IN THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

KATHERINE SULLIVAN, *et al.*,	*	
Plaintiffs,	*	
v.	*	No. 1:24-cv-00172
MICHAEL G. SUMMERS, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * *

MARYLAND STATE BOARD OF ELECTIONS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Ms. Sullivan and Mr. Morsberger ("plaintiffs") share "concerns about the integrity" of the 2020 and 2022 elections in Maryland. (ECF 31 ¶ 3.) In light of those concerns they "initiated and participated" in a statewide "investigative canvass," based on voter registration and voter history data they had obtained, to bolster presumed doubts they held regarding the results of the 2020 presidential election. (*Id.* ¶ 27.) The canvass fell short of contacting a self-identified representative sample (*id*. at ¶ 30; ECF 31-1 at 2);[1] nevertheless, plaintiffs generated a "report" from it purporting to prove that over 62,000 votes were erroneously cast in the 2020 election. (ECF 31-1 at 5.) Plaintiffs' report then became a basis for a civil suit against the Maryland State Board of Elections (the "State Board"), filed during Maryland's 2024 presidential primary, that sought to

[1] Plaintiffs generated the target sample—383 register voters—from a universe of 112,507 pre-selected registered voters in Maryland. (ECF 31 ¶ 27.) Over four million voters are registered in Maryland. (*Id.*)

enjoin Maryland from holding any further elections until a court-appointed "Special Master facilitated the adoption of a new voting system in Maryland." (ECF 31 ¶ 35.) [2]

Ms. Sullivan and Mr. Morsberger did not use their voter registration materials, their voting history information, or their investigative canvass, to determine whether inactive voters had been removed from the voter registration list. (ECF 31 ¶¶ 29, 33.) And at no point have plaintiffs availed themselves of the federally-mandated administrative process for challenging a voter registration error or discrepancy. (*Id.* at ¶¶ 39, 40 (citing COMAR 33.01.05.01–.08).)

Looking ahead, Ms. Sullivan and Mr. Morsberger "anticipate" conducting similar investigative canvasses to "identify and analyze" future issues with the 2024 general election. (ECF 31 ¶ 11.) They contend that the NVRA compels the State Board to assist them in that effort by providing them detailed information on when, where, and how each voter in Maryland voted over the past two decades so that they may question individual voters, face-to-face, about those voting behaviors. (*Id.* ¶¶ 11, 15, 16, 18, 19.) But Ms. Sullivan and Mr. Morsberger fundamentally misapprehend what the NVRA requires of Maryland.

The NVRA does not require "[t]he collection and use of accurate and current voter history information." (ECF 32-1 at 5.) The NVRA does not "guarantee[] public access to virtually 'all records' generated or utilized in the maintenance of the voter rolls." (*Id.*

[2] The district court dismissed the suit for lack of subject matter jurisdiction. (ECF 31 ¶ 38). The plaintiff-organizations failed to establish standing by neglecting to plead any cognizable injury-in-fact. *See Maryland Election Integrity, et al. v. Maryland State Board of Elections*, Memorandum Opinion, ECF 44, (Issued May 8, 2024).

at 4.) And the NVRA does not deputize private criminal investigations into past electoral conduct under the guise of "identify[ing] potential inconsistencies or anomalies in the voter registration list." (*Id*. at 9.) Ultimately, the NVRA does not compel a state to disclose voting history information to individuals who wish to use that information to impeach past elections by interviewing individual voters.

Summary judgment should be denied to plaintiffs on Counts I and II of their complaint. Instead, summary judgment should be granted to the State Board on all three counts in the complaint.

STATEMENT OF FACTS

Plaintiffs' Past Use of Voting History Information

Plaintiffs possess no less than eleven instances of Maryland's voter registration list, issued between August 2021 and July 2023, with accompanying voting history information. (ECF 31 ¶ 23.) To investigate his concerns with the integrity of Maryland's recent elections, Mr. Morsberger combined those multiple lists and histories into a single database and "evaluated" the resultant registration and voting history information it contained. (*Id.* ¶ 24; ECF 31-1 at 1.) Mr. Morsberger allegedly uncovered nearly 80,000 registration violations in his combined database (ECF 31-1 at 4), dwarfing the number of issues uncovered by the State's legislative audit of the voter registration system (ECF 31-2 at 10-12). The discrepancy is likely explained by a fundamental flaw in Mr. Morsberger's methodology—he combined multiple past voter registration lists into a single database, treated the resultant combined database as the "active" voter registration

list, and failed to account for duplicate (or contradictory) entries from list-ot-list. *See* Seo-young Silvia Kim and Bernard L. Fraga, *When Do Voter Files Accurately Measure Turnout? How Transitory Voter File Snapshots Impact Research and Representation*, Am. Pol. Sci. Ass'n Preprint (Sept. 14, 2022) (accessible at https://preprints.apsanet.org/engage/apsa/article-details/6321ef75faf4a4ba6f1213ef).

Ms. Sullivan and Mr. Morsberger thereafter initiated a statewide "investigative canvass" to ask voters face-to-face questions about their voting history information. (ECF 31 ¶ 27.) The canvass could not reach all registered voters in the state, so, instead, plaintiffs narrowed the field of voters they intended to canvass by paring the list down to 112,507 select individuals. (*Id.*) The select individuals were differentiated from the greater pool of registered voter based on a single voting history parameter—"namely, the voter's participation in the 2020 general election after not participating in any election between 2014 and 2020." (*Id.*) Plaintiffs thus sought to draw conclusions about the State's voter registration practices from a select group of low-turnout voters.

Plaintiffs aimed to obtain 383 responses from their door-to-door canvass effort in order to achieve, according to their methodology, a "95% confidence interval with a 5% margin of error." (ECF 31 ¶ 28.) They obtained only 160 responses, or less than half of their targeted sample. (*Id.* ¶¶ 28, 30.) Undeterred by that shortcoming, though, plaintiffs issued a report drawing on the canvass responses; amongst the many claims presented in the report—5,625 fraudulent votes were cast in 2020 presidential general election. (ECF 31-1 at 1, 6.)

On March 6, 2024, Maryland Election Integrity, a limited liability company formed in Maryland, filed a civil action against the State Board in this Court. (ECF 31 ¶ 34.) The complaint drew on plaintiffs' analysis of the combined voter registration list database, plaintiffs' statewide investigative canvass, and the report that resulted from that canvass, to accuse the State Board of "flaunt[ing] the Constitutional requirement to only allow known citizens eligible to vote, to vote and los[ing] control of [Maryland's] voting system." (*Id.* ¶ 35.) For relief, the complaint sought to "enjoin the State from administering or certifying any election, including the 2024 primary election, until a court-appointed Special Master facilitated the adoption of a new voting system in Maryland." (*Id.*) The complaint named Ms. Sullivan as a member of the company; and drew on an affidavit from Mr. Morsberger in support of a preliminary injunction to halt the ongoing primary election. (*Id.* ¶ 36.)

Neither plaintiff used the voter registration list or voting history during their investigative canvass to determine if inactive voters had been timely and properly removed from the voter registration list for the failure to return the requisite notice card and participate in a recent election. (ECF 31 ¶¶ 29, 33.) And neither plaintiff has filed with the State Board an administrative petition seeking to address a voter registration error. (*Id.* ¶¶ 39, 40 (citing COMAR 33.01.05.01–.08).) Instead, Ms. Sullivan and Mr. Morsberger obtained voting histories through July 2023 (*Id.* ¶¶ 4, 23), questioned voters in person through the fall of 2023 (*Id.* ¶ 27), authored a report in February 2024 (ECF 31-1 at 1), and filed suit on March 6, 2024 (ECF 31 ¶ 34).

Plaintiffs foresee themselves repeating their efforts for the 2024 election. (ECF 31 ¶ 11).

ARGUMENT

I. THE PARTIES DO NOT DISPUTE THE MATERIAL FACTS, MAKING SUMMARY JUDGMENT FOR THE STATE BOARD ON ALL COUNTS APPROPRIATE.

Summary judgment must be granted where there is no dispute as to material fact and the moving party is entitled to judgment as a matter of law. *Philpot v. Indep. Journal Review*, 92 F.4th 252, 257 (4th Cir. 2024) (quotation omitted).

The State Board submitted a motion to dismiss, or in the alternative, for summary judgment on all three counts in the complaint at ECF 19. Plaintiffs opposed the motion at ECF 22. The State Board replied to the opposition at ECF 29. Plaintiffs now move for summary judgment on Counts I and II of their complaint (ECF 32) on a stipulated set of facts (ECF 31).

The State Board therefore renews its motion for summary judgment on all three counts of the complaint. To the extent they contain materials and arguments pertinent here, the State Board references and incorporates its prior memorandum in support of its motion to dismiss (ECF 19-1) and reply to plaintiffs' opposition to that motion (ECF 29) in this response.

II. THE NVRA DOES NOT OPERATE THE WAY PLAINTIFFS ARGUE THAT IT DOES.

Plaintiffs' argument in support of summary judgment on Count I proceeds in three parts. First, plaintiffs assert that it is "*impossible*" to comply with the list maintenance obligations of the NVRA "without voter history records." (ECF 32-1 at 4 (emphasis in original).) Second, voter history records are thus subject to the NVRA disclosure provision because of their "nexus" to a voter list maintenance program or activity. (*Id.* at 6) And third, no State law or regulation can prevent an individual from using voting history information to evaluate the accuracy of the voter registration list. (*Id.* at 12.) Plaintiffs' arguments falter, though, in all three instances.

Plaintiffs loosely use the term "voter history record" to describe both the information the NVRA contemplates incidental to list maintenance and the information Maryland collects and provides upon request. They are not, however, one in the same. The information disclosed by the State provides far more than the NVRA ever contemplates. Put simply, the granular voting history details disclosed by request in a Maryland voting history are functionally irrelevant to the NVRA's list maintenance process. It is entirely possible to comply with the list maintenance obligations of the NVRA without any reference to the voting history information Maryland discloses to requesting individuals.

And while there may be some "nexus" between a Maryland voting history and the accuracy of the state's voter registration list, disclosure is not premised on a "nexus." 52 U.S.C. § 20507(i)(1) cabins its application to records of programs implemented "for

the purpose" of list maintenance, 52 U.S.C. § 20507(i)(1), not those with a "nexus" to list maintenance. And it does for good reason—applying the disclosure provision to any record that has a "nexus" to list maintenance would lead to untenable results.

And finally, plaintiffs conflate assessing the accuracy of the voter registration list with assessing the accuracy of an election. Knowing when, how, and by what method a voter cast a ballot in every election going back to 2006 does nothing to assess the accuracy of the current voter registration list. Using Maryland's voting history information to conduct an investigative canvass may grant insight into the accuracy of a past election, but the NVRA does not concern itself with past elections.

A. The NVRA neither requires nor contemplates the wealth of voting history information Maryland maintains.

The terms "voting history," "voter history record," or "voting history information" do not appear in the NVRA. Nor, for that matter, do they appear anywhere in Title 52 of the United States' Code, which contains all provisions related to voting and elections. Plaintiffs' mis-cite the Help America Vote Act in asserting that the "statewide voter registration list, known in Maryland as MDVOTERS, must be maintained in conformance with the NVRA, to include tracking the voter history of inactive voters." (ECF 32-1 at 5 (citing 52 U.S.C. § 21083(a)(2)(A)). The requirements for a "single, uniform, official, centralized, interactive computerized statewide voter registration list" are listed at 52 U.S.C. § 21083(a)(1)(A). Voting history information is not one of them. *See id*. at § 2108(A)(1)(A)(i)–(viii).

The NVRA permits a voter's removal from a voter registration list based on a change of residence, with that change demonstrated by two independent pieces of evidence. *Husted v. A Phillip Randolph Inst.*, 584 U.S. 756, 762-64 (2018). First, the voter must fail to return a notice card, mailed to the voter's residence, affirming their presence within the jurisdiction. *Id.* at 763; 52 U.S.C. § 20507(d)(1)(B)(i). Second, the voter must "not vote[] or appear[] to vote . . . in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice." 52 U.S.C. § 20507(d)(1)(B)(ii); *see also* Md. Code Ann., Election Law Article, § 3-502(e)(2)(ii).

Under the NVRA, then, a state need only keep track of a voter voting, *or appearing to vote*, to comply with the maintenance tool upon which plaintiff relies. And because a voter must logically appear to vote in order to vote, the State need *not* keep any record of the voter's actual participation in the election—it need only record the voter's *appearance* to participate in the election. Once the voter appears to vote, they cannot be removed for failure to respond to the notice card.

Maryland complies with the NVRA removal process by tracking when a voter appears to vote. Section 3-503 of the Election Law Article directs the placement of a voter into "inactive" status upon their failure to respond to the NVRA-mandated notice card. Elec. Law § 3-503(a). An inactive voter is then removed from the voter registration list, in accordance with the NVRA, after failing to vote in two election cycles. *Id.* at § 3-503(c). But Maryland law removes the voter from inactive status when they "appear[] to vote" and otherwise take action to "correct the registrar's record of the

registrant's address." 52 U.S.C. § 20507(d)(1)(B)(ii). A voter "shall be restored to active status" upon "completing and signing" any of the following documents: a voter registration application, a petition to place a candidate or question on a ballot, a certificate of candidacy, an application for an absentee ballot, or a written affirmation of residence completed on election day." Elec. Law § 3-503(b). Maryland therefore need not keep track of any voting history information for any of its voters, but complies with the voter removal provisions of the NVRA.

If Congress intended otherwise, it had the opportunity to say so at 52 U.S.C. § 20507(i)(2). As a supplement to the disclosure provision, Congress specified that a state must maintain a record of "names and addresses of all persons to whom notices described in [the removal provision] 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." *Id.* The NVRA therefore provides an express mandate as to what record a state must maintain in connection with its removal provision: the people to whom notice cards are sent. If Congress intended for voting history information in conjunction with that removal process to be recorded and disclosed, it would have provided as much in 52 U.S.C. § 20507(i)(2). That it did not evidences Congress' intent to leave the states a choice of what records to maintain for list removal purposes. *See Porter v Clarke*, 923 F.3d 348, 367 (4th Cir. 2019) (applying the principle of statutory interpretation that "[w]here Congress includes particular language in one section of a statute but omits it another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.")

In that context, the state law requirement to "include voting history information on a current basis for a period covering at least the 5 preceding years" is not, as plaintiffs see it, an admission that Maryland collects voting histories to comply with the NVRA. Elec. Law § 3-101(b)(6). First, it is superfluous in light of the fact that Maryland records when a voter submits a voter registration application, signs a petition, asks for a mail-in ballot, or signs a written affirmation in a polling place. And second, five years of voting history information is more than the NVRA needs. NVRA removal is predicated on, at maximum, the failure to vote over a two-year span.[3]

NVRA removal based on the failure to vote (as opposed to the failure to appear to vote) also requires only one record: a voting credit. Put another way, a state need only know whether its voter submitted a ballot, or not, in the past two general elections. But Maryland collects and discloses far more than that. A Maryland voting history "is a compilation of information on when and how a registered voter participated in Maryland elections going back to 2006." (ECF 31 ¶ 7.) Knowing *how* a voter voted (by mail, early, or in-person on election day) accomplishes nothing for NVRA removal. Knowing that a voter participated in elections in 2008, 2012, and 2018 accomplishes nothing for NVRA removal. Knowing that a voter participated in a special election to fill a vacancy on the Prince George's County Council accomplishes nothing for NVRA removal. And

[3] General elections for federal office take place every two years due to the need to elect members to the United States House of Representatives "every second year." U.S. Const. art. I § 2 cl. 1.

knowing that a voter has requested to be placed on the permanent absentee ballot list accomplishes nothing for NVRA removal.

The information provided by a Maryland voting history is not necessarily responsive to the question posed by NVRA's removal condition: did a voter submit a ballot in the past two federal general elections? And the information Mr. Morsberger sought in his September 2023 request giving rise to this case was similarly unresponsive. (ECF 31 ¶¶ 18, 19.) The details of a Maryland voting history told plaintiffs nothing about whether voters should have been removed due to their inactive status. It is therefore wrong to assert, as plaintiffs do, that a Maryland voting history is an integral piece of the State's ability to comply with the NVRA's removal process.

B. Maryland's voter history information is not a record of a program conducted for the purpose of maintaining the voter registration list.

On this point, plaintiffs repeat the same argument they made in opposition to the State Board's motion to dismiss. In their earlier opposition, plaintiffs argued that a Maryland voting history was "integral," (ECF 22 at 1, 11), "innate" (*id* at 3), "intertwined" (*id* at 7), "critical" (ECF 27 at 4), and "necessary" (*id* at 9) to voter registration list maintenance. Now, in their motion for summary judgment, plaintiffs broaden their argument, asserting that any "document or data that has any nexus to voter list maintenance 'programs and activities' is within Section 8(i)'s scope." (ECF 32-1 at 6). In essence, plaintiffs argue that 52 U.S.C. § 20507(i)(1) compels disclosure of any record sharing the same demographic subject matter as the voter registration list. If the record is incidentally used to verify the list, in plaintiffs view, it must be disclosed.

The State Board has already addressed how this argument fails under the plain language of the statute.[4] Briefly, subject matter relevance is not the threshold at which a record must be disclosed. *Public Interest Legal Foundation v. North Carolina State Bd. Of Elec.*, 996 F.3d 257, 264 (4th Cir. 2021) ("[T]he term 'all records' in the disclosure provision does not encompass any relevant record from any source whatsoever . . .") The threshold is intent—the record must document a program or activity "conducted for the purpose" of maintaining the voter roll. 52 U.S.C. § 20507(i)(1). The analysis does not focus on the record itself, but on the activity or program that produces it. *Project Vote/Voting for America, Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012). If that activity or program was plainly established for the purpose of "of ensuring the accuracy and currency of official lists of eligible voters," it must be disclosed. 52 U.S.C. § 20507(i)(1). If not, then the NVRA does not compel disclosure.

Plaintiffs' analysis, hinging disclosure on whether the record is relevant to list maintenance, is unsupported by the plain language of the NVRA and would lead to unintended, untenable results. *United States v. Joshua*, 607 F.3d 379, 387 (4th Cir. 2010). This point is best illustrated by the Judge Andrew F. Wilkinson Judicial Security Act, which goes into effect in Maryland on October 1, 2024. 2024 Md. Laws ch. 414 § 3.

The goal of the law is manifest: "to ensure the protection, safety, and security of judicial officers and their families throughout Maryland." *Id.* 2024 Md. Laws ch. 414, preamble. To that end, the act creates an Office of Information Privacy within

[4] The State Board therefore incorporates into this response Argument I of its reply to plaintiffs' opposition to the motion to dismiss. (ECF 29 at 2-5.)

Maryland's Administrative Office of the Courts; and, establishes a Judicial Address Confidentiality Program in that office. *Id.* at § 2, 7-8. The purposes of the newly created office, and program, are to:

> (1) Enable state and local agencies to respond to requests for public records without disclosing the actual address of a program participant; (2) encourage interagency cooperation in providing address confidentiality for program participants; (3) allow governmental entities and persons to accept a program participant's use of an address designated by the office of information privacy as a substitute address; and (4) provide a program participant with protections in addition to those provided under title 3, subtitle 23 of this article.

Id. at §2, 8. Importantly, it is not a purpose of the either the office, or program, to ensure accuracy in Maryland's voter registration list.

Under the new law, State and federal judges (current and retired), State and federal magistrates (current and retired), and their families, may apply to the Office of Information Privacy to participate in the Judicial Address Confidentiality Program. *Id.* at §2, 8. Once accepted to the program, the judicial participant's actual address is shielded from public disclosure and a substitute address is used for governmental purposes instead. *Id.* at §2, 8-9. For the State Board, this means the judicial participant's entry on the voter registration list would publicly display the substitute address; the participant's actual address would be used for electoral purposes, but would be shielded from any public disclosure. *Id.* at §2, 8-10.

Maryland's Secretary of State administers a very similar address confidentiality program for victims of actual or threatened domestic violence, sexual assault, stalking, harassment, and human trafficking. *See* Md. Code Ann., State Govt. §§ 7-301–7-313.

Under plaintiffs' analysis, the NVRA would preempt the Judicial Address Confidentiality Program, requiring disclosure of a judicial participant's actual address on a voter registration list. The record at issue—a judicial participant's enrollment in the program, masking their real address with a substitute address—bears a clear nexus with maintenance of the voter registration list. While the list would publicly display the program's substitute address, the State Board would need to reference the enrollment record to know where the judicial participation actual resides and, thus, which ballot the participant should vote (or run on).

The NVRA does not require disclosure of Judicial Address Confidentiality Program records for the same reason it does not require disclosure of Maryland voting histories. The records are products of programs that exist for reasons independent of the voter registration list. The judicial confidentiality program exists for security purposes; voting exists for democracy purposes. A judicial confidentiality record is produced as a result of an effort to keep judicial participants safe; a Maryland voting history is produced as a result of a voter's effort to "hav[e] a voice in [an] election." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

The NVRA does not compel disclosure of records with some nexus to maintenance of the voter registration list. The NVRA only compels disclosure of records born of efforts undertaken "for the purpose" of list maintenance. Voting histories are no such record.

C. Plaintiffs have not, and cannot, use Maryland's voting history information to assess the accuracy of the voter registration list.

In the interests of brevity, the State Board hereby references and incorporates Argument II.C (ECF 19-1 at 20) from its memorandum in support of its motion to dismiss and Argument II from its reply to plaintiffs' opposition to that motion (ECF 29 at 5). Summarily, a Maryland voting history will not inform an investigative canvasser whether a person's demographic entry on the voter registration list is correct—the person's demographic information provides that insight. And a Maryland voting history cannot confirm a person's eligibility for the list.

A Maryland voting history can only tell an investigative canvasser whether the State has recorded a voter's specific method of participation in a given election. And that information is only relevant to determining the truth of that voter's participation—whether they actually participated in an election by that method. But, the NVRA disclosure provision is "not designed as a tool to root out voter fraud, 'cross-over voting,' or any other illegal or allegedly illegal activity with casting a ballot on election day." *Judicial Watch, Inc. v. Lamone*, 399 F.Supp.3d 425, 435 (D. Md. 2019). COMAR 33.03.02.01B(1)(c) does not contravene any purpose of the NVRA because the NVRA does not concern itself with assessing the accuracy of past elections.

III. COMAR 33.03.02.01B(1)(C) STRIKES A CONSTITUTIONAL BALANCE BETWEEN BURDENING PLAINTIFFS' INVESTIGATORY CANVASSING EFFORTS AND PROTECTING MARYLAND VOTERS FROM UNDUE HARASSMENT.

Plaintiffs restate their argument from ECF 22 in support of their motion for summary judgment on Count II of their complaint. For the reasons stated in ECF 19-1,

Argument III, and ECF 29, Argument III, "investigations" are not a viewpoint protected by the First Amendment.

Additionally, the burden imposed by COMAR 33.03.02.01B(1)(c) on plaintiffs is not the same as that contemplated in *Fusaro v. Cogan*, 930 F.3d 241 (4th Cir. 2019). and *Fusaro v. Howard*, 19 F.4th 357 (4th Cir. 2021). Both prior cases considered access to the voter registration list as a form of political speech. *See Cogan*, 930 F.3d at 251 (noting the registration list's value as a tool for political speech because it facilitates the spreading of messages for political purposes or garnering of support for candidates or causes); *see also Howard*, 19 F.4th at 370 (burden imposed on appellant's political speech was modest because he could obtain voter registration materials by other means).

Factually, Ms. Sullivan and Mr. Morsberger are being prevented from using the voter registration list to conduct a statewide canvass investigating the elections in 2024. (ECF 31 ¶ 11.) An investigative canvass into presumed future electoral discrepancies is not the political speech contemplated by *Cogan* and *Howard*. An investigative canvass is an exercise in information-gathering. It is not a discussion public issues or debate of candidate qualifications, or even a persuasive utterance in support of a cause or view. *See Earls v. North Carolina Judicial Standards Commission*, 703 F.Supp.3d 701, 722-23 & 723 n.15 (M.D.N.C. 2023). The application of COMAR 33.03.02.01B(1)(c) to plaintiffs' future investigative canvass is therefore not a burden that necessarily triggers First Amendment scrutiny; or, if it is, it does no weigh in plaintiffs' favor with any heft. In either event, Maryland's determination that its "citizens should not face an onslaught of communication[s] or solicitations irrelevant to the electoral process as the price of

participation in the electoral process," *Howard*, 19 F.4th at 370 (quotation omitted) (alteration in original), justifies application of the regulation to plaintiffs' investigative canvassing activities.

Summary judgment should be granted to the State Board on Count II.

IV. COMAR 33.03.02.01B(1)(C) CONSTITUTED A VALID EXERCISE OF THE STATE BOARD'S REGULATORY AUTHORITY.

Plaintiffs do not request summary judgment on Count III of their complaint. For the reasons stated in ECF 19-1, Argument IV, summary judgment should be granted to the State Board on Count III of the complaint.

CONCLUSION

Plaintiffs' motion for partial summary judgment should be denied. Summary judgment on all counts should be granted to the State Board.

Respectfully submitted,

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