identification numbers”—despite the fact that PILF had not demanded these in its Notice and the Division had already provided ascension numbers.⁶⁴

Now, in its opposition, PILF changed its offer, saying it would be satisfied with ERIC’s deceased voter reports “with *only*” or “with *nothing more than* voter identification numbers,”⁶⁵ while also insisting that it is entitled to the deceased reports in their entirety.⁶⁶ Regardless of how PILF characterizes its first request, the deceased reports are not subject to the Disclosure Provision, as discussed above.

PILF also reiterates its request from its complaint for the Division’s lists with “voter identification numbers”—even though PILF’s Notice made no such demand and the Division in fact complied by providing ascension numbers. PILF did not ask for “voter identification numbers” as defined by Alaska law in its second request or its Notice.⁶⁷ PILF asked for “unique voter identification numbers,”⁶⁸ and once the Division provided its list with ascension numbers, PILF did not notify the Division of any

⁶³ Doc. 1, Prayer for Relief, at ¶ 1.

⁶⁴ *Id.* at ¶ 2.

⁶⁵ Doc. 44 at 5, 24 (emphasis added).

⁶⁶ *Id.* at 24 n.4.

⁶⁷ *Contra* Doc. 44 at 31. Although not at issue here, ascension numbers satisfy the “unique identifier” requirement in the Help America Vote Act, 52 USC 21083(a)(1)(A). *Id.*

⁶⁸ Doc. 1-1 at 2.

corresponding NVRA violation.⁶⁹ Nor could it have, because ascension numbers *are* “unique voter identification numbers.” Under Alaska law, ascension numbers are distinct from voter identification numbers, but their function is the same: to provide a unique number that identifies each voter.⁷⁰ The difference is that ascension numbers cannot also be used to impersonate voters.⁷¹

PILF ignores the legal distinction between voter identification numbers and ascension numbers in its opposition.⁷² But this distinction proves the Division complied with PILF’s second request and had no notice to the contrary. The purpose of the NVRA’s notice requirement is to allow an agency the chance to comply with an NVRA request, without having to revisit that request in court.⁷³ PILF’s claim for the Division’s deceased voter list with voter identification numbers should be dismissed because the Division provided ascension numbers and PILF did not provide—and still has not provided—any notice that ascension numbers are inadequate.

PILF also ignores any claim it has to the dates of birth of the voters on the

⁶⁹ Doc. 1-3 at 3 (demanding ERIC’s deceased voter reports, not the Division’s list, with unique voter identification numbers).

⁷⁰ Doc. 40 at 28 (citing AS 15.07.195(a)(4), (d)).

⁷¹ *Id.* at 28–29 (citing 6 AAC 25.510).

⁷² Doc. 44 at 31–33.

⁷³ See *Ass’n of Cmty. Organizations for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997). Notice may not be required when it would have been futile, but only when a state has actual notice of the alleged violation. *Id.* The Division had no actual notice here.

Division deceased voter list.⁷⁴ The absence of this information was the only deficiency PILF even noted with respect to its second request,⁷⁵ and the Division raised this issue in its Motion to Dismiss.⁷⁶ But PILF apparently does not demand the Division's list with dates of birth. Even if it did, dates of birth are protected from disclosure.⁷⁷ Thus, the Division complied with PILF's second request, because it was not required to provide dates of birth and it did provide unique identification numbers for all the voters on its list. Even if the Court finds that ERIC's deceased voter reports are subject to disclosure, PILF's claims relating to its second request should be dismissed, for lack of notice and actual compliance.

CONCLUSION

Because ERIC's deceased voter reports are beyond the scope of the unambiguous terms of the Disclosure Provision and the Division satisfied PILF's request for implementation records, the Court should dismiss PILF's claims.

⁷⁴ Doc. 44 at 31–33.

⁷⁵ Doc. 1-3 at 2.

⁷⁶ Doc. 40 at 29–30.

⁷⁷ *Id.* at 29–31.

DATED: October 21, 2022.

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Certificate of Service

I certify that on October 21, 2022 the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS** was served electronically on:

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