UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC INTEREST LEGAL FOUNDATION, INC., **Plaintiff,** **v.** **MONICA HOLMAN EVANS,** **Defendant.**	**Civil Action No. 21-3180 (FYP)**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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INTRODUCTION

In June of 2021, plaintiff Public Interest Legal Foundation, Inc. sent two requests for information to the District of Columbia Board of Elections (BOE) under a provision of the National Voter Registration Act (NVRA) that requires certain records be made available for public inspection. BOE, headed by defendant Monica Holman Evans, partially granted and partially denied plaintiff's requests. Plaintiff brings this action alleging that the applicable provision of the NVRA requires BOE to produce applicable records in the possession of the District of Columbia (the District). Plaintiff, however, is incorrect. The language of the NVRA limits the mandatory disclosure of records to those "concerning the implementation" of specified "programs and activities," the plain meaning of which does not encompass the sensitive personal information and third-party reports about deceased voters that plaintiff has requested here. To whatever extent the applicable provision's language is ambiguous, the NVRA as a whole uses the terms "programs" and "activities" solely in reference to active processes, and the use of "implementation" further bolsters the conclusion that only records concerning changes to voter rolls are subject to disclosure. The broader context of related federal legislation further demonstrates that plaintiff's unduly broad reading of the NVRA is incorrect and would have policy consequences contravening the NVRA's express purpose. Alternatively, even if any information plaintiff has requested is subject to disclosure, sensitive personal information is not. Plaintiff's Complaint should be dismissed.

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BACKGROUND

I. National Voter Registration Act

In 1993, Congress passed the NVRA on the basis of three express findings: that United States citizens have a "fundamental right" to vote; that "it is the duty of Federal, State, and local governments to promote the exercise of that right"; and that "discriminatory and unfair registration

laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office," including by "disproportionately" harming participation by "various groups, including racial minorities." 52 U.S.C. § 20501(a). Accordingly, the NVRA was implemented to achieve four expressly stated purposes: (1) "to establish procedures" for increasing voter registration for federal elections; (2) to "enhance[] the participation" of eligible voters in federal elections; (3) "to protect the integrity of the electoral process"; and (4) "to ensure that accurate and current voter registration rolls are maintained." *Id.* § 20501(b). *Cf. True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 722 (S.D. Miss. 2014) ("The NVRA was not designed as a tool to root out voter fraud, 'cross-over voting,' or any other illegal or allegedly illegal activity associated with casting a ballot on election day.").

The legal requirements imposed by the NVRA largely pertain to specifying ways states must make voter registration available, including the responsibilities of state voter registration agencies.[1] *See* 52 U.S.C § 20503(a) (mandating states must make voter registration for federal elections available "simultaneously with an application for a motor vehicle driver's license," "by mail," and "by application in person"); *id.* § 20506 (responsibilities of voter registration agencies). The NVRA also sets forth rules for removing previously registered individuals from lists of eligible voters. *See id.* § 20507(a)(3). A state cannot remove a registered voter except at the voter's request, "by reason of criminal conviction or mental incapacity" under state law, "the death of the registrant," or a change in the voter's residence. *Id.* §§ 20507(a)(3), (4); *see also id.* § 20507(d) (specifying process for confirming a change of residence). The statute also specifies parameters for how these can be carried out. For example, under the NVRA, "[a]ny State program or activity

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[1] The NVRA defines "State" as "a State of the United States and the District of Columbia." *See* 52 U.S.C. § 20502(4).

to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office" must be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965," and "shall not result in the removal" of an individual from a state's eligible voter list except under limited circumstances. *Id.* § 20507(b). And, the statute provides that a state may "establish[] a program" to use change-of-address information from the United States Postal Service (USPS) to identify registered voters whose addresses may have changed. *Id.* § 20507(c).

Beyond these procedural components, the NVRA contains a provision entitled "Public disclosure of voter registration activities" (the Activities Disclosure Provision) concerning records that state agencies must make available to the public. That provision reads as follows:

> (1) 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.
>
> (2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

52 U.S.C. § 20507(i).

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II. Plaintiff's Allegations

Along with 31 states, the District is a member of the Electronic Registration Information Center (ERIC), "a non-profit organization with the sole mission of assisting states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens." Compl. [1] ¶¶ 10, 13 n.2. All members sign an agreement setting forth terms and conditions for ERIC membership. *Id.* ¶ 14 (citing ERIC Bylaws, Article II, Section 3, at 4

https://ericstates.org/wp-content/uploads/2020/02/ERIC_Bylaws_01-2020.pdf).[2] Pursuant to its membership agreement, the District must provide ERIC with certain information taken from District voter registration and motor vehicle licensing and identification databases. *Id.* ¶¶ 15 (citing ERIC Bylaws, Exhibit A (Membership Agreement) at Section 2(b), at 17); 16.

ERIC, in turn, has access to a Social Security Administration (SSA) database called the Limited Access Death Master File (Limited Access DMF), *id.* ¶ 19, which contains "the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security," 42 U.S.C. § 1306c(d). As the name of the database indicates, a provision of federal law enacted as part of the Bipartisan Budget Act of 2013 (2013 Act) limits access to that information only to entities certified under a Department of Commerce certification program (Certification Program) as meeting specified criteria. *See* 42 U.S.C. § 1306c; 15 C.F.R. § 1110.102. An entity must show either "a legitimate fraud prevention interest" or "a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty" to be eligible for certification. 42 U.S.C. § 1306c(a)(2)(A). The entity must also show it has "systems, facilities, and procedures," and the related experience, necessary to safely maintain the information. *Id.* § 1306c(a)(2)(B). Government entities must additionally show they meet confidentiality requirements specified under the Internal Revenue Code. *See id.* § 1306c(a)(2)(C)

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[2] In addition to plaintiff's allegations, a motion to dismiss may cite to any document "referred to in the complaint" that "is central to the plaintiff's claim." *Slovinec v. Georgetown Univ.*, 268 F. Supp. 3d 55, 59 (D.D.C. 2017). The Court may also take judicial notice of matters that are "not subject to reasonable dispute" because they are "generally known within" the Court's jurisdiction or "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b). All page citations to the ERIC Bylaws, which is cited and referenced throughout the Complaint, are to the PDF page numbers.

(citing 26 U.S.C. § 6103(p)(4)).[3] A provision in the law, however, expressly prohibits disclosure of Limited Access DMF information in response to Freedom of Information Act (FOIA) requests. *See* 42 U.S.C. § 1306c(e). Certified entities who misuse Limited Access DMF information, or release it to entities that do not meet the certification criteria, are subject to financial penalties. *Id.* § 1306c(c).

As alleged, with data collected from its members and the Limited Access DMF, ERIC provides its members with non-public reports "that show voters who have moved within their state, voters who have moved out of state, **voters who have died**, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not registered." Compl. ¶ 18 (quoting FAQs, What Reports Do States Receive from ERIC, https://ericstates.org/ (Complaint's emphasis)). As relevant here, ERIC provides the District with reports "showing registrants who are deceased or likely deceased" (Deceased Reports). *Id.* ¶ 20. The District "uses ERIC Deceased Reports to conduct list maintenance programs and activities required by the NVRA." *Id.* ¶ 25.

On June 24, 2021, plaintiff sent BOE a request for records under the NVRA's Activities Disclosure Provision. *Id.* ¶ 37; *see* 52 U.S.C. § 20507(i). Plaintiff's request consisted of two parts: (1) "All 'ERIC Data' received from ERIC during the years 2019, 2020, and 2021 concerning registered voters identified as deceased or potentially deceased"; and (2) "All reports and/or statewide-voter-registration-system-generated lists showing all registrants removed from the list

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[3] Originally the SSA created an unrestricted version of the Death Master File in 1980 as part of a consent decree resolving a Freedom of Information Act (FOIA) lawsuit. *See* Social Sec. Admin. Office of the Insp. Gen., "Follow-up on Personally Identifiable Information Made Available to the Public Via the Death Master File (A-06-18-50708)," at 1 n.2 (June 11, 2021), available at https://bit.ly/33NDNji (last visited Feb. 2, 2022). In the ensuing decades, however, individuals began using information procured from the DMF to commit identity theft, prompting creation of the Certification Program. *See* Staff of H. Comm. on the Budget, 113th Cong., Rep. on Bipartisan Budget Act of 2013, at 262 (Comm. Print 2014), available at https://bit.ly/3HsiUco (last visited Feb. 2, 2022) (2014 Committee Print).

of eligible voters for reason of death for the years 2019, 2020, and 2021." *Id.* Request (2) contained the proviso that "[s]uch lists will optimally include unique voter identification numbers, county or locality, full names, addresses, and dates of birth." *Id.* Plaintiff's letter also defined "ERIC Data" to mean "data included in reports by ERIC to member states concerning deceased and relocated registrants, and other information related to voter registration list maintenance." *Id.* ¶ 38 (internal quotation marks omitted).

BOE denied plaintiff's first request as written. *See id.* ¶¶ 40-44. Pointing to its membership agreement with ERIC, BOE stated that the ERIC Deceased Reports "contain federally-protected [Limited Access DMF] data," as well as District of Columbia Department of Motor Vehicles (DCDMV) data provided to ERIC by the District that would otherwise be barred from disclosure by the federal Driver's Privacy Protection Act (DPPA). *See* Compl. Ex. B. [1-2] at 1 (citing 18 U.S.C. §§ 2721(a), 2725(4)).[4] Although plaintiff did not expressly style its request as one under the District's Freedom of Information Act (DC FOIA), to cover all bases for its determination, BOE also cited to a DC FOIA provision which prohibits disclosure of information "specifically exempted from disclosure by statute." *See* Compl. Ex. B at 1 (quoting D.C. Code § 2-534(a)(6)).

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As to plaintiff's second request, BOE granted it in part and denied it in part. Compl. ¶ 46. BOE provided plaintiff with a list of individuals removed from the District's voter rolls between January 1, 2019 to June 29, 2021, for reason of death. *Id.*; *see also* Compl. Ex. B at 1-2. BOE declined, however, to provide dates of birth and voter identification numbers for each person. *Id.*

[4] The DPPA provides that government motor vehicle departments may not knowingly disclose personal information kept in motor vehicle records outside of several exceptions enumerated under the statute. *See* 18 U.S.C. §§ 2721(a), (b). Under one such exception, personal information may be disclosed "[f]or use by any government agency … in carrying out its functions …." *Id.* § 2721(b)(1).

On July 21, 2021, plaintiff sent BOE a letter (July Letter) stating that the District was in violation of the NVRA's Activities Disclosure Provision. Compl. ¶ 47. In that letter, plaintiff stated that BOE's response violated the Activities Disclosure Provision because the law "exempts only two pieces of information" from its "broad disclosure mandate," namely "a declination to register to vote," and "the identity of a voter registration agency through which any particular voter is registered." Compl. Ex. C [1-3] at 2. Plaintiff stated that it did "not seek either of those things and the NVRA exempts no other records." *Id.* Plaintiff nevertheless stated that BOE could satisfy its request by producing the "'ERIC Data' reports with unique voter identification numbers" but "redact[] … all data elements contained in the [Limited Access DMF] and protected by 15 C.F.R. § 1110 et seq., such as SSN dates of birth, SSN dates of death, SSN death locations, and full/partial SSN numbers [*sic* throughout]." Compl. ¶ 52. Plaintiff demanded, however, that BOE "resubmit [a list of deceased voters] with unique voter identification numbers." *Id.*

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On October 19, 2021, BOE responded to plaintiff's July Letter by reiterating that, as to plaintiff's first request, it could not produce the ERIC Deceased Reports because plaintiff had not established that it was entitled to access information derived from the Limited Access DMF under 42 U.S.C. § 1306c. *See* Compl. Ex. D at 1. BOE further explained that the ERIC Deceased Reports contain information otherwise barred from disclosure under the DPPA. *Id.* at 2. As to plaintiff's second request, BOE agreed to update its previously disclosed list of deceased voters with a unique "system-generated" voter identification number for each individual but could not provide actual voter registration numbers. *Id.* As BOE explained, the Activities Disclosure Provision itself prohibits the disclosure of any records that "relate … to the identity of a voter registration agency through which any particular voter is registered," and some voter registration numbers in the District are "legacy voter registration numbers" containing that very information. *Id.* at 2-3 (citing

52 U.S.C. § 20507(i)). Plaintiff alleges that beyond receiving the information BOE agreed to produce, it has "received no further correspondence or records" from BOE. Compl. ¶ 55.

On December 6, 2021, plaintiff filed this lawsuit, bringing a single claim under Section 8(i) of the NVRA arising from the BOE's partial denial of its two records requests. *Id.* ¶¶ 66-72. Plaintiff now seeks declaratory and injunctive relief, as well as attorney's fees and costs. *Id.* Prayer for Relief ¶¶ 1-8.

LEGAL STANDARD

"[T]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (internal quotation marks omitted). A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although "detailed factual allegations" are not required to withstand a Rule 12(b)(6) motion, a plaintiff must offer "more than labels and conclusions" to provide "grounds" of "entitle[ment] to relief." *Twombly*, 550 U.S. at 555. A complaint alleging facts which are "'merely consistent with' a defendant's liability, . . . 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557) (alterations adopted).

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ARGUMENT

I. Plaintiff Has Not Stated a Claim Based on the Plain Language of the NVRA.

Plaintiff's only claim alleges an informational injury under the NVRA's Activities Disclosure Provision from the District's purported failure to disclose certain categories of

information under two separate requests. Compl. ¶¶ 66-72.[5] Even as alleged, however, BOE's response to plaintiff's requests does not violate the NVRA, as the language of the statute does not require disclosure of the requested information.

Interpretation of a statute "starts with the plain meaning of the text, looking to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Elec. Privacy Info. Ctr. v. Internal Revenue Svc.*, 910 F.3d 1232, 1241 (D.C. Cir. 2018) (internal quotation marks omitted) (quoting *Blackman v. District of Columbia*, 456 F.3d 167, 176 (D.C. Cir. 2006)). Where statutory language has a "plain and unambiguous meaning," the "inquiry ends so long as the resulting statutory scheme is coherent and consistent." *Blackman*, 456 F.3d at 176 (internal quotation marks omitted) (quoting *United States v. Barnes*, 295 F.3d 1354, 1359 (D.C. Cir. 2002)).

Plaintiff has not stated a claim as to either of its requests based on the plain language of the NVRA. Some of the voter registration numbers plaintiff seeks are expressly prohibited from disclosure under the statute because those numbers reveal the site of an individual's voter registration. *See* 52 U.S.C. § 20507(i)(2). And all remaining information sought, including the information plaintiff alleges to be in the ERIC Deceased Reports, does not fall within the Activities Disclosure Provision because it is not information "concerning the implementation" of relevant "programs and activities." *See id.* § 20507(i)(1).

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[5] The Complaint does not state whether plaintiff seeks all the information sought in its original requests to BOE or only the more limited quantity of information sought in its July Letter. *Compare* Compl. ¶ 37 *with id.* ¶ 52. Plaintiff, however, has not stated a claim in either case.

A. The NVRA Expressly Prohibits Disclosure of Legacy Voter Registration Numbers.

First, the individual voter identification numbers that plaintiff seeks implicate an exemption written into the NVRA's plain language. The Activities Disclosure Provision expressly excludes any records that "relate to … the identity of a voter registration agency through which any particular voter is registered." 52 U.S.C. § 20507(i)(2). Indeed, a related provision actively mandates that states "ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public." *Id.* § 20507(a)(6). As at least one court has observed, the clear basis for these provisions is that "a disclosure of where a particular applicant submitted a voter registration form—for instance, whether the form was submitted to a State office providing assistance to the poor or at a DMV—might disclose information about an applicant that is stigmatizing or might otherwise adversely reflect upon a particular applicant." *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1339 (N.D. Ga. 2016).

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BOE has already provided plaintiff with unique system-generated identification numbers for each eligible voter removed from the District's voter registration lists for reason of death in the years requested. Compl. ¶¶ 46, 54; *see also* Compl. Ex. D at 2-3. Plaintiff nevertheless continues to seek every such individual's actual voter registration number. Compl. ¶ 52. But as the District explained in its letters denying plaintiff's requests, some of the numbers are "legacy numbers" that identify the voter registration agency through which the voter registered. Compl. Ex. D at 2-3. Such records are not available under the Activities Disclosure Provision. Plaintiff cannot state a claim for an informational injury under the NVRA with respect to the legacy voter registration numbers when the information sought is prohibited from disclosure under that very statute.

B. The Plain Language of the Activities Disclosure Provision Does Not Mandate Disclosure of Sensitive Personal Information or Third-Party Reports.

Plaintiff additionally sought from BOE "[a]ll 'ERIC Data' received from ERIC during the years 2019, 2020, and 2021 concerning registered voters identified as deceased or potentially deceased."[6] Compl. ¶ 37. Plaintiff defined "ERIC Data" as "data included in reports provided by ERIC to member states concerning deceased and relocated registrants, and other information related to voter registration list maintenance," with no exclusion for sensitive personal information. *Id.* ¶ 38 (internal quotation marks omitted).[7] The plain language of the NVRA, however, does not encompass that information.

The Activities Disclosure Provision requires that government agencies make available "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). From this limited universe, the provision carves out two exceptions: any records that relate to "a declination to register to vote," and those relating to "the identity of a voter registration agency through which any particular voter is registered." *Id.* The provision also clarifies that among those records that must be made available are "lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each

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[6] Plaintiff previously narrowed its record request to exclude "all data elements contained in the [Limited Access DMF] and protected by 15 C.F.R. § 1110 et seq., such as SSN dates of birth, SSN dates of death, SSN death locations, and full/partial SSN numbers [*sic* throughout]." Compl. ¶ 52.

[7] Indeed, in plaintiff's request seeking all voters removed from the District's voter registration lists by reason of death, plaintiff specified that, in addition to voter identification numbers, "[s]uch lists will optimally include … county or locality, full names, addresses, and dates of birth."

such person has responded to the notice as of the date that inspection of the records is made."[8] *Id.* § 20507(i)(2).

Despite plaintiff's breathtaking assertions to the contrary, *see* Compl. Ex. C at 2, the Activities Disclosure Provision is not an unbounded requirement that an elections board disclose any and all records requested. Rather, the Activities Disclosure Provision is limited by its plain language to those records "concerning the implementation" of specified "programs and activities." *See* 52 U.S.C. § 20507(i)(1). As other courts have found, Congress used the word "implementation" to "restrict[] the scope of the records required to be disclosed" to information about "processes" for voter list maintenance. *Kemp*, 208 F. Supp. 3d at 1339; *see also id.* at 1338-39 ("If Congress intended a broad disclosure requirement encompassing information more granular than process information, it is unclear why it chose to include the word 'implementation' at all."). Similarly, the language confining the provision's scope to those records involving the implementation of "programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" establishes further boundaries, as not everything amounts to a "program" or an "activity." *See, e.g., id.* at 1338 (citing dictionary definitions of "program" and "activity" and concluding Activities Disclosure Provision only applicable to records "related to fulfilling, performing, carrying out, or putting into effect by means of a definite plan or procedure (1) systems or (2) specific actions to ensure that the State's official list of individuals entitled to vote is current and accurate"); *Pub. Interest Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 559 (M.D. Pa. 2019) (finding plain meaning limits Activity Disclosure Provision

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[8] Subsection (d), entitled "Removal of names from voting rolls," concerns when and how jurisdictions must contact registered voters to determine if a change of residence warrants their removal from voter rolls. Subsection (d)(2) specifies how such communications may be sent to such individuals, and how jurisdictions may require a recipient to confirm their place of residence. *See* 52 U.S.C. § 20507(d)(2).

to records reflecting implementation of "a schedule or system designed to serve a specific end, or a particular function or operation, 'conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters'").

To be sure, the Activities Disclosure Provision does contemplate the disclosure of some records, and courts have found several types of information to fall within the statute's ambit. *See, e.g.*, *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 337 (4th Cir. 2012) (voter registration records); *Kemp*, 208 F. Supp. 3d at 1342 (agency records pertaining to entry of voter registration applications into state database); *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 442 (D. Md. 2019) (list of registered voters). And the statute itself further specifies that states must make available the names and addresses of anyone to whom change-of-residence correspondence was sent, as well as any responses given by those individuals. *See* 52 U.S.C. §§ 20507(i)(2), (d)(2). But courts have also concluded that certain election-related information falls outside of the Activities Disclosure Provision and is not subject to disclosure. *See, e.g.*, *Kemp*, 208 F. Supp. 3d at 1343 (voter telephone numbers, certain automatically generated letters, and disposition of letters sent to voter registration applicants not subject to disclosure); *Hosemann*, 43 F. Supp. 3d at 724 ("poll books" reflecting only voters eligible to vote on election day not within Activities Disclosure Provision); *id.* at 727-28 (absentee ballot applications and envelopes not within Activities Disclosure Provision). In any case, no court has found that states must provide what plaintiff seeks here: third-party reports, compiled using sensitive personal information otherwise not subject to disclosure, assessing whether registered voters may be deceased.

Indeed, plaintiff has failed to allege that the ERIC Deceased Reports concern the "implementation" of a "program" or "activity" of the relevant kind beyond a single conclusory allegation to that end. *See* Compl. ¶ 25. A complaint, however, must offer "more than labels and

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conclusions" to provide "grounds" of "entitle[ment] to relief." *Twombly*, 550 U.S. at 555. The only relevant factual contentions plaintiff attempts to offer purport that ERIC issues the District reports "showing registrants who are deceased or likely deceased," Compl. ¶ 20, and that "[w]hen the District of Columbia receives ERIC Deceased Reports, the District of Columbia is required to, 'at a minimum, initiate contact with that voter in order to correct the inaccuracy or obtain information sufficient to inactivate or update the voter's record,'" *id.* ¶ 21 (quoting Membership Agreement, section 5(b), at 20). But even if that is assumed to be true, the ERIC Deceased Reports are not documents reflecting the "implementation" of anything by the District. *See Kemp,* 208 F. Supp. 3d at 1337 ("implement" defined in dictionary as "to carry out, especially to give practical effect to and ensure of actual fulfillment by concrete measures"; "to fulfill; perform, carry out, or to put into effect according to or by means of a definite plan or procedure"; and "to complete, perform, carry into effect") (internal quotation marks omitted). They are simply third-party reports reflecting information furnished to the District. Plaintiff does not allege that the ERIC Deceased Reports contain any information reflecting any "programs" or "activities" as defined under the Activities Disclosure Provision, let alone the "implementation" thereof.

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Under the NVRA's plain language, plaintiff has not stated a claim for relief. No further analysis is needed. *See Blackman,* 456 F.3d at 176.

II. The Statutory Context, Legislative Background, and Policy Ramifications Support the Conclusion That the Requested Information Is Not Subject to Disclosure.

Alternatively, even if the language is not plain and unambiguous on its face, the rest of the NVRA and the background legislative context make clear that the information plaintiff seeks nonetheless falls outside of the Activities Disclosure Provision's scope. When the text of a statutory provision is ambiguous, courts must "consider the broader context of [the section] and the structure of the … [a]ct as a whole, as well as the contextual background against which

Congress was legislating, including relevant practices of the Executive Branch which presumably informed Congress's decision, prior legislative acts, and historical events." *United States v. Wilson*, 290 F.3d 347, 354 (D.C. Cir. 2002). Courts may also consider "the policy ramifications" of any particular interpretation. *Id.*; *see also Crandon v. United States*, 494 U.S. 152, 158 (1990) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy."). Taking each of these into account, plaintiff has not stated a claim here.

A. The Activities Disclosure Provision and the NVRA as a Whole Do Not Support Disclosure of Sensitive Personal Information or Third-Party Reports on Deceased Voters.

The broader context of the Activities Disclosure Provision and the NVRA as a whole make clear that the information sought here does not fall within the "implementation" of "programs" or "activities" as contemplated under the statute. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) ("The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.").

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When resolving statutory ambiguities, "[i]nterpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006); *see also id.* ("The definition of words in isolation … is not necessarily controlling in statutory construction."); *Brown & Williamson*, 529 U.S. at 133 ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989))). It is well accepted that when analyzing statutory language, "a word is known by the company it keeps—a rule that is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts

of Congress." *S. Carolina Pub. Serv. Auth. v. F.E.R.C. (SCPSA)*, 762 F.3d 41, 59 (D.C. Cir. 2014) (alteration adopted) (internal quotation marks omitted) (quoting *Dolan*, 546 U.S. at 486). These principles make plain that plaintiff has not stated a claim under the NVRA.

1. "Program" and "Activity" Refer Throughout the Statute Only to Active Processes.

As recounted above, the bulk of the NVRA's provisions deal with procedures for promoting voter registration and limiting the circumstances in which individuals can be removed from state voter registration lists. *See* 52 U.S.C. § 20504 (setting forth requirement that a driver's license application include a simple voter registration form); *id.* § 20505 (requiring mail-in voter registration); *id.* § 20506 (requiring that certain public agencies provide voter registration services). Throughout the statute, Congress set strict rules for specified types of "programs" and "activities," making clear that these terms refer to active processes, not to the mere receipt and review of information provided by a third party. For example, the NVRA sets non-discrimination parameters around "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office," mandating that any such program or activity "shall not result in the removal of the name of any person registered to vote in an election for Federal office by reason of the person's failure to vote" except under specified circumstances. *See* 52 U.S.C. § 20507(b). As the language of this provisions makes clear, the "programs" or "activities" contemplated throughout Section 20507 must consist of active processes to alter voter registration lists, as nothing else could "result in the removal" of registered voters.

This is in line with the D.C. Circuit's approach to statutory interpretation in *SCPSA*. At issue there was construction of Section 202(a) of the Federal Power Act, which directs the Federal Energy Regulatory Commission (FERC) "to divide the country into regional districts for the

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voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy." *SCPSA*, 762 F.3d at 59. The question was whether Section 202(a) barred FERC from regulating "transmission planning," or the planning of new electricity facilities, given its mandate that the country be divided into electrical energy districts for "coordination" efforts that are strictly "voluntary." *Id.* Although "coordination" in isolation could be understood to encompass transmission planning, the court looked at the statute as a whole and concluded that "[t]he 'coordination' addressed in Section 202(a) is textually limited to coordination for purposes of generation, transmission and sale, all activities that require operating facilities" already to be in existence. *Id.* In that statute, transmission planning did not fall within "coordination" because the term was used only to refer to coordination activities around preexisting electrical facilities. Likewise here, the language used elsewhere in Section 20507 provides needed context for the terms "programs" and "activities," which refer only to active processes throughout Section 20507.

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Interpreting both terms that way is also consistent with provisions elsewhere in the NVRA requiring each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from voter lists because of death or a change of residence, *id.* § 20507(a)(4), and to establish a "program" in which, using USPS change-of-address information, a state official may "change[] the registration records to show the new address and send[] the registrant a notice of the change … by which the registrant may verify or correct the address information" or may "use[]" a separate statutory notice procedure "to confirm the change of address" depending on whether the registrant has moved outside of his or her previous jurisdiction, *id.* § 20507(c). All of these involve actively changing voter registration lists.

Reading the NVRA as a whole, "programs" and "activities" therefore must refer to active processes that can result in actual changes to voter registration lists, not the mere review of

information provided in a third-party report. Any other reading would impose meaning on the Activities Disclosure Provision that is inconsistent with the rest of the statute. *Cf. Brown & Williamson*, 529 U.S. at 133 ("A court must … interpret [a] statute as a symmetrical and coherent regulatory scheme … and fit, if possible, all parts into a harmonious whole." (citations and internal quotation marks omitted)).

2. Alternatively, Because "Implementing" Appears Nowhere Else in the Statute, the Activities Disclosure Provision Was Specifically Limited to Active Processes.

Even if the terms "programs" and "activities" were not clear in context, one additional piece of the Activities Disclosure Provision is unmistakable: the use of the term "implementing," which appears nowhere else in the statute. It is a canonical principle of statutory interpretation that statutes should be interpreted "to give effect, if possible, to every clause and word of a statute." *Validus Reinsurance, Ltd. v. United States*, 786 F.3d 1039, 1045 (D.C. Cir. 2015) (internal quotation marks omitted) (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)); *see also Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 669 (2007) ("[W]e have cautioned against reading a text in a way that makes part of it redundant.").

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Even if "programs" and "activities" do not refer solely to active processes in the NVRA, the Activities Disclosure Provision expressly applies only to records "concerning the implementation" of those programs and activities, leaving no question that only active processes fall within its scope. As other courts have observed, the plain meaning of "implement" is active: to "carry out, … especially to give practical effect to and ensure the actual fulfillment by concrete measures," *Kemp*, 208 F. Supp. 3d at 1337 (citing Webster's Third New Int'l Dictionary 1134 (2002)), or "to put into effect according to or by means of a definite plan or procedure," *id.* (citing Webster's Encyclopedic Unabridged Dictionary 961 (2001)); *see also Hosemann*, 43 F. Supp. 3d at 719 (citing similar dictionary definitions). Any ambiguity surrounding "programs" and

"activities" in isolation is thus resolved by the inclusion of "implementation." Even as alleged, the ERIC Deceased Reports do not reflect the "implementation" of anything, only information provided to the District by a third party about potentially deceased voters. *See* Compl. ¶ 20. They therefore fall outside of the Activities Disclosure Provision on its face.

3. The NVRA's Legislative History Makes Clear that Congress Never Contemplated Deceased Voter Information as Part of the Activities Disclosure Provision.

Finally, the legislative history resolves any residual ambiguity in the Activities Disclosure Provision. Legislative history "may give meaning to ambiguous statutory provisions" where the principles gleaned from the legislative history also find support in the statutory language itself. *Int'l Bhd. of Elec. Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697, 699-700 (D.C. Cir. 1987). Even if the Activities Disclosure Provision is unclear, the NVRA's legislative history reveals that sensitive personal information and records related to deceased voters were not contemplated as part of the provision.

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The Activities Disclosure Provision originated in the Senate's version of the NVRA, which contains the identical language ultimately adopted. *Compare* S. 460, 103rd Cong. § 8(i) (1993) *with* 52 U.S.C. § 20507(i) (using the same language). The Senate Committee Report explains that the provision was intended to apply to information related to ensuring the accuracy of voter addresses:

> Subsection (i) provides that each State shall maintain for two years all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency *of addresses* on the official list of eligible voters. The records must be made available for public inspection and, where available, photocopying at reasonable costs. [T]he records shall include lists of names and addresses of all persons to whom notices were sent and information concerning whether or not each person has responded to the notice as of the date of inspection.
> Provisions of this Act pertaining to voter registration programs require that information regarding a person's declination to register not be used for any purpose other than registration. There was also concern that information not be

> made public as to what voters registered at a particularly agency, such as a welfare or unemployment office. Therefore, these records may not contain any information relating to a declination to register or the identity of a voter registration agency through which any particular voter is registered, or a list of those persons registered through a particular agency.

S. Rep. No. 103-6, at 35 (1993) (emphasis added). Thus, the Activities Disclosure Provision was not envisioned by Congress to extend beyond information related to ensuring that voters are registered at the correct address.

This reading finds support in the language of subsection (i)(2) as adopted, which specifies that the records publicly available under subsection (i)(1) "shall include" lists of names and addresses of persons to whom change of address notices are sent and the responses to those notices. *See* 52 U.S.C. § 20507(i)(2). Because subsection (i)(2) deals with one category of records containing names and addresses, the use of "shall include" suggests that subsection (i)(1) primarily envisioned information related to where voters lived. In any case, it was plainly not intended to open the floodgates by making all voter-related information, and especially sensitive personal information, available to the public.

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Plaintiff's unduly broad reading notwithstanding, the Activities Disclosure Provision plainly does not encompass the information sought here. Concluding otherwise would unduly broaden the statute against the intention of Congress. *See SCPSA*, 762 F.3d at 59.

B. <u>The Broader Context of Federal Legislation Does Not Support Plaintiff's Reading of the Activities Disclosure Provision.</u>

Beyond the NVRA itself, the backdrop of other Congressional legislation lends itself to the same conclusion that plaintiff has read the statute incorrectly and has not stated a claim for relief. *See Wilson*, 290 F.3d at 354 (meaning of statutory terms may be clarified by "the contextual background against which Congress was legislating").

When interpreting Congressional legislation, courts must "presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). Indeed, the Supreme Court has cautioned against reading statutes in such a way as to effect an "implied repeal" of one of them. *See, e.g.*, *Branch v. Smith*, 538 U.S. 254, 273 (2003); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976). This applies no less to the NVRA. As the Fourth Circuit has concluded, "the term 'all records' in the [Activities Disclosure Provision] 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." *Pub. Interest Legal Found., Inc. v. North Carolina State Bd. of Elections (NCBOE)*, 996 F.3d 257, 264 (4th Cir. 2021). This is also true of subsequent federal legislation, which cannot be read to imply the repeal or amendment of the NVRA absent an express statement from Congress. *See J.E.M. Ag. Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-44 (2001) ("[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." (internal quotation marks omitted)). Reading the full breadth of federal legislation accordingly, the NVRA cannot be read to encompass the records plaintiff seeks.

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1. Plaintiff's Reading of the NVRA Would Conflict with Other Statutes in Existence When It Passed.

Plaintiff's claim cannot succeed because it depends on a reading of the NVRA that would put the statute in conflict with numerous other federal statutes in existence at the time it was passed. As other courts have noted, the Activities Disclosure Provision "was not drafted in a vacuum," but rather was enacted by Congress "thirty-seven years after it passed [FOIA]," and "nineteen years after enacting the Privacy Act of 1974." *Hosemann*, 43 F. Supp. 3d at 735 (citations omitted). Both

of those statutes include robust provisions protecting the privacy of individuals' personal information. *See* 5 U.S.C. § 552(b)(6) (records not subject to FOIA if disclosure "would constitute a clearly unwarranted invasion of personal privacy); *id.* § 552a(d) (specifying Privacy Act prohibitions against unwarranted disclosure of individuals' personal information by government agencies).

Indeed, "[i]t is hard to imagine that in enacting the NVRA, Congress intended to abrogate all protections provided for by Federal and State laws against the disclosure of private and confidential information." *Hosemann*, 43 F. Supp. 3d at 735. This is especially so in light of the presumption against "repeals by implication"; the implied repeal of a statutory provision will not be inferred "unless the later statute expressly contradicts the original act or unless such a construction is absolutely necessary in order that the words of the later statute shall have any meaning at all." *Nat'l Ass'n of Home Builders*, 551 U.S.at 662 (alterations adopted) (internal quotation marks omitted); *see also Branch*, 538 U.S. at 273 (implied repeal "will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'" (quoting *Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936))).[9]

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The NVRA did not supplant either FOIA or the Privacy Act, which deal with the general availability of government records and the protection of private information within government, respectively. *See Wilson*, 290 F.3d at 356 ("Congress is presumed to preserve, not abrogate, the background understandings against which it legislates."). No irreconcilable conflict exists between these statutes and the NVRA if the NVRA is read simply to exclude the kinds of records that would

[9] This is true also of "implied amendments" to statutes, which "are no more favored than implied repeals." *See Nat'l Ass'n of Home Builders*, 551 U.S. at 664 n.8.

implicate individual privacy concerns under FOIA and the Privacy Act. *See J.E.M.*, 534 U.S. at 143-44. Plaintiff's broad reading of the Activities Disclosure Provision would create unnecessary conflicts between the NVRA and prior legislation and should be rejected.

2. Plaintiff's Reading of the Activities Disclosure Provision Would Require the Court To Conclude Subsequent Legislation Partially Repealed the NVRA.

On similar grounds, plaintiff's unduly broad reading of the Activities Disclosure Provision would place it in conflict with subsequent federal legislation that likewise should not be read to have impliedly repealed or otherwise abrogated parts of the NVRA. *See Nat'l Ass'n of Home Builders*, 551 U.S. at 662. For example, the 2013 Act put in place the Limited Access DMF certification program to limit and regulate access to sensitive SSA records concerning the recently deceased. *See* 42 U.S.C. § 1306c(b) (establishing the certification program). If that kind of information had been previously subject to disclosure under the NVRA, the 2013 Act would have implicitly repealed any applicable provisions, as the 2013 Act unambiguously restricts disclosure of Limited Access DMF information to those who have been duly certified. *See* 42 U.S.C. § 1306c(a) (prohibiting disclosure of applicable information "to any person" unless certified); *cf. id.* § 1306c(c) (imposing financial penalties on certified entities who engage in unauthorized disclosure of Limited Access DMF information); *id.* § 1306c(e) (Limited Access DMF information not subject to disclosure by any federal agency, including under FOIA). The potential conflict imposed by that interpretation strongly suggests that the NVRA never permitted the disclosure of that information in the first place, which Congress can be presumed to have known when passing the 2013 Act. *See Goodyear Atomic*, 486 U.S. at 184-85 (courts must "presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts").

The same is true of the Driver's Privacy Protection Act of 1994 (DPPA), 18 U.S.C. § 2721 *et seq*. The DPPA prohibits the disclosure of "personal information … about any individual

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obtained by [any motor vehicle] department in connection with a motor vehicle record" except in certain specified circumstances. 18 U.S.C. § 2721(a), (b);[10] *see also* 15 C.F.R. § 1110. Congress was presumably aware of the NVRA when enacting the DPPA, given that the NVRA expressly required state departments of motor vehicles to include an option to register to vote with every application for a driver's license. *See* 52 U.S.C. § 20504 (requiring that every driver's license application be considered a voter registration unless the applicant elects not to register to vote). In any case, the DPPA included no provision expressly repealing any portion of the NVRA, including the Activities Disclosure Provision, suggesting that Congress did not believe the DPPA's limitations on disclosing personal information in any way conflicted with the NVRA. *See Nat'l Ass'n of Home Builders*, 551 U.S. at 662; *accord NCBOE*, 996 F.3d at 268 (finding DPPA "may preclude the disclosure of documents obtained by" a state elections board from a state department of motor vehicles).[11]

The broader context of Congressional legislation thus makes clear that plaintiff's reading of the NVRA is incorrect. As alleged, the ERIC Deceased Reports and all the information contained within them, including voter registration numbers, are not subject to disclosure under the Activities Disclosure Provision.

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[10] One such exception permits disclosure "[f]or use by any government agency … in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions." 18 U.S.C. § 2721(b)(1). That exception permits BOE to share DCDMV information with ERIC as alleged here. *See* Compl. ¶ 16.

[11] Consequently, plaintiff's reading of the Activities Disclosure Provision would create a backdoor not only circumventing the Limited Access DMF certification program but also the DPPA. As alleged, the identifying information that plaintiff seeks was obtained by the BOE from the DCDMV. *See* Compl. ¶ 15 (District required under ERIC membership agreement to provide "all licensing or identification contained in the [District's] motor vehicles database"). Plaintiff would thus get to access information otherwise prohibited from disclosure under the DPPA by way of the NVRA.

C. Reading the NVRA as Plaintiff Construes It Would Undermine Rather Than Promote the Statute's Purpose.

Finally, whatever ambiguities might exist in the Activities Disclosure Provision, the policy consequences of ordering disclosure here strongly weigh in favor of dismissal. *See Wilson*, 290 F.3d at 361 (relying on policy considerations to resolve an ambiguous statute).

First and foremost, interpreting the statute as plaintiff proposes would have the practical effect of gutting the Limited Access DMF certification program. Thirty-one states and the District are ERIC members, Compl. ¶ 13 n.2, and all receive reports from ERIC incorporating information from the Limited Access DMF, *id.* ¶¶ 18-19. If those reports were subject to public inspection under the Activities Disclosure Provision, full access of every report's contents would be available to any requester regardless of whether they have been or could be certified under the Certification Program. Moreover, the requestor would then be subject to civil penalties under 15 C.F.R. § 1110.200 for any further disclosures. *See* 15 C.F.R. § 1110.200 (imposing fines on anyone who uses or discloses information in the Limited Access DMF except as expressly permitted by law, irrespective of their certification status). Thus, if the Court ordered production of the records sought, ERIC, the District, and plaintiff alike could face financial penalties for using or disclosing any information produced to the extent it came from the Limited Access DMF. *See Wilson*, 290 F.3d at 361 (statutory constructions producing "'absurd results' are strongly disfavored" (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982))). The Court should not countenance plaintiff's attempts to create a backdoor to the Limited Access DMF Certification Program that Congress plainly did not intend. *See SCPSA*, 762 F.3d at 59.

Second, reading the Activities Disclosure Provision as broadly as plaintiff proposes would create an obvious incentive for ERIC to stop incorporating information from the Limited Access DMF into its members' reports, leaving the District (and all other ERIC members) with less

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accurate data in its hands. The 2013 Act specifies that certified entities may be fined for unauthorized disclosures of Limited Access DMF information regardless of the entity's intent. *See* 15 C.F.R. § 1110.200(a) (imposing civil penalties and potential decertification for misuse of the Limited Access DMF). For certified entities such as ERIC that seek to assist governments with Limited Access DMF-related information, the choice would be stark: cease doing so or risk public disclosure and all attendant fines and decertification. Yet Congress passed the NVRA precisely "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). Shutting off a valuable information channel to ERIC's members would undermine that purpose, not promote it.

Third, it is unclear what countervailing benefits, if any, plaintiff believes will be gained by public disclosure of ERIC's Deceased Reports and all other requested information. The only concerns with ERIC's practices alleged by plaintiff involve problems identifying voters who changed addresses. *See* Compl. ¶¶ 33-35. Moreover, the overarching election transparency concern plaintiff alleges is "that significant numbers of people are at risk of being disenfranchised, particularly those from minority groups." *Id.* ¶ 36. Yet neither of these has anything to do with any of the material plaintiff seeks, including the information plaintiff alleges to be in the Deceased Reports about "registrants who are deceased or likely deceased." Compl. ¶ 20. Plaintiff has identified no problem in the District that is in any way connected to the information sought, placing this case in stark contrast to others brought specifically to shed light on alleged problems that were both identifiable and of the kind the NVRA sought to protect against. *See, e.g.*, *Long*, 682 F.3d at 333-36 (concluding completed voter registration applications within Activities Disclosure Provision in case arising from concern that African-American college students suffered impediments to registering to vote); *Fish v. Kobach*, 840 F.3d 710, 756 (10th Cir. 2016) (striking

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down a Kansas law that imposed additional requirements on voter registration in violation of the NVRA). Any implicit objective related to illegal activity by voters falls outside the scope of the NVRA. *See Hosemann*, 43 F. Supp. 3d at 722 ("The NVRA was not designed as a tool to root out voter fraud, 'cross-over voting,' or any other illegal or allegedly illegal activity associated with casting a ballot on election day."); *accord Petit v. United States Dep't of Educ.*, 675 F.3d 769, 782 (D.C. Cir. 2012) (to understand statutory language, court "must consider … the problem Congress sought to solve in enacting the statute in the first place" (internal quotation marks omitted)).

Even taking all of plaintiff's allegations as true, ordering disclosure of the requested information here would undermine the NVRA and build a backdoor into the Limited Access DMF Certification Program, all while furthering no legitimate purpose for plaintiff. The Activities Disclosure Provision should not be read to countenance such an outcome.

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III. Even if Some Requested Information Is Subject to Disclosure, Confidential Personal Information Can Be Redacted.

Plaintiff has previously agreed to receive the ERIC Deceased Reports with "the redaction of all data elements contained in the [Limited Access DMF] and protected by 15 C.F.R. § 1110 et seq." Compl. ¶ 52. Indeed, as other courts have found, even the express exception in Section 20507(i)(2) pertaining to records of address change verifications only mandates disclosure of "names and addresses," a recognition by Congress "that other voter registration information may be sensitive and not subject to disclosure." *Hosemann*, 43 F. Supp. 3d at 734. This is consistent with decades of federal legislation preceding the NVRA "express[ing] Congress's concern for individuals' privacy interest." *Id.* at 735 (citing Voting Rights Act of 1965, FOIA, and Privacy Act of 1974). Nothing in the NVRA evinces Congress's intent to repeal those laws. *See id.* ("It is hard to imagine that in enacting the NVRA, Congress intended to abrogate all protections provided for by Federal and State laws against the disclosure of private and confidential information."). Thus,

even if plaintiff is entitled to some records, plaintiff is not entitled to them without appropriate redactions of confidential personal information—and has already agreed to as much. *See* Compl. ¶ 52.

CONCLUSION

For the foregoing reasons, the Court should grant this motion and dismiss plaintiff's Complaint with prejudice.

Dated: February 3, 2022.

Respectfully submitted,

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