

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PUBLIC INTEREST LEGAL
FOUNDATION, INC.,

Plaintiff,

v.

SHENNA BELLOWS, in her official
capacity as the Secretary of State for the
State of Maine,

Defendant.

Docket No. 1:20-cv-00061-GZS

**DEFENDANT’S COMBINED STATEMENT OF MATERIAL FACTS
OPPOSING PLAINTIFF’S SUMMARY JUDGMENT MOTION
AND SUPPORTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Maine Local Rule 56(b) and (c) and the Court’s order of September 2, 2022 (ECF No. 72), Defendant Shenna Bellows, in her official capacity as Secretary of State (the “Secretary”), responds to Plaintiff’s Public Interest Legal Foundation, Inc.’s (“PILF’s”) statement of material facts in support its motion for summary judgment to PILF’s summary judgment motion and in support of the Secretary’s cross-motion for summary judgment. To the extent the Secretary admits or admits with qualification PILF’s proposed statements of fact, she does so for summary judgment purposes only.

The Secretary’s Responses to PILF’s Statement of Material Facts

The Secretary responds to PILF’s proposed statement of material fact as follows:

The NVRA’s Public Disclosure Provision

1. Section 8(i)(1) of the National Voter Registration Act of 1993 (“NRVA”) provides,

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, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

52 U.S.C. § 20507(i)(1) (hereafter, the “Public Disclosure Provision”).

RESPONSE: Admitted.¹

2. The “Party/Campaign Use Voter File” (“Voter File”) is subject to disclosure under the NVRA’s Public Disclosure Provision. ECF No. 61 at 10.

RESPONSE: Denied if not stricken. The statement should be stricken because it asserts a legal conclusion, not a fact, and because the Court’s order on a motion to dismiss is not “record material properly considered on summary judgment.” L.R. 56(f); *see also* Fed. R. Civ. P. 56(c)(2) (permitting objections to alleged facts if the supporting material “cannot be presented in a form that would be admissible in evidence”). Moreover, the Court’s discussion of this issue was in a procedural context in which there was no factual record, the Court found no facts, and the Court was required to assume that all the allegations in the Amended Complaint were true. The Court could properly reconsider its conclusion based on the factual record developed on summary judgment or at trial.

If the statement is not stricken, the Secretary denies the paragraph. Among other things, the party/campaign-use voter file is not used by the Secretary of State to conduct list maintenance activities or for any other purpose; the file contains no information on voters whose

¹ The Secretary is admitting to PILF’s proposed “facts” quoting or paraphrasing various statutory provisions to the extent they appear to be accurate representations of those statutes. The Secretary observes, however, that these admissions have no legal significance. To the extent there might be some discrepancy between PILF’s characterization of these statutes and the statutes themselves, the actual statutes would control. The parties cannot bind the Court to apply incorrect law.

registrations were canceled; and, the file contains no data that would indicate whether a particular voter's registration information was altered as the result of the Secretary's or any municipalities' periodic list maintenance efforts. First Declaration of Julie Flynn, dated April 9, 2021 (ECF No. 36) ("1st Flynn Decl.") ¶¶ 26–28. The records therefore do not "concern[] the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" within the meaning of 52 U.S.C. § 20507(i)(1).

The Parties

3. The Public Interest Legal Foundation, Inc., is a 501(c)(3) non-partisan, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation seeks to promote 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. 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. Declaration of Logan Churchwell ¶ 4 ("Churchwell Decl.").

RESPONSE: Admitted.

4. Defendant Shenna Bellows is the Secretary of State for the State of Maine ("Secretary"). ECF No. 73 at 2, Joint Stipulation of Material Facts ¶ 11 ("Fact Stip.").

RESPONSE: Admitted.

5. Secretary Bellows is Maine's chief election official and "the coordinator of state responsibilities under the National Voter Registration Act of 1993," 21-A M.R.S. § 180. Fact Stip. ¶ 11.

RESPONSE: Admitted.

The Foundation's Request for Maine's "Party/Campaign Use Voter File"

6. On or around October 17, 2019, the Foundation sent to the Secretary and the Secretary received the letter filed in this case as Docket Entry 55-1 (hereafter, the "Request Letter"). Fact Stip. ¶ 1; ECF No. 55-1.

RESPONSE: Admitted.

7. The Foundation's Request Letter requested an "electronic copy of the Maine statewide voter registration list" pursuant to the NVRA's Public Disclosure Provision. Fact Stip. ¶ 1; ECF No. 55-1 at 2.

RESPONSE: Admitted.

8. The Foundation's Request letter acknowledged that Title 21-A, Section 196A(1)(B) of Maine Revised Statutes appears to prohibit the Foundation from receiving the requested voter registration list and from using it for the Foundation's intended purposes. Fact Stip. ¶ 1; ECF No. 55-1 at 1-2.

RESPONSE: Admitted.

9. The Foundation's Request Letter also notified the Secretary that Maine law violates the NVRA because it prohibits disclosure and certain uses of the requested statewide voter registration list. Fact Stip. ¶ 1; ECF No. 55-1 at 1-2.

RESPONSE: Qualified. While the proposed statement accurately describes what the letter says, the Secretary disputes that Maine law in fact violates the NVRA. Defendant's Answer to the Amended Complaint (ECF No. 61) ¶ 41.

10. On October 17, 2019, the Foundation received an email from the Secretary denying the Foundation's request for a copy of the statewide voter registration list. Fact Stip. ¶ 2; ECF No. 55-2.

RESPONSE: Admitted.

11. The Secretary's email explained,

Our office is in receipt of your letter. You are correct that Maine law prohibits the disclosure of the voter registration list to your organization and for your purposes. Further response/ comment on current Maine law is beyond my scope. If you would like to contact the Maine attorney general's office to voice your concern about an existing Maine law, that would be the appropriate venue.

Fact Stip. ¶ 2; ECF No. 55-2.

RESPONSE: Admitted.

12. On or around October 29, 2019, the Foundation sent to the Secretary and the Secretary received the letter filed in this case as Docket Entry 55-3 (hereafter, the “Notice Letter”). Fact Stip. ¶ 3.

RESPONSE: Admitted.

13. The Notice Letter notified the Secretary that the Secretary is in violation of the NVRA for failure to permit inspection and duplication of records as required by the NVRA’s Public Disclosure Provision. Fact Stip. ¶ 3; ECF No. 55-3 at 1.

RESPONSE: Admitted.

14. The Notice Letter further notified the Secretary that if the violation of the NVRA was not cured within 90 days, a lawsuit may be filed against the Secretary, as permitted by the NVRA, 52 U.S.C. § 20510(b). Fact Stip. ¶ 3; ECF No. 55-3 at 1.

RESPONSE: Admitted.

15. On or around January 29, 2020, the Foundation sent to the Secretary and the Secretary received the letter filed in this case as Docket Entry 55-4. Fact Stip. ¶ 4.

RESPONSE: Admitted.

16. The January 29, 2020, letter notified the Secretary that the 90-day curative period afforded by the NVRA, 52 U.S.C. § 20510(b), would expire on Sunday, February 2, 2020, at the latest. Fact Stip. ¶ 4; ECF No. 55-4 at 1.

RESPONSE: Admitted.

17. On or around January 30, 2020, the Secretary sent to the Foundation and the Foundation received the letter filed in this case as Docket Entry 55-5. Fact Stip. ¶ 5.

RESPONSE: Admitted.

18. The Secretary’s January 30, 2020, letter explained that the statewide voter registration list requested by the Foundation is known as the “party/campaign use voter file.” Fact Stip. ¶ 5; ECF No. 55-5 at 1.

RESPONSE: Admitted.

19. The Secretary’s January 30, 2020, letter further explained that the Foundation’s request for the “Party/Campaign Use Voter File” is being denied because the Foundation “is not engaged in a campaign or ‘get out the vote’ effort.” Fact Stip. ¶ 5; ECF No. 55-5 at 1.

RESPONSE: Admitted.

20. On or around February 3, 2020, the Foundation sent to the Secretary and the Secretary received the letter filed in this case as Docket Entry 55-6. Fact Stip. ¶ 6.

RESPONSE: Admitted.

21. The Foundation's February 3, 2020, letter confirmed that the Foundation is requesting a copy of Maine's "Party/Campaign Use Voter File." Fact Stip. ¶ 6; ECF No. 55-6 at 1.

RESPONSE: Admitted.

22. The Foundation's February 3, 2020, letter asked the Secretary "to confirm by 2:00 pm EST on February 4, 2020 whether you will permit us to inspect and duplicate (or otherwise purchase and receive) the 'party/campaign use voter file' with the data fields described by 21-A M.R.S § 196-A(1)(B)." Fact Stip. ¶ 6; ECF No. 55-6 at 2.

RESPONSE: Admitted.

23. On or around February 5, 2020, the Secretary sent to the Foundation and the Foundation received the letter filed in this case as Docket Entry 55-7. Fact Stip. ¶ 7.

RESPONSE: Admitted.

24. The Secretary's February 5, 2020, letter confirmed that the Foundation's request for the "Party/Campaign Use Voter File" is denied. Fact. Stip. ¶ 7; ECF no. 55-7 at 1.

RESPONSE: Admitted.

25. Prior to the filing of this action, the Foundation requested from the Secretary Maine's "Party/Campaign Use Voter File," which is described in Title 21-A, Section 196-A(1)(B) of Maine Revised Statutes. Fact Stip. ¶ 8.

RESPONSE: Admitted.

26. The Secretary denied the Foundation's request for a copy of Maine's "Party/Campaign Use Voter File." Fact Stip. ¶ 9.

RESPONSE: Qualified if not stricken. The asserted fact should be stricken as irrelevant because Count I of the Amended Complaint, which is the only count in the Amended Complaint

to allege a denial of access to the Voter File, was dismissed by this Court as moot. *See* ECF No. 61 at 5–7. PILF therefore cannot pursue a denial-of-access claim at summary judgment.

If the fact is not stricken the Secretary qualifies it as follows: The Secretary’s denial of the request occurred no later than February 5, 2020. Fact. Stip. ¶ 7. Subsequent to that denial, the Maine Legislature amended the applicable law to allow disclosure of the Party/Campaign Use Voter File to individuals and groups seeking to evaluate the State’s voter list maintenance activities. Declaration of Julie Flynn, dated November 22, 2022 (ECF No. 77) (2d Flynn Decl.) ¶ 5. Under the new law, if the Public Interest Legal Foundation submits a properly completed application for the Party/Campaign Use Voter File, the Secretary will provide it with the file. *Id.* ¶ 13.

27. The Secretary has not provided the “Party/Campaign Use Voter File” to the Foundation. Fact Stip. ¶ 10.

RESPONSE: Qualified if not stricken. The asserted fact should be stricken as irrelevant because Count I of the Amended Complaint, which is the only count in the Amended Complaint to allege a denial of access to the Voter File, was dismissed by this Court as moot. *See* ECF No. 61 at 5–7. PILF therefore cannot pursue a denial-of-access claim at summary judgment.

If the asserted fact is not stricken the Secretary qualifies it as follows: The Public Interest Legal Foundation has not submitted the required request form to the Elections Division or paid the applicable fee to obtain the Voter File. 2d Flynn Decl. ¶¶ 11–12.

The Foundation’s Programmatic Activities

28. The Foundation’s regular programmatic activities include, but are not limited to (1) evaluating how and whether states and/or local governments are complying with voter list maintenance laws; (2) pursuing legal action to enforce state and federal voter list maintenance laws; (3) analyzing registration and voting data; (4) educating the public through published reports, blog posts, press releases, newsletters, and emails; and, (5) providing voter list maintenance leads and potentially irregular registration and voting data to state and local governments.

Churchwell Decl. ¶ 5; Exhibit A to Churchwell Decl. at 3-4 (Response to Interrogatory No. 2).

RESPONSE: Admitted.

29. The Foundation also regularly analyzes voter participation history to study (1) enforcement of voter list maintenance laws that depend on voting or attempted voting; (2) whether any registrant cast more than one vote in the same election in the same jurisdiction; (3) whether any registrant cast votes in two or more local jurisdictions or states in the same election; (4) whether votes were cast by ineligible registrants; (5) whether provisional voting laws are properly enforced; and, (6) the extent of voter participation. Churchwell Decl. ¶ 6; Exhibit A to Churchwell Decl. at 9-10 (Response to Interrogatory No. 6).

RESPONSE: Admitted.

30. The Foundation uses a state's voter roll and other voter registration and voting records to monitor, study, and evaluate that particular state's voter list maintenance activities and also those of other jurisdictions and states. Churchwell Decl. ¶ 7; *E.g.*, Exhibit A to Churchwell Decl. at 4-6 (Response to Interrogatory No. 3); Exhibit C to Churchwell Decl. at 1-2 (Supplemental Response to Interrogatory No. 3); Exhibit B to Churchwell Decl. at 6-8 (Response to Request for Production No. 3).

RESPONSE: Admitted.

31. The Foundation also uses a state's voter file and other voter registration and voting records to enforce voter list maintenance laws. Churchwell Decl. ¶ 8; Exhibit A to Churchwell Decl. at 6-7 (Response to Interrogatory No. 4); Exhibit B to Churchwell Decl. at 810 (Response to Request for Production No. 4).

RESPONSE: Qualified. As a private entity, PILF's method of "enforc[ing]" voter list maintenance laws is to file civil lawsuits against government officials and entities. Churchwell Decl. ¶ 4 & Ex. B at 10 (Response to Request for Production No. 4).

32. The Foundation also uses a state's voter roll and other voter registration and voting records to educate the general public and government officials, including through the Internet. Churchwell Decl. ¶ 9; Exhibit A to Churchwell Decl. at 7-9 (Response to Interrogatory No. 5); Exhibit B to Churchwell Decl. at 4-8, 10-12, 14-15 (Response to Request for Production Nos. 2, 3, 5, 7); Exhibit D to Churchwell Decl. at 2 (Supplemental Response to Request for Production No. 5).

RESPONSE: Qualified. While PILF may use such records in its work, it does not have a hard and fast policy on the use of personally identifying information in its public reports and sometimes removes identifying information about voters in its reports. Churchwell Dep. at 22:8–13, 59:9–60:19, 63:18–64:15, 68:6–10, 68:14–69:9.

33. The Foundation also uses a state’s voter roll and other voter registration and voting records to provide voter list maintenance leads and potentially irregular registration and voting data to state and local governments. Churchwell Decl. ¶ 10; Exhibit C to Churchwell Decl. at 2 (Supplemental Response to Interrogatory No. 7); Exhibit D to Churchwell Decl. at 3 (Supplemental Response to Request for Production No. 6); Exhibit E to Churchwell Decl. at PILF-000866-880; Exhibit D to Churchwell Decl. at 3 (Supplemental Response to Request for Production No. 9); Exhibit E to Churchwell Decl. at PILF-000881-892.

RESPONSE: Admitted.

34. The Foundation uses registrants’ personally identifying information—such as name and address—to conduct the regular, programmatic activities described in the above paragraphs. Churchwell Decl. ¶ 11; Exhibit C to Churchwell Decl. at 1-2 (Supplemental Response to Interrogatory No. 3); Exhibit A to Churchwell Decl. at 4-6 (Response to Interrogatory No. 3); Exhibit B to Churchwell Decl. at 6-8 (Response to Request for Production No. 3); Exhibit A to Churchwell Decl. at 6-7 (Response to Interrogatory No. 4); Exhibit B to Churchwell Decl. at 8-9 (Response to Request for Production No. 4); Exhibit A to Churchwell Decl. at 7-9 (Response to Interrogatory No. 5); Exhibit B to Churchwell Decl. at 10-12 (Response to Request for Production No. 5); Exhibit D to Churchwell Decl. at 2 (Supplemental Response to Request for Production No. 4); Exhibit E to Churchwell Decl. at PILF-000866-880.

RESPONSE: Qualified. While PILF may use such records in its work, it does not have a hard and fast policy on the use of personally identifying information in its public reports and sometimes removes identifying information about voters in its reports. Churchwell Dep. at 22:8–13, 59:9–60:19, 63:18–64:15, 68:6–10, 68:14–69:9.

The Foundation’s Intended Uses for Maine’s Voter File

35. The Foundation currently intends to use the Voter File to conduct the regular, programmatic activities described in the above paragraphs, including (1) monitoring, study, analyzing, and evaluating the list maintenance activities of other jurisdictions and states; (2) enforcing voter list maintenance laws in Maine and in

other states, including filing actions under the NVRA’s private-right-of-action provision; (3) educating the general public and government officials about list maintenance activities in Maine and other states, including through the Internet; (4) sharing voter list maintenance leads and potentially irregular registration and voting data to state and local governments within and outside Maine. Churchwell Decl. ¶ 12; *see supra* ¶¶ 28-34.

RESPONSE: Admitted.

36. Where necessary, the Foundation intends to use personally identifying information—such as name, address, and voter identification number—to conduct those activities. Churchwell Decl. ¶ 13.

RESPONSE: Qualified. PILF does not have a hard and fast policy on the use of personally identifying information in its public reports and sometimes removes identifying information about voters in its reports. Churchwell Dep. at 22:8–13, 59:9–60:19, 63:18–64:15, 68:6–10, 68:14–69:9.

37. The Foundation intends to develop more specific plans for the Voter File after Defendant provides it to the Foundation. Churchwell Decl. ¶ 14.

RESPONSE: Admitted.

DEFENDANT’S STATEMENT OF ADDITIONAL MATERIAL FACTS

Pursuant to L.R. 56(b) and (c) the Secretary offers the following statement of additional material facts, both in support of her motion for summary judgment and in opposition to Plaintiff’s motion for summary judgment:

The Creation of Maine’s CVR System

38. At the time the NVRA passed in 1993, Maine, like many states, had no centralized voter registration database. Declaration of Julie Flynn, dated April 9, 2021 (ECF No. 36) (“1st Flynn Decl.”) ¶ 6.

39. Because Maine elections are administered primarily at the municipal level, each of Maine’s more than 500 municipalities was responsible for maintaining voter rolls for its

residents, and did so in a variety of forms, including by handwritten lists and a variety of electronic formats. 1st Flynn Decl. ¶ 6.

40. The enactment of HAVA in 2002 required Maine to upgrade this system of maintaining voter rolls and implement “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level that contains the name and registration information of every legally registered voter in the State.” 1st Flynn Decl. ¶ 7.

41. The Secretary’s office, working with outside vendors, created the statewide electronic system required by HAVA, which is known as the Central Voter Registration system, or CVR, which became fully operational in the spring of 2007. 1st Flynn Decl. ¶ 8.

42. The database portion of CVR contains personal information about every registered voter in the state, including nearly all the information that a voter provides in his or her registration form, such as name, address, party affiliation, and date of birth, as well as certain other information inputted by municipal registrars, such as which elections the voter voted in. 1st Flynn Decl. ¶ 9.

43. The CVR database is maintained in the Secretary’s secure data center. 1st Flynn Decl. ¶ 9.

44. As of November 20, 2022, a Voter File generated from CVR would contain personally identifying information on 1,142,764 Maine voters, including 925,899 voters designated “active” and 216,865 voters designated “inactive.” 2d Flynn Decl. ¶ 8.

Maine's Voter Privacy Law

45. Prior to the implementation of CVR, the fact that voter data was held at the municipal level in a variety of different formats made it nearly impossible for anyone to compile a complete and up-to-date list of all Maine voters. 1st Flynn Decl. ¶ 11.

46. The Legislature had concerns about the privacy implications of compiling such a large electronic database containing personal information about Maine voters, and enacted the first privacy protections on CVR data in 2005, before CVR became operational. See 2005 P.L. ch. 404 (codified at 21-A M.R.S. § 196, recodified as amended at 21-A M.R.S. § 196-A). 1st Flynn Decl. ¶¶ 11–12.

47. The Legislature identified three “compelling state interests” at stake in regulating public access to CVR data: preventing voter fraud, preventing the potential disenfranchisement of voters, and ensuring that voters are not discouraged from participating in the voting process. 1st Flynn Decl. ¶ 13.

48. The Legislature’s concern about voter fraud was that, if CVR data was readily accessible, it might be used by unscrupulous individuals to commit voter fraud. 1st Flynn Decl. ¶ 13.

49. The Legislature was also concerned that eligible voters might be deterred from registering to vote if they knew the personal data they were providing on the registration form (or other data tracked by CVR, such as voter participation history) would become public or be sold to commercial interests. 1st Flynn Decl. ¶ 13.

50. Based on part on annual reports on CVR issued by the Secretary, the Maine Legislature has amended the laws governing the confidentiality of CVR data several times since 2005. 1st Flynn Decl. ¶ 15.

51. The Voter File generated from CVR pursuant to 21-A M.R.S. § 196-A(1)(B), contains extensive data on individual voters, specifically

- the voter’s name
- residence address
- mailing address
- year of birth
- enrollment status
- electoral districts
- voter status
- date of registration
- date of change of the voter record if applicable
- voter participation history
- voter record number
- any special designations indicating uniformed service voters, overseas voters or township voters

1st Flynn Decl. ¶ 17.

52. “Enrollment status” refers to the voter’s party enrollment, if any. “Voter status” refers to whether the voter has failed to respond to a change of address confirmation notice, and is thus at risk of having their registration cancelled if they fail to vote in the next two general elections. See 21-A M.R.S. § 162-A. “Voter participation history” is a record of all state and federal primary and general elections in which the voter has participated going back to the date of registration or 2007, whichever is later. 1st Flynn Decl. ¶ 18.

53. 21-A M.R.S. § 196-A(1)(B) allows political parties and officials to access this detailed voter information, subject to the restrictions on use, sale, and further dissemination, in recognition of the fact that giving candidates, parties, and other participants in the electoral process the ability to find and communicate with registered voters can increase civic engagement and participation in the electoral process as well as to ensure that political parties are able to associate with their enrolled voters. 1st Flynn Decl. ¶ 19.

54. A law enacted by the 130th Legislature makes available the same Voter File to individuals evaluating the State’s compliance with its voter list maintenance obligations, subject to certain restrictions on use and dissemination of the data in the file. 2d Flynn Decl. ¶¶ 6, 8.

55. Individuals or entities requesting a party/campaign-use voter file under Exception B are required to submit an application to the Secretary documenting that they qualify to receive the data and acknowledging the restrictions on its use. 1st Flynn Decl. ¶ 20.

56. Following the effective date of the new law, the Elections Division drafted and posted to the Secretary of State website revised application forms. The revised application and instructions, which were posted in early January, 2022, make clear that the Voter File may be requested by individuals or groups wishing to “evaluate the State’s compliance with its voter list maintenance obligations, under the National Voter Registration Act of 1993.” 2d Flynn Decl. ¶¶ 9–10; Joint Stipulation of Material Facts (“Joint Stip.”) (ECF No. 73) ¶¶ 13–14.

57. The revised instructions (as well as the previous version of the instructions) state that CVR data is available for the approved uses upon submission of a completed request form and payment of the applicable fee. 2d Flynn Decl. ¶ 11.

58. The Public Interest Legal Foundation (PILF) has not submitted an application to the Elections Division or paid the applicable fee to obtain the Voter File, and does not intend to do so due to this litigation. 2d Flynn Decl. ¶ 12; Rule 30(b)(6) Deposition of Logan Churchwell, dated Aug. 25, 2022 (ECF No. 78) (“Churchwell Dep.”) at 19:10–17.

59. If PILF submits to the Elections Division a properly completed application acknowledging the restrictions on use and dissemination of the Voter File and pays the applicable fee, the Elections Division would provide PILF with the Voter File. 2d Flynn Decl. ¶ 13.

The Secretary's List Maintenance Efforts

60. Since implementation of CVR in 2007, the Secretary has engaged in a program of maintaining the voter registrations documented in CVR, as required by the NVRA and HAVA. 1st Flynn Decl. ¶ 21.

61. The Secretary's office routinely works with municipalities to identify and remove records of deceased voters, voters who have moved, and duplicate voter records. 1st Flynn Decl. ¶ 21.

62. Municipalities review State death records on a monthly basis and cancel the records of voters who have died. 1st Flynn Decl. ¶ 21.

63. The Secretary's office, in 2007, 2009, 2011, and 2013, conducted system-wide voter list maintenance processes using U.S. Postal Service National Change of Address data. 1st Flynn Decl. ¶ 22.

64. In 2017, the Secretary's office conducted additional maintenance activities using the Interstate Voter Registration Crosscheck Program, which enabled cancellation of registrations for voters who had registered and voted in other states after having previously registered in Maine. 1st Flynn Decl. ¶ 23.

65. In 2021, the Legislature authorized the Secretary of State to join the Electronic Registration Information Center ("ERIC"), which provides a secure electronic platform for member states to cross check their voter registration data with those of other states, allowing states to identify individuals who may have moved to other states without canceling their voter registration. The Secretary is currently engaged in efforts to conduct list maintenance using ERIC. 2d Flynn Decl. ¶ 25.

66. The Elections Division in the summer of 2022 conducted list maintenance activities under the NVRA in which postcards were mailed to certain Maine voters under 52 U.S.C. § 20507(d)(2) seeking to determine if they remained at their registered address. 2d Flynn Decl. ¶ 24.

67. In accordance with the NVRA, the Election Division is preserving records relating to this effort for two years, including the information required to be preserved under 52 U.S.C. § 20507(i)(2). As with past NVRA maintenance efforts, these materials are available to the public for inspection and copying. 2d Flynn Decl. ¶ 24; 1st Flynn Decl. ¶ 25.

The Voter File

68. The Voter File that the Secretary produces under 21-A M.R.S. § 196-A(1)(J) is not used by the Secretary to conduct list maintenance activities or for any other purpose. 2d Flynn Decl. ¶ 26; *see also* 1st Flynn Decl. ¶ 26.

69. The Voter File contains no information on voters whose registrations were cancelled. 1st Flynn Decl. ¶ 27.

70. The Voter File contains no data that would indicate whether a particular voter's registration information was altered as the result of the Secretary's or any municipalities' periodic list maintenance efforts. 1st Flynn Decl. ¶ 28.

71. The Voter File contains information on numerous Maine voters whose registration information has never been altered by the Secretary's list maintenance activities. 2d Flynn Decl. ¶ 27.

PILF

72. PILF exists in part to “fight against lawlessness in American elections.” Rule 30(b)(6) Deposition of N. Christian Adams, dated Feb. 8, 2021 (ECF No. 37) (“Adams Dep.”) at 57:24–58:13.

73. In May 2017, PILF issued a report called Alien Invasion II, the Sequel to the Discovery and Coverup of Noncitizen Registration and Voting in Virginia. Adams Dep. at 141:3–14 & Ex. 12 (ECF No. 37-2).

74. The originally published version of the report attached records that PILF obtained from governmental officials that included the names and contact information of individual Virginia registrants and voters. Adams Dep. at 141:3–14, 144:8–16, & Ex. 12 at Title Page.

75. One of the report’s attachments was a record that listed voters whose registrations had been cancelled based on a declaration of non-citizenship on a Department of Motor Vehicles form and who failed to affirm citizenship within two weeks of being sent a notice from election officials. Adams Dep. at 141:3–14, 146:6–147:15, & Ex. 12 at Title Page.

76. Some of the individuals named in these records were “false positives,” meaning that they were in fact U.S. citizens. Adams Dep. at 149:19–150:9 & Ex. 12 at Title Page.

77. In April 2018, individuals identified in the report brought a federal lawsuit against PILF for defamation and violation of the Voting Rights Act and 42 U.S.C. § 1985(3), alleging that they were in fact properly voting citizens and that PILF had falsely accused them of committing felonies. Churchwell Decl., Ex. B at 16–17 (Response to Request for Production No. 8); *League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.*, No. 1:18-CV-00423, 2018 WL 3848404, at *1–*2 (E.D. Va. Aug. 13, 2018).

78. The current version of the *Alien Invasion II* report contains a statement on the title page explaining that the exhibits identifying specific voters had been removed and stating in part: “PILF recognizes that individuals in Exhibits 1 and 12 were in fact citizens and that these citizens did not commit felonies. PILF profoundly regrets any characterization of those registrants as felons or instances of registration or voting as felonies.” Adams Dep. at 141:3–14 & Ex. 12 at Title Page; *see also* <https://publicinterestlegal.org/pilf-files/Alien-Invasion-II-FINAL.pdf> (last accessed on Nov. 17, 2022).

79. In November 2019, PILF published a report titled *Calm Before the Storm, Are Palm Beach County’s Elections Protected Against Emerging Threats?*, in which it published the full names, addresses, birthdates, and party enrollment of Florida voters that PILF alleged were registered to vote twice. Adams Dep. at 120:14–124:14 & Ex. 11 at 16–18; *see also* <https://publicinterestlegal.org/pilf-files/Report-Calm Before the Storm-Palm Beach County1.pdf> (last accessed on Nov. 17, 2022).

80. PILF maintains a database estimated to contain data on several hundred million voters. Churchwell Dep. at 33:20–34:4.

81. PILF uses commercial, Social Security, and other databases to match data and attempt to confirm identities of voters listed in the voter lists it obtains from states. Churchwell Dep. at 28:17–30:11, 40:24–42:4; Adams Dep. at 41:10–22, 42:7–25.

82. PILF would be able to use these databases to derive full birthdates for voters listed in the Maine Voter File, even though the file lists only years of birth. Churchwell Dep. at 42:5–13.

83. It is also theoretically possible for PILF to determine social security numbers of voters in the Voter File. Churchwell Dep. at 42:17–43:15.

84. PILF's analyses of voter lists result in "false positives," in which its analysis incorrectly indicates that a voter's registration should not remain active. Adams Dep. at 52:22–53:8.

85. Only elections officials can conclusively determine whether PILF's analyses of voter data reflect actual misconduct by voters. Churchwell Dep. at 43:16–45:15.

86. PILF does not have a hard and fast policy on the use of personally identifying information in its public reports. Churchwell Dep. at 22:8–13.

87. PILF considers redacting voter names and addresses in its published reports in some circumstances to protect the privacy of voters. Churchwell Dep. at 59:9–60:19.

88. PILF has withheld identifying information about a voter in a published report in part out of concern that readers would confuse the identified voter for another person with a similar name. Churchwell Dep. at 63:18–64:15, 68:6–10, 68:14–69:9.

89. PILF has in prior litigation redacted or omitted personally identifying information about voters in its court filings. Churchwell Dep. at 80:6–82:21.

90. PILF has in prior litigation filed under seal exhibits containing personally identifying information about voters. Churchwell Dep. at 84:4–85:10; Churchwell Decl., Ex. D at 2 (Plaintiff's Supplemental Responses to Defendants' Document Requests) (ECF No. 74-6).

91. In settling a case in which PILF sought access to Maryland's voter file, PILF was agreeable to restrictions that would prevent it from publishing to the Internet or disclosing in its publications any of the contents of the voter lists at issue. Churchwell Dep. at 86:10–87:11, 91:17–92:23 & Ex. I (ECF No. 78-1).

92. It is standard practice for jurisdictions that sell their voter data to require buyers to agree to not sell it or use it for a commercial purpose. Churchwell Dep. at 89:16–18.

The Secretary's Interpretation of Exception J

93. The Secretary does not interpret Exception J to prohibit organizations from using the Voter File to evaluate other states' voter list maintenance practices. 2d Flynn Decl. ¶¶ 16, 23.

94. The Secretary does not interpret Exception J to prohibit organizations from using the Voter File in judicial proceedings relating to list maintenance or the integrity of voter lists, so long as the organization took steps to file any relevant portions of the Voter File under seal. 2d Flynn Decl. ¶ 17, 23.

95. The Secretary does not interpret Exception J to prohibit organizations from sharing information contained in the Voter File with public officials for a purpose directly related to evaluating compliance with voter list maintenance obligations. 2d Flynn Decl. ¶¶ 18, 23.

96. The Secretary does not interpret Exception J to prohibit organizations from using the Voter File to search for instances of registrants voting multiple times. 2d Flynn Decl. ¶ 21.

97. The Secretary does not interpret Exception J to prohibit organizations from publishing the results of their evaluations of the Voter File for purposes of public education, so long as the organization abides by the restriction on publicly disclosing personally identifying voter information. 2d Flynn Decl. ¶ 22.

98. An organization sharing information in the Voter File with state and local officials within Maine would not be at risk of violating the prohibition on public disclosure of personally identifying voter information in 196-A(1)(J)(2) because Maine officials are themselves required to keep such data confidential. 2d Flynn Decl. ¶ 19.

99. An organization's disclosure of personally identifying information from the Maine Voter File to officials outside of Maine would not risk a violation of 21-A M.R.S.

§ 196-A(1)(J)(2) unless those jurisdictions had no legal safeguards protecting such data from public disclosure. And, even if the jurisdiction had no such safeguards, the organization would still be free under Maine law to transmit data it acquired from sources other than Maine's Voter File, such as the home state's voter file. 2d Flynn Decl. ¶ 20.

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