

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

**SECRETARY OF STATE’S REPLY IN SUPPORT OF
MOTION FOR PARTIAL STAY PENDING APPEAL**

The Court should grant the limited and narrow stay requested by the Secretary because it will protect Maine voters from potential harm while causing little or no harm to PILF. Moreover, the Secretary’s appeal presents substantial and close questions of law that are issues of first impression in this Circuit and have been only sparsely litigated elsewhere. PILF’s opposition fails to rebut these showings.

Reply Argument

I. The Balance of Harms Weighs in Favor of Granting a Partial Stay

The Secretary demonstrated in her motion that the balance of harms weighs significantly in favor of granting the partial stay she seeks while her appeal is pending. The Secretary’s motion seeks only narrow relief while her appeal is pending: to require PILF to abide by Exception J’s restriction on making personally identifying voter information “accessible by the general public on the Internet or through other means.” *See* 21-A M.R.S.A. § 196-A(1)(J)(2). This Court’s declaratory relief to PILF would otherwise remain in full force and effect during the

appeal. The limited relief would allow PILF full use of the Voter File data for whatever analyses or other activities it wishes to conduct while simultaneously protecting Maine voters, at least for the limited period of the appeal, from invasions of privacy caused by actual publication of their personal information to the general public. In its decision granting summary judgment to PILF, the Court “acknowledge[d] Defendant’s privacy concerns related to the disclosure of sensitive information contained in the Voter Roll.” ECF No. 87 at 15. The relief sought by the Secretary would address the largest of those privacy concerns—protecting voters from public exposure of their information—while imposing little or no harm on PILF.

PILF’s opposition argues that no harm can come to voters because PILF does not yet have a copy of the Voter File. It even goes so far as to suggest that the Secretary is somehow “concealing” the Voter File from it. Opp. at 3. By “concealing,” PILF apparently means that Secretary has not affirmatively waived the requirements that PILF submit a request form and pay the required fee. But the Court did not order the Secretary to do that. To the contrary, its Order expressly contemplates that PILF would need to file a request and pay the applicable fee. *See* Order at 17 (declining to issue an injunction because “the record suggests that Defendant would grant Plaintiff’s request for the Voter File if and when it files the requisite form and pays the applicable fee”).

PILF needs to submit a request form acknowledging Exception J’s restrictions not because those restrictions are currently enforceable against it—the Court’s order makes clear they are not—but because they may be in the future if the Secretary prevails on appeal or if the Court grants this motion.¹ Similarly, PILF needs to pay the \$2,200 fee for the Voter File because

¹ PILF’s claim that it would be committing the crime of “unsworn falsification” under 17-A M.R.S. § 453(1)(A) if it completed the request form is wrong, as Secretary explained in her reply in support of her summary judgment motion. *See* ECF No. 86 at 2. The form does not require PILF to

the fee is both authorized by the NVRA, *see* 52 U.S.C.A. § 20507(i), and required by a portion of Maine law not challenged by PILF. *See* 196-A M.R.S.A. § 196-A(2).

In any event, contrary to PILF's claim, the threat of harm to the public is not in any way mitigated or alleviated simply because PILF is currently choosing to refrain from asking for the Voter File in the manner contemplated by the Court's order. PILF is not promising to forgo requesting the Voter File during the appeal. It could change its mind at any time—including immediately after this Court resolves the pending motion. As the Secretary has stated numerous times, if PILF makes a proper request, she will grant it. If and when that happens, a second round of expedited motion practice should not be required to determine whether PILF can publish sensitive voter data while the Secretary's appeal is pending. In short, where the only thing preventing serious harm to the public is PILF's elective position that the Secretary ought to give it the File apparently for free, and without PILF having to file a proper request, the Court should find that the harm is sufficiently imminent to warrant relief.

Finally, PILF alleges that there is no evidence that indiscriminate publication of voters' private data will deter voter registration. *Opp.* at 5. Courts, however, have recognized that disclosure of voter personal information may have negative effects on voter registration. *Fusaro v. Howard*, 19 F.4th 357, 369 (4th Cir. 2021); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 739 (S.D. Miss. 2014). Moreover, the notion that the high voter registration numbers in Maine shows that there is no reason to fear such a deterrent effect makes little sense. Maine has strictly protected the voter data in its CVR system since CVR's inception in 2005, allowing its use only for narrow purposes. *See* 2005 P.L. ch. 404. Until now, Maine voters have always had

make a false statement nor does it contain the written warning necessary for the crime to apply. *See* 17-A M.R.S.A. § 453(1)(A).

assurance that their personal data maintained in the CVR system would be protected. The Secretary seeks a partial stay in this case precisely to prevent the loss of that important assurance to Maine voters.

II. The Public Interest Favors a Partial Stay

The Secretary also showed in her motion that the public interest favors a partial stay, in part because of the strong public interest in protecting voters' personal privacy. Mot. at 4. In response, PILF argues that, in enacting the NVRA, "Congress believed public disclosure of names and addresses to be necessary to achieve the statute's goals." Opp. at 6. PILF points specifically to 52 U.S.C.A. § 20507(i)(2), which requires states to maintain and disclose to the public the names and addresses of voters who were sent postcards under the NVRA's address-verification process. *Id.*; *see* 52 U.S.C.A. § 20507(d)(2). But that NVRA provision requires public disclosure of a limited universe of voter personal information—name and address only—and only for a subset of voters who have been directly affected by NVRA list-maintenance activities. The Voter File, on the other hand, contains the personal information of every single voter in Maine, and includes more information than just name and address. *See* 21-A M.R.S.A. 196-A(1)(B). The fact that Congress saw fit to make public name and address information of this subset of voters in no way establishes that PILF would somehow be acting to further the public interest in publicizing to the general public the personal information of any or all of the 1.1 million Maine voters found in the Voter File. Indeed, if PILF wrongly and publicly suggests some of these voters engaged in misconduct—as it has done in the past, *see* ECF No. 79 at 17–18 (Def.'s Statement of Material Facts ¶¶ 72–78)—it will be acting directly contrary to the public interest.

PILF also complains that it has been "waiting since October 17, 2019, to receive the Voter File" and that more federal elections should not pass "without the transparency Congress

intended.” Opp. at 6. But PILF has been able to obtain the Voter File from the Secretary since October 18, 2021. See P.L. 2021, ch. 310. The delay beyond that has been of its own making. And, in any event, “the transparency Congress intended” was to allow members of the public to assess whether state and local governments were properly carrying out list-maintenance activities. It was not to facilitate public accusations against individual voters or publication of their private data to the general public.

III. The Case Involves Important Legal Issues that Warrant a Partial Stay

Finally, the Secretary showed in her motion that the issues in this case present important and novel legal issues that justify a stay. Mot. at 4–5 (citing *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979)). PILF argues in response that the Secretary has not demonstrated that her appeal has potential merit. Opp. at 2. But the potential merit of the Secretary’s position on appeal is shown—as the Secretary noted in her motion—in the dozens of pages of briefing that she filed in support of her summary judgment motion. The Court is already familiar with these arguments. But, to avoid any doubt, the Secretary’s appeal has a substantial chance of success on the merits—particularly with regard to her defense of the anti-publication provision of Exception J—for two reasons in particular:

First, the applicability of 52 U.S.C. § 20507(i) to a static list of personal information generated from the CVR system is, at the very least, a close question of statutory interpretation. While it is true that the Fourth Circuit has given that provision a very broad interpretation, it is the only federal court of appeals to have considered the question. The First Circuit may well conclude that the canon that all words of a statute should be given meaning, *see City of Providence v. Barr*, 954 F.3d 23, 37 (1st Cir. 2020), requires a conclusion that § 20507(i)—which has several qualifying terms that seem to have little or no independent meaning under the

Fourth Circuit’s interpretation—is more narrowly targeted than the Fourth Circuit and this Court have read it.

Second, there is even less caselaw, controlling or otherwise, on the extent to which § 20507(i) preempts state laws seeking to protect the privacy of voter information. Moreover, a number of courts have recognized that the NVRA should not be read to require indiscriminate disclosure of voter personal information, no matter how sensitive. *Pub. Int. Legal Found., Inc. v. N. Carolina State Bd. of Elections*, 996 F.3d 257, 264 (4th Cir. 2021); *True the Vote*, 43 F. Supp. 3d at 739. These cases suggest that the Secretary will be able to present a strong argument on appeal that the ban on publishing voter personal information is not preempted because it actively furthers the NVRA’s pro-registration purposes as well as federal policies in favor of privacy and against voter harassment and intimidation.

CONCLUSION

For the foregoing reasons, the Court should grant the Secretary’s Motion and issue a partial stay of its Order and Judgment pending appeal.

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