

No. 24-6629

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PUBLIC INTEREST LEGAL FOUNDATION, INC.

Plaintiff-Appellant,

v.

**SCOTT T. NAGO, in his official capacity
as the Chief Election Officer for the State of Hawaii,**

Defendants-Appellee.

**On Appeal from the United States District Court
for the District of Hawai'i
No. 1:23-CV-00389-LEK-WRP
Honorable Leslie E. Kobayashi**

DEFENDANT-APPELLEE'S ANSWERING BRIEF

ANNE E. LOPEZ

Attorney General of Hawai'i

RANDALL NISHIYAMA

REESE R. NAKAMURA

Deputy Attorneys General

Department of the Attorney General

425 Queen Street

Honolulu, Hawai'i 96813

Telephone: (808) 586-0618

Facsimile: (808) 586-1372

Email: reese.r.nakamura@hawaii.gov

AARON H. SCHULANER

General Counsel

Office of Elections

802 Lehua Avenue

Pearl City, Hawaii 96782

Telephone: (808) 586-1255

Fax: (808) 453-6006

Email: aaron.h.schulaner@hawaii.gov

Attorneys for Defendant-Appellee

SCOTT T. NAGO

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATUTORY AND REGULATORY AUTHORITIES	3
STATEMENT OF THE ISSUES.....	3
STATEMENT OF THE CASE.....	4
I. PILF FAILED TO REQUEST VOTER REGISTRATION DATA FROM THE COUNTY CLERKS USING THE PRESCRIBED APPLICATION FORM	4
II. THE PROCEDURAL HISTORY REFLECTS AN INSISTENCE BY PILF TO NOT SUBMIT ANY APPLICATIONS TO THE COUNTY CLERKS EVEN WHEN PROVIDED FOUR MONTHS BY THE DISTRICT COURT TO ENSURE ITS CASE WAS RIPE.	7
SUMMARY OF ARGUMENT	10
STANDARD OF REVIEW.....	12
ARGUMENT	12
I. PILF’S CLAIM OF AN INFORMATIONAL INJURY IS NOT RIPE AS IT FAILED TO EVEN REQUEST THE INFORMATION USING THE PRESCRIBED APPLICATION FORM	12
A. PILF appears to incorrectly argue that its attempt to satisfy the notice requirement of the NVRA for statutory standing purposes with its May 17, 2023, notice letter established an informational injury for ripeness purposes when Nago did not provide the records within 90 days and instead directed PILF to the county clerks	14

- B. To the extent PILF’s attempt to satisfy the 90-day notice requirement of the NVRA is intertwined with determining ripeness, PILF failed to provide proper notice as PILF amended its original notice on September 7, 2024, when it sent a new notice to Nago and for the first time to the county clerks, but then filed its case only 14 days later before Nago or the county clerks could respond14
- C. PILF failed to establish that the reference to an election or government purpose in Hawaii law was a ban on how PILF intended to use what it sought and that this excused PILF from at a minimum submitting applications to the county clerks to see if what it sought would be provided.16
- D. PILF failed to establish that submitting applications to the county clerks is so burdensome and contrary to the NVRA that it in conjunction with its notice letter constituted an informational injury that did not require them to submit the applications to allow the county clerks to respond for purposes of establishing ripeness.....17
- II. TO THE EXTENT THIS COURT FINDS THAT PILF’S CASE IS RIPE, REMAND OF PILF’S REMAINING ISSUES ON APPEAL IS APPROPRIATE TO OBTAIN THE BENEFIT OF THE DISTRICT COURT RULING ON THOSE ISSUES, AS OPPOSED TO THIS COURT BEING LIMITED TO THE UNDEVELOPED RECORD TO ADDRESS THE MERITS OF THOSE ISSUES.21
- III. PILF FAILED TO ESTABLISH THAT THE COUNTY CLERKS HANDLING RECORDS REQUESTS WAS PREEMPTED BY THE NVRA.....25
- IV. PILF FAILED TO ESTABLISH THAT THE RECORD IT SOUGHT CONCERNED AN ACTUAL NVRA PROGRAM OR ACTIVITY, SUCH AS A VOTER REMOVAL PROGRAM, WHICH IS CLEARLY REFERRED TO AS A PROGRAM IN THE NVRA29

A.	PILF failed to establish that Subsection (i) when read in conjunction with the rest of 52 U.S.C. § 20507 and the NVRA encompassed a specific voter registration list that may have been in existence at the time of PILF’s notice letter, as PILF did not establish which program may have actually made use of or otherwise involved that record or even when the execution of the program occurred.	29
B.	PILF failed to establish that Hawaii law conflicts with 52 U.S.C. § 20507 as Hawaii law provides for the release of the voter registration list for election or government purposes	38
C.	PILF failed to establish that the NVRA prohibits Hawaii law or Nago from delegating to the county clerks responding to requests under 52 U.S.C. § 20507	39
CONCLUSION		41

TABLE OF AUTHORITIES

Federal Cases

<i>Alaska Dep't of Fish & Game v. Fed. Subsistence Bd.</i> , 62 F.4th 1177 (9th Cir. 2023)	25
<i>Arizona Inter Tribal Council of Ariz., Inc.</i> , 570 U.S. 1, 133 S.Ct. 2247, 186 L.Ed.2d 239 (2013)	24, 25, 37
<i>Carney v. Adams</i> , 141 S. Ct. 493 (2020).....	13
<i>Dodd v. Hood River County</i> , 59 F.3d 852 (9th Cir. 1994)	22
<i>Golden v. Cal. Emergency Physicians Med. Grp.</i> , 782 F.3d 1083 (9th Cir. 2015)	22
<i>Greater Birmingham Ministries v. Alabama</i> , 105 F.4th 1324 (11th Cir. 2024).....	36
<i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756, 138 S.Ct. 1833 (2018)	24, 26, 33, 35
<i>Judicial Watch, Inc. v. Lamone</i> , 399 F.Supp.3d 425 (D. Md. 2019).....	36
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	13
<i>Medtronic v. Lohr</i> , 518 U.S. 470 (1996).....	25
<i>Merritt v. Countrywide Fin. Corp.</i> , 759 F.3d 1023 (9th Cir. 2014)	25
<i>Pizzuto v. Tewalt</i> , 997 F.3d 893 (9th Cir. 2021)	12, 13, 22

<i>Planned Parenthood of Greater Wash. v. U.S. Dep't of Health & Human Servs.</i> , 946 F.3d 1100 (9th Cir. 2020)	23, 24
<i>Project Vote/Voting for Am., Inc. v. Long</i> , 682 F.3d 331 (4th Cir. 2012)	36
<i>Pub. Interest Legal Found., Inc. v. Bellows</i> , 92 F.4th 36 (1st Cir. 2024)	16, 36
<i>Ratzlaf v. United States</i> , 510 U.S. 135 (1994)	37
<i>Shirk v. United States</i> , 773 F.3d 999 (9th Cir. 2014)	21
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	13
<i>True The Vote v. Hosemann</i> , 43 F. Supp. 3d 6932 (S.D. Miss. 2014)	28, 36, 41
Federal Rules of Civil Procedure (FRCP)	
FRCP Rule 12(b)(1)	8
FRCP Rule 12(b)(6)	8
FRCP Rule 12(b)(7)	8
FRCP Rule 56	8
Federal Constitution	
U.S. Const. art. I, § 4, cl. 1	25
United States Code (U.S.C.)	
52 U.S.C. § 20501(b)	33, 37

52 U.S.C. § 20501(b)(4)	38
52 U.S.C. §§ 20504-20508	40
52 U.S.C. § 20507	10, 12, 17, 19, 27, 28, 29, 32, 38, 39, 41
52 U.S.C. § 20507(a)	32
52 U.S.C. § 20507(a)(4).....	33, 37
52 U.S.C. § 20507(b)	15, 32, 33, 37, 38
52 U.S.C. § 20507(b)(1)	14
52 U.S.C. § 20507(b)(2)	37
52 U.S.C. § 20507(b)-(j)	27
52 U.S.C. § 20507(c)	6, 32, 33, 37
52 U.S.C. § 20507(c)-(d)	37, 38
52 U.S.C. § 20507(d)	34
52 U.S.C. § 20507(d)(2)	32
52 U.S.C. § 20507(i)	1, 4, 6, 7, 8, 15, 19, 21, 26, 35, 36, 37, 38, 39
52 U.S.C. § 20507(i)(1)	10, 31, 32, 33, 34, 36, 38, 39
52 U.S.C. § 20507(i)(2)	32, 34
52 U.S.C. § 20507(j)	18
52 U.S.C. § 20507(j)(1)	18
52 U.S.C. § 20507(j)(1)-(3)	18
52 U.S.C. § 20509	39

52 U.S.C. § 20510(b)	5, 6, 16
52 U.S.C. § 20510(c)	15
52 U.S.C. §§ 20901-21145	4
52 U.S.C. § 21083(a)(1)(A)	19
52 U.S.C. § 21083(a)(1)(A)(v) & (vi)	19
52 U.S.C. § 21083(a)(1)(A)(vii)	19
52 U.S.C. § 21083(a)(2).....	20
52 U.S.C. § 21083(b)	27
52 U.S.C. § 21145	27
Senate Report (S. Rep.)	
S. Rep. No. 103-6 (National Voter Registration Act of 1993)	40
House Report (H. Rep.)	
H. Rep. No. 103-9 (National Voter Registration Act of 1993)	35, 40
Hawaii Revised Statutes (HRS)	
HRS § 11-11.....	3
HRS §§ 11-11 to 11-26	17, 18, 26, 40
HRS § 11-17.....	3
HRS § 11-97.....	2, 3, 12, 26, 39
HRS § 11-97(a)	1, 2, 4

Hawaii Administrative Rules (HAR)

HAR § 3-177-157.....	34
HAR § 3-177-160.....	2, 3, 12, 39

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C.A. NO. 24-6629

D.C. NO. 1:23-CV-00389-LEK-WRP

APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

DEFENDANT-APPELLEE'S ANSWERING BRIEF

INTRODUCTION

This case is about the failure of the Public Interest Legal Foundation (PILF) to take the nominal steps necessary to ensure that its case was constitutionally ripe at the District Court level.

PILF initially addressed a letter to Chief Election Officer Scott T. Nago (Nago) which claimed 52 U.S.C. § 20507(i) (i.e. Section 8(i) of the National Voter Registration Act of 1993 (NVRA)) as its authority to inspect the voter registration list that otherwise would normally be provided to requesters with an election or government purpose under Hawaii Revised Statutes (HRS) § 11-97(a).

Nago directed PILF to the county clerks, of which there are four for election purposes, as they handled requests for records concerning voter registration under state law, which included HRS § 11-97 and the rule implementing it, Hawaii Administrative Rule (HAR) § 3-177-160. In seeking the information, PILF, despite being directed by Nago to inquire with the county clerks, sought to dispute whether it needed to actually apply for the voter registration list with the county clerks based on its interpretation of the NVRA.

When PILF sued Nago in District Court, Nago raised the issue that PILF lacked standing as it had still not submitted its applications to the county clerks. The District Court found that PILF's case was not constitutionally ripe as it had not submitted the applications to the county clerks and thus it did not address the merits of PILF's claims regarding what the NVRA required in terms of its original request to Nago.

The District Court provided PILF four months to amend its complaint, to the extent its case became ripe during that period of time. Instead of submitting the required applications to the county clerks to see if its requests would be rejected and then filing an amended complaint if they were, it chose to file a notice indicating it would not be amending its complaint and seeking for the District Court to amend its earlier order. This was treated as a motion for reconsideration that was denied and PILF then filed the present appeal.

STATUTORY AND REGULATORY AUTHORITIES

All relevant statutory and regulatory authorities appear in the Addendum to this brief.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in granting Nago's motion to dismiss based on ripeness when PILF failed to complete and submit the prescribed application form to each of the county clerks, resulting in it only having a prospective injury of the burden of completing and submitting the applications, as opposed to an informational injury resulting from an actual denial of the applications;

2. Whether the NVRA preempts Hawaii's election laws, HRS §§ 11-11, 11-17, 11-97, and HAR § 3-177-160, which collectively requires PILF to submit a prescribed application to each of the county clerks, who serve as the registrars referenced in the NVRA for their respective jurisdictions.

3. Whether the NVRA preempts HAR § 3-177-160, which limits the release and use of the voter registration information, outside of a voter's full name, district/precinct designation, and voter information, to only those with an election or government purpose, even if the county clerks were to ultimately consider a purpose cited by PILF in relation the NVRA, an election law, to be an election purpose.

STATEMENT OF THE CASE

I. PILF FAILED TO REQUEST VOTER REGISTRATION DATA FROM THE COUNTY CLERKS USING THE PRESCRIBED APPLICATION FORM.

On April 6, 2023, PILF sent an email to Nago citing 52 U.S.C. § 20507(i) and seeking “[a] current or most updated copy of the complete [statewide voter registration system] voter roll extract containing all data fields provided to requesters having a government or election purpose under H.R.S. § 11-97(a).” ER-17 and ER-279. Nago’s office responded on May 8, 2023, and directed PILF to the counties. ER-17 and ER-262-263. PILF contacted Nago’s office that same day with a request for clarification and Nago’s office responded two days later, on May 10, 2023, again directing PILF to the counties. ER-17-18 and ER-262.

On May 17, 2023, PILF sent Nago a letter indicating that it read the NVRA in conjunction with Help America Vote Act of 2002 (“HAVA”) (52 U.S.C. §§ 20901-21145) to require the requested disclosure to be made by Nago, as opposed to by the county clerks. ER-18 and ER-266-68. Additionally, PILF claimed that it did not satisfy the “election purpose” requirement of HRS § 11-97(a) to obtain the list as it did not “engage in candidate election-related activities,” despite the rule making no explicit reference to that being required to establish an election purpose. ER-267-68. Further, PILF cited 52 U.S.C.

§ 20510(b) and indicated an action would be filed within 90 days if the requested records were not disclosed. ER-268.

In a letter signed by Nago's general counsel on June 28, 2023, PILF's interpretation of the law was disputed and it was referred to the county clerks. ER-18 and ER-270-77.¹

PILF visited the offices of the county clerks for the County of Hawaii, County of Kauai, and City and County of Honolulu in person, as opposed to corresponding with them by email, during the week of August 14, 2023, but omitted the County of Maui due to the emergency declaration in that county. ER-18 and ER-248. PILF did not submit the required application for the records to the counties as part of its visits to these counties. ER-19 and ER-200.

On August 22, 2023, PILF sent an email to Nago's office questioning whether its intended uses of the voter file constituted "election or government purposes" and essentially contending that Nago could not delegate responsibilities under the NVRA to the counties. ER-19 and ER-279-80.

On September 1, 2023, Nago's general counsel again referred PILF to the county clerks. ER-19 and ER-282.

¹ PILF apparently did not learn of the letter until it visited Nago's office on August 17, 2023, and stated that it had not received a written response to its earlier letter. ER-180. Based on this, Nago's office emailed PILF the letter that day. ER-180-81.

On September 7, 2023, Nago received three letters from PILF dated that same day. Each letter was jointly addressed to Nago and the county clerk for the County of Hawaii, City and County of Honolulu, or County of Kauai. The letter began with a statement that contained a beginning sentence that stated the following: “Pursuant to 52 U.S.C. § 20510(b), this letter serves to notify you that **Chief Nago and the [] County Clerk are in violation of the National Voter Registration Act** for failure to permit inspection and duplication of records as required by 52 U.S.C. § 20507(i)”. ER-227, ER-230, and ER-233 (emphasis in original). The letters indicated a lawsuit would be “filed within 90 days of [the recipient’s] receipt of [the] notice” if disclosure of the records did not occur and that “an award of attorney’s fees, expenses, and costs incurred are available under 52 U.S.C. § 20510(c).”² ER-19, ER-201, and ER-227-35. The ninetieth day after September 7, 2023, was December 6, 2023.

The letters included no reference to Nago not being able to delegate to the county clerks as had existed in PILF’s letter dated May 17, 2023, that had been addressed solely to Mr. Nago. ER-227-35.

² The provision cited by PILF provides the following: “If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.” 52 U.S.C. § 20510(c).

However, the letters did indicate that on the specific date PILF visited the office of each county clerk in August 2023 and that it “cit[ed] the State Office’s repeated instruction as the reason for the visit.” ER-228, 231, and 234. The letters also noted that its “representative provided a print copy of the original request made under the NVRA,” which Nago understands to be the letter dated April 6, 2023. ER-228, 231, 234, and 258. PILF concluded that its request to each county was denied, apparently on the day it visited each of the three counties. ER-228, 231, and 234. Further, the letters noted that PILF was prohibited from receiving the voter file under Hawaii law, even though it acknowledged that Nago had indicated that PILF might in fact have a permissible election or government purpose. ER-228, 231, and 234.

II. THE PROCEDURAL HISTORY REFLECTS AN INSISTENCE BY PILF TO NOT SUBMIT ANY APPLICATIONS TO THE COUNTY CLERKS EVEN WHEN PROVIDED FOUR MONTHS BY THE DISTRICT COURT TO ENSURE ITS CASE WAS RIPE.

On September 21, 2023, PILF filed its initial Complaint solely against Nago and did not include any county clerks. PILF’s First Amended Complaint (FAC), which was filed on September 22, 2023, again did not include the county clerks as defendants. ER-239-282. Additionally, it had been barely two weeks since its September 7, 2023, letter, as opposed to 90 days.

PILF’s FAC had three counts: (1) PILF contended Nago’s delegation to the county clerks to produce voter data allegedly violated 52 U.S.C. § 20507(i) as it

constituted a denial of access and thus was preempted; (2) PILF contended Hawaii's requirement that voter data requests involved an election or government purpose allegedly violated 52 U.S.C. § 20507(i) as it constituted a functional denial of access and thus was preempted; and (3) PILF contended Hawaii's requirement to have an election or government purpose allegedly violated 52 U.S.C. § 20507(i) as it constituted an unlawful use restriction and thus was preempted. ER249-53.

On November 28, 2023, Nago filed his Motion to Dismiss, or in the Alternative, for Summary Judgment pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), 12(b)(7), and 56. Nago contended the following: (1) PILF lacked Article III standing; (2) PILF failed to state a claim under the NVRA; and (3) PILF failed to join indispensable parties in the form of the county clerks. ER-21 and 183-85.

Ultimately, on June 28, 2024, the District Court issued its Order dismissing the case without prejudice. ER-16-37. The District Court dismissed Count I (denial of access) as it found that the matter was not ripe for purposes of establishing Article III standing given that PILF had not submitted the requisite request forms to the county clerks, no rejection or injury in fact had consequently occurred, and any harm at that point in time was speculative. ER-31.

Counts II and III (functional denial of access and unlawful use restrictions) were likewise dismissed as not ripe, with the District Court noting that "[PILF]

does not face a realistic danger of sustaining direct injury from filling out the applications for voter data.” ER-34-35.

As the District Court did not have subject matter jurisdiction it did not address Hawaii’s argument that the counties were indispensable parties. ER-34-35. Finally, the District Court indicated that as Counts I, II, and III were not ripe, it was dismissing PILF’s FAC without prejudice, with leave for PILF to “amend by **October 28, 2024**, if any of the claims are ripe at that time.” ER-36 (Emphasis in original).

On July 9, 2024, eleven days later, PILF filed a notice indicating it would not be amending its complaint and sought for the District Court to amend its earlier order. ER-11-15. The filing was treated as a motion for reconsideration and was denied by the District Court in a minute order on August 9, 2024. ER-8-10.

On October 29, 2024, PILF fled its Notice of Appeal. ER-287-90. Later that same day, the District Court issued its Order Dismissing Case without prejudice and without leave to amend. ER-5-7. Final judgment was also entered that day. ER-4. An Amended Notice of Appeal was filed by PILF on October 30, 2024. ER-283-86.

SUMMARY OF ARGUMENT

Section 8 of the NVRA, 52 U.S.C. § 20507, lays out a variety of requirements concerning “the administration of voter registration for elections for Federal office” that involve “registrars” and a “registrar’s jurisdiction.” Similarly, there are frequent references to “the appropriate State election official” throughout Section 8 and other parts of the NVRA that relate to duties traditionally associated with a “registrar.” For example, 52 U.S.C. § 20507(a) references the receipt of a voter registration application and the subsequent sending of a disposition of the application to the applicant by “the appropriate State election official.”

In Hawaii, these “registrars” or “appropriate State election officials” are the county clerks, the “registrar’s jurisdiction” is the county of each county clerk, and the duties and responsibilities of the “registrar” or “appropriate State election official” correspond to the duties and responsibilities of the county clerks under state law. Simply put, 52 U.S.C. § 20507 acknowledges that the “registrars” are the ones who conduct voter registration, including list maintenance removal programs and activities.

PILF contends it is entitled to the voter registration lists associated with the county clerks. Specifically, PILF cites 52 U.S.C. § 20507(i)(1), which states the following:

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.

Emphases added.

The first issue on appeal involves whether PILF's claim was not ripe and thus warranted dismissal due to its failure to submit the prescribed application forms to the county clerks for the voter registration list. To the extent the voter registration list is the product of the county clerks' efforts to register voters and to ensure its accuracy and currency through its implementation of list maintenance removal programs and activities, it is not unreasonable to require PILF to ask those very same officials for the voter registration list using a prescribed application form. To the extent the Court disagrees on ripeness, Nago contends it should not address the merits but instead remand to the District Court the second and third issues on appeal described below.

The second issue on appeal is that PILF contends Hawaii elections laws are preempted to the extent PILF is required to submit applications to the county clerks. However, the NVRA clearly envisions a structure in which registrars are the linchpin for voter registration in their respective jurisdictions and as such

requests for voter registration information are properly addressed by them, which in Hawaii are the county clerks.

The third issue on appeal is that PILF contends Hawaii elections laws are preempted to the extent they limit access to those citing an election or government purpose for the voter registration list. PILF fails on this issue as 52 U.S.C. § 20507 relates to the list maintenance removal process as opposed to any matter related to voter registration. To the extent its interpretation of 52 U.S.C. § 20507 is correct, then PILF still fails as Hawaii law already provides for access to the voter registration list. *See* HRS § 11-97 and HAR 3-177-160. Finally, it fails as it cannot establish that the NVRA prohibits Hawaii law or Nago from delegating to the county clerks responding to requests that cite 52 U.S.C. § 20507.

STANDARD OF REVIEW

A dismissal due to a lack of ripeness is reviewed de novo by this Court.

See Pizzuto v. Tewalt, 997 F.3d 893, 899 (9th Cir. 2021).

ARGUMENT

I. PILF’S CLAIM OF AN INFORMATIONAL INJURY IS NOT RIPE AS IT FAILED TO EVEN REQUEST THE INFORMATION USING THE PRESCRIBED APPLICATION FORM.

PILF’s claims were not constitutionally ripe as it lacked an “injury in fact” that would permit it to have Article III standing. “Constitutional ripeness requires that the case ‘present issues that are definite and concrete’ and ‘is often treated

under the rubric of standing because ripeness coincides squarely with standing’s injury in fact prong.” *Pizzuto v. Tewalt*, 997 F.3d 893, 899 (9th Cir. 2021) (citation omitted).

Under Article III of the Constitution, federal court jurisdiction is limited to “cases” and “controversies.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). Additionally, “[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The Supreme Court “ha[s] long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions.” *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (internal citations omitted).

Specifically, the District Court clearly laid out that PILF “has yet to be denied information.” ER-29. Instead, it pointed out that “[PILF] is challenging the entity through which that information is made available to [PILF], specifically, [Nago’s] referral of the request to the respective counties.” ER-29. As such, it concluded that “[r]egarding Count I, [PILF’s] prospective injury is not the denial of information, but rather the burden of requesting voter data from four county clerks, rather than submitting one request to [Nago].” ER-29.

- A. PILF appears to incorrectly argue that its attempt to satisfy the notice requirement of the NVRA for statutory standing purposes with its May 17, 2023, notice letter established an informational injury for ripeness purposes when Nago did not provide the records within 90 days and instead directed PILF to the county clerks.

PILF in its opening brief attempts to argue again that an “informational injury” occurred and tries to recast the referral to the county clerks as a rejection of its request by the government. Opening Brief at 11-14. However, when it comes to the topic of addressing ripeness itself, it appears PILF equates ripeness with its allegation that it complied with the statutory terms of the NVRA to file its case and cites a case out of the First Circuit. Opening Brief at 15-16. Specifically, PILF states the following: “This case is ripe simply because Mr. Nago failed to produce the statewide Voter File to the Foundation within 90 days of his receipt of the May 17, 2023, notice letter.” Opening Brief at 16. PILF does this despite the District Court dividing its discussion of standing between statutory standing and ripeness and did not equate statutory standing with ripeness. ER-25-35.

- B. To the extent PILF’s attempt to satisfy the 90-day notice requirement of the NVRA is intertwined with determining ripeness, PILF failed to provide proper notice as PILF amended its original notice on September 7, 2024, when it sent a new notice to Nago and for the first time to the county clerks, but then filed its case only 14 days later before Nago or the county clerks could respond.

As for statutory standing itself, PILF failed to meet the language of 52 U.S.C. § 20510(b)(1). Specifically, while the District Court found that statutory standing was met by PILF providing a notice letter on May 17, 2022, to Nago, and

filing its lawsuit over ninety days later on September 21, 2023, PILF essentially sent an amended notice letter on September 7, 2023, to Nago and three of the county clerks and that resulted in Nago and the county clerks having 90 days until December 7, 2023, to attempt to resolve the matter. ER-26-27.

The three letters contained a beginning sentence that stated the following: “Pursuant to 52 U.S.C. § 20510(b), this letter serves to notify you that **Chief Nago and the [] County Clerk are in violation of the National Voter Registration Act** for failure to permit inspection and duplication of records as required by 52 U.S.C. § 20507(i)”. ER-227, 230, and 233 (emphasis in original). The letters included no reference to Nago not being able to delegate to the county clerks the production of the voter registration and cited Nago’s previous referrals of PILF to the county clerks. ER-227-35.

This was in contrast to PILF’s earlier notice letter dated May 17, 2023, that likewise indicated it was sent pursuant to 52 U.S.C. § 20510(b) and indicated if the requested records were not disclosed that “a lawsuit under the NVRA will be filed within 90 days of your receipt of this notice” and that “an award of attorney’s fees, expenses and costs incurred are available under 52 U.S.C. § 20510(c).” Emphasis added. ER-266-68.

Essentially, it is reasonable to understand that PILF had adjusted its position to no longer contend that Nago had violated the NVRA by referring the matter to

the county clerks and instead was contending the county clerks were in violation of the NVRA for not producing the records. In the alternative, it is reasonable to see that the existence of both the May 17, 2023, letter and the September 7, 2023, letters created an ambiguity over the alleged violations of the NVRA that PILF was contending had occurred either by Nago alone or in conjunction with the county clerks. This ambiguity would be inconsistent with 52 U.S.C. § 20510(b), which seeks to ensure the recipient has appropriate notice of the alleged violations and its apparent encouragement of the settlement of disputes without litigation as reflected by its provision of a 90-day window of time before a lawsuit could be filed.

- C. PILF failed to establish that the reference to an election or government purpose in Hawaii law was a ban on how PILF intended to use what it sought and that this excused PILF from at a minimum submitting applications to the county clerks to see if what it sought would be provided.

As for the case cited by PILF in the ripeness section of its opening brief, *Pub. Int. Legal Found. v. Bellows*, 92 F.4th 36, 53 (1st Cir 2024), it makes no explicit reference to the term “ripeness.” Opening Brief at 15. However, PILF appears to have cited it as the case involved, in part, the court’s determination that the language of specific use and publication bans prohibited what PILF planned to do with the voter registration data and that the NVRA preempted them. *Id.* at 53-56. Having said that, PILF does not directly compare the language in those bans in that case to Hawaii’s laws referring to an election or government purpose, or

address the District Court’s order noting “[t]he Court is not persuaded that filling out the application for voter data and submitting it to each respective county would subject Plaintiff to the risk of a felony and a fine.” ER-32.

- D. PILF failed to establish that submitting applications to the county clerks is so burdensome and contrary to the NVRA that it in conjunction with its notice letter constituted an informational injury that did not require them to submit the applications to allow the county clerks to respond for purposes of establishing ripeness.

Finally, PILF contends that the requirement to submit applications to the county clerks is preempted by the NVRA as it is more burdensome than sending a single request to Nago. Opening Brief at 19-20.

First, as previously noted, the NVRA, enacted back in 1993, recognizes the voter registration structure in which there are registrars and that each registrar has a registrar’s jurisdiction. *See* 52 U.S.C. § 20507. This corresponds to the construct in Hawaii of voter registration being addressed by the county clerks for their respective county jurisdiction. *See* HRS §§ 11-11 to 11-26.

The position of chief election officer in Hawaii, given the statutory duties of the county clerks, was not considered a registrar at the time of the enactment of the NVRA in 1993 and that has continued up to the present. This is due, in part, to the position of chief election officer not having a “registrar’s jurisdiction” that encompasses the whole state and not exercising all of the duties of a registrar. Specifically, the NVRA describes a “registrar’s jurisdiction” as essentially a unit of

government or an office that covers a specific geographic area and performs “**all of the functions of a voting registrar.**” *See* 52 U.S.C. § 20507(j)(1)-(3).

The relevant subsection notes that the definition includes “an incorporated city, town, borough, or other form of municipality.” 52 U.S.C. § 20507(j)(1). Other than the City and County of Honolulu, which is incorporated as both a city and a county, there are no other incorporated municipalities. The statute continues on by noting a registrar’s jurisdiction includes where “voter registration is maintained by a county, parish or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government.” 52 U.S.C. § 20507(j)(2). The counties of Hawaii, Maui, Kauai, and the previously mentioned City and County of Honolulu are covered by this provision. The subsection concludes with the possibility of a larger registrar’s jurisdiction existing “if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government **by an office that performs all of the functions of a voting registrar**, the geographic areas of the consolidated municipalities or other geographic units.” 52 USC § 20507(j) (emphasis added).

However, as previously noted, the county clerks are the ones that actually perform the function a registrar in their county jurisdictions. *See* HRS §§ 11-11 to 11-26. Given this, Nago cannot be understood to “perform[] all of the functions

of a voting registrar.” Similarly, Hawaii cannot be considered a single registrar’s jurisdiction for purposes of the NVRA. As such, requests for the disclosure of “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” are correctly referred to those who are the actual registrars. 52 U.S.C. § 20507(i).

While not clear, it appears PILF may be contending that the subsequent passage of the Help America Vote Act of 2002 (HAVA), somehow changed the NVRA in some way to require that the chief election officer, as opposed to the county clerks, is to provide records in response to inquiries citing 52 U.S.C. § 20507.

Specifically, HAVA provides for “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.” 52 U.S.C. § 21083(a)(1)(A). However, local election officials (i.e. the county clerks) are expected to have immediate electronic access to the system and to, on an expedited basis, enter voter registration information into it. *See* 52 U.S.C. §§ 21083(a)(1)(A)(v) & (vi). Additionally, the chief election officer is expected to provide support to the local election officials to enter voter registration information into the system. *See* 52 U.S.C. § 21083(a)(1)(A)(vii). Further, “[t]he appropriate State or **local election official**

shall perform list maintenance” and this includes following the removal procedures of the NVRA. 52 U.S.C. § 21083(a)(2) (emphasis added). Finally, Section 906 of HAVA notes that its provisions, other than Section 303(b) (52 U.S.C. § 21083(b)) concerning those who register by mail, have no effect on the NVRA, along with other specified laws. *See* 52 U.S.C. § 21145.

The chief election officer hosts the statewide voter registration system and provides support to the county clerks to permit them to access the system, enter voter registration information into it, and to conduct “programs and activities [] for the purpose of ensuring the accuracy of official lists of eligible voters.” 52 U.S.C. § 20507(i). Consistent with this, there is no impediment to the county clerks responding to records requests after the passage of HAVA.

Second, accepting that a state can delegate to its county clerks, the application itself is a standardized form that does not require PILF to do anything more than complete a single application and then copy and paste its contents onto the applications for the other three counties. *See* HAR § 3-177-160(g) and ER-203-26. Simply put, PILF cannot establish that the completion of an application for each of the four counties is somehow onerous or difficult. Its contention regarding other states having more counties is not relevant as it is disputing its reasonableness for Hawaii and we cannot speak as to the processes that exist in those states. Opening Brief at 20.

Additionally, as the counties are the ones who handling voter registration, there is no avoiding that they are the ones able to speak to questions relating to its “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).

II. TO THE EXTENT THIS COURT FINDS THAT PILF’S CASE IS RIPE, REMAND OF PILF’S REMAINING ISSUES ON APPEAL IS APPROPRIATE TO OBTAIN THE BENEFIT OF THE DISTRICT COURT RULING ON THOSE ISSUES, AS OPPOSED TO THIS COURT BEING LIMITED TO THE UNDEVELOPED RECORD TO ADDRESS THE MERITS OF THOSE ISSUES.

To the extent this Court disagrees with the District Court and vacates its judgment on the grounds that the case was actually ripe, the case should simply be remanded to the District Court, as opposed to this Court addressing the merits of the remaining issues on appeal, without the benefit of the District Court ruling on those issues. *See Shirk v. United States*, 773 F.3d 999, 1007 (9th Cir. 2014) (expressing this Court’s mindfulness about the traditional process of the lower courts making determinations on issues that it subsequently reviews).

PILF itself concludes its opening brief by stating that it “prays this court reverse the decision of the trial court on ripeness and remand the case to the trial court for consideration of the case on the merits and grant any other relief to which [PILF] may be entitled.” Opening Brief at 21. However, its opening brief instead of raising solely the issue of ripeness raises two additional issues that it casts as

questions regarding whether certain state laws are preempted by the NVRA.

Opening Brief at 4. Further, PILF spends a significant portion of its brief on those issues. Opening Brief at 16-20.

In some ways this is similar to earlier when PILF insisted on filing in District Court before actually submitting the required applications to the county clerks for what it sought. ER-29. Likewise, it is similar to PILF subsequently refusing to amend its complaint and instead wanting a final appealable order, if its request for reconsideration of the District Court's dismissal was not granted in relation to its claims not being ripe. ER-14.

Nago submits that if this Court reverses the District Court on the issue of ripeness, then generally such a finding of ripeness would result in the remaining issues being remanded. *See Dodd v. Hood River County*, 59 F.3d 852, 864 (9th Cir. 1994) (finding ripeness and remanding a federal taking claim despite the parties fulling briefing the merits and expressing a willing for the matter to be decided); *Golden v. Cal. Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1089, 1093 (9th Cir. 2015) (finding ripeness and remanding a dispute regarding the impact of a state statue on a settlement agreement); *Pizzuto v. Tewalt*, 997 F.3d 893, 906 (9th Cir. 2021) (finding ripeness and remanding a case concerning prisoner execution procedures).

While there can be exceptions to the general rule of remanding to a district court to initially rule on the merits, none of them are applicable in this case. Specifically, “[w]hen ‘proper resolution is beyond any doubt,’ when ‘injustice might otherwise result,’ and when an issue is purely legal are exceptions to the general rule.” *Planned Parenthood of Greater Wash. v. U.S. Dep’t of Health & Human Servs.*, 946 F.3d 1100, 1110 (9th Cir. 2020) (citations omitted).

There can be no showing that the proper resolution is beyond a doubt or that an injustice would result if the case were remanded. For example, there are no reported cases cited by either party that reflect a court has even resolved whether a state under the NVRA is somehow not authorized to delegate specific tasks to the local election officials through either its state laws or by a direct delegation by their chief state election official.

What is left in terms of exceptions to the general rule is whether the two remaining issues are purely legal. PILF’s approach to this case, in which it has not submitted applications to the county clerks and has acted as if any applications would be rejected, is one where its focus has been on its interpretation of the NVRA and its argument that Hawaii law conflicts with the NVRA and thus is preempted. In contrast, Nago does not see the “factual record [as being] so fully developed as to render any further development irrelevant” or that it could not

‘develop[] new facts in response to or advanc[e] distinct legal arguments against the issue[s]’.” *Id.* at 1111 (citations omitted).

For example, the District Court did not address, because the case was not ripe, what it framed as Nago’s argument that “complete relief cannot be afforded without the counties as parties to the suit, making the counties indispensable parties, and requiring the Amended Complaint be dismissed with prejudice.” ER-35. Related to this point, there is no developed record as to how the county clerks would have responded to PILF if it had submitted the required applications. Likewise, there is no benefit from the arguments of the county clerks that they could have advanced if they had been included as defendants by the District Court.

As for the NVRA, which PILF claims preempts state law, there is the possible development of the arguments about the duties and responsibilities of the county clerks and how they are consistent with the NVRA. Additionally, there is the possible development of the process the county clerks follow to ensure the accuracy and currency of the list of eligible voters and how records associated with that process are separate and distinct from what PILF is actually seeking.

Finally, as for the NVRA itself, the Supreme Court has stated, “The NVRA ‘erect[s] a complex superstructure of federal regulation atop state voter-registration systems.’” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761, 138 S.Ct. 1833, 1838 (2018) (quoting *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5,

133 S.Ct. 2247, 2251 (2013)). PILF’s claims should be treated no different than other “claim[s] [that] raise[] . . . question[s] of first impression in this circuit and require[] resolution of complicated issues of statutory interpretation” that are first remanded to the underlying District Court to decide. *Alaska Dep’t of Fish & Game v. Fed. Subsistence Bd.*, 62 F.4th 1177, 1183 (9th Cir. 2023) (citing *Merritt v. Countrywide Fin. Corp.*, 759 F.3d 1023, 1035 (9th Cir. 2014)).

III. PILF FAILED TO ESTABLISH THAT THE COUNTY CLERKS HANDLING RECORDS REQUESTS WAS PREEMPTED BY THE NVRA.

To the extent this Court were to directly address whether state law in the present case was preempted by the NVRA, “[t]he purpose of Congress is the ultimate touchstone” in deciding preemption. *Medtronic v. Lohr*, 518 U.S. 470 (1996) (internal citation omitted).

States prescribe “[t]he Times, Places and Manner” of federal elections, subject to the Congress passing laws to “make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. In other words, the default is state regulation, subject to Congressional intervention. “[S]o far as it is exercised and no farther, the regulations affected supersede those of the State which are inconsistent therewith.” *Arizona Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9, 133 S.Ct. 2247 (2013) (citation omitted).

With this in mind, the Supreme Court has acknowledged that historically “Congress left it up to the States to maintain accurate lists of those eligible to vote in federal elections” and that it intervened in 1993 to enact the NVRA, which “erected a complex superstructure of federal regulation atop state voter-registration systems.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761, 138 S.Ct. 1833, 1838 (2018) (internal citation omitted). In other words, the legal systems by which states “maintain accurate lists” still are permitted to exist and are only preempted to the extent the “complex superstructure of federal regulation atop” those systems conflict. The use of the term “atop” gets across that Congress was not replacing state systems but instead largely attempting to make use of those systems and only when there was an actual conflict would any preemption occur.

Hawaii’s county clerks, as described in HRS §§ 11-11 to 11-26, along with HRS § 11-97, perform the traditional duties of the registrar that the NVRA and HAVA reference in terms of voter registration. Specifically, definition of “registrar’s jurisdiction” is found in Section 8(i) of the NVRA and it includes a county or similar entity that “performs all of the functions of a voting registrar.” 52 U.S.C. § 20507(i). Given the duties and responsibilities of the county clerks under state law, the county clerks are the only officials in Hawaii who constitute registrars under NVRA.

The NVRA sets out the following duties of the registrars: (1) receipt of applications; (2) issuing dispositions of the applications; (3) providing the limited circumstances in which a registrant may be removed; (4) conducting a general program to remove ineligible voters due to death or change of residence out of the jurisdiction; (5) informing applicants of “voter eligibility requirements” and “penalties for submission of a false voter registration application;” and (6) “ensur[ing] that the identify of the voter registration agency through which any particular voter is registered is not disclosed to the public.” *See* 52 U.S.C. § 20507.

These are elaborated on in greater detail in the remaining subsections of Section 8 (52 U.S.C. §§ 20507(b)-(j)) that are entitled as follows: “(b) Confirmation of voter registration;” “(c) Voter removal programs;” “(d) Removal of names from voting rolls;” “(e) Procedure for voting following failure to return card;” “(f) Change of voting address within a jurisdiction;” “(g) Conviction in federal court;” “(h) Reduced postal rates;” “(i) Public disclosure of voter registration activities;” and “(j) Definition.”

The subsequent Help America Vote Act of 2002, other than in a specific provision, 52 U.S.C. § 21083(b), concerning those who register by mail, clearly states it has no effect on the NVRA. *See* 52 U.S.C. § 21145. As such, HAVA’s requirement of “a single, uniform, official, centralized, interactive computerized

statewide voter registration list defined, maintained, and administered at the State level” which the county clerks enter data into and interact with has no impact on who responds to requests concerning the work of the county clerks under 52 U.S.C. § 20507.

In the end, the NVRA continues to recognize the role of the registrars and has no language directly indicating that a state cannot provide for the registrars to address requests that may concern 52 U.S.C. § 20507.

Consistent with this, Nago contends the county clerks have a direct interest in this action because the relief and remedy that PILF is seeking will effectively undercut their duties and responsibilities under state and federal law. *True The Vote v. Hosemann*, 43 F. Supp. 3d 693, 712 (S.D. Miss. 2014) (“Other courts confronted with NVRA lawsuits have likewise recognized that Counties or County officials were proper parties to the suit”). Given this and as the District Court did not reach the merits of whether to join the county clerks as the case was dismissed on the basis of ripeness, this Court should not address the merits of any issue raised on this appeal other than ripeness.

IV. PILF FAILED TO ESTABLISH THAT THE RECORD IT SOUGHT CONCERNED AN ACTUAL NVRA PROGRAM OR ACTIVITY, SUCH AS A VOTER REMOVAL PROGRAM, WHICH IS CLEARLY REFERRED TO AS A PROGRAM IN THE NVRA.

- A. PILF failed to establish that Subsection (i) when read in conjunction with the rest of 52 U.S.C. § 20507 and the NVRA encompassed a specific voter registration list that may have been in existence at the time of PILF's notice letter, as PILF did not establish which program may have actually made use of or otherwise involved that record or even when the execution of the program occurred.

Given the length of the text of 52 U.S.C. § 20507, which is composed of subsections (a) to (j), the entire statute is included as part of the Appendix at A-001 to A007. However, to facilitate a discussion of this portion of the brief, subsections (a) and (i) are repeated here before commencing with Nago's argument on this point.

§20507. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall-

- (1) ensure that any eligible applicant is registered to vote in an election-

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except-

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of-

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of-

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(i) Public disclosure of voter registration activities

(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.

Emphases added.³

First, PILF fails on this issue as it cannot satisfy the condition precedent of establishing that 52 U.S.C. § 20507(i)(1) is even applicable to a request for any voter registration list. Specifically, it needs to establish that the NVRA's requirement to permit the public inspection or photocopying of "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" is the equivalent of simply "all records concerning voter registration."

PILF needed to establish that the statute includes any voter registration list at any point in time, as opposed to the records that relate to "ensuring the accuracy and currency of officials lists of eligible voters" at the time the voter removal program was conducted. In other words, PILF needed to establish that on March 17, 2023, the voter registration list in existence that day, which one would expect

³ Nago contends the program for purposes of Subsection (i)(i) is the program noted in Subsection (a)(4) that references Subsections (b), (c), and (d) that can be found in the Appendix at A-002 to A-004.

to be fluid and dynamic as voters can largely register at any time throughout the year, was a record that concerned a program or activity that may have occurred a few months or significantly earlier, depending on when the county clerks scheduled their voter removal programs to be conducted.

In support of this position, Nago contends that the discrete “programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” referenced in 52 U.S.C. § 20507(i)(1) are those that use the actual term “program” in 52 U.S.C. § 20507, which is entitled “Requirements with Respect to the Administration of Voter Registration.”

These specific programs, as previously noted, relate to voter removal. *See* 52 U.S.C. § 20507(a)(4), (b), (c), and (d). Examples of records associated with these programs and the subordinate activities in 52 U.S.C. § 20507(i)(1) are reflected in 52 U.S.C. § 20507(i)(2) (i.e. “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”).

The NVRA lists four purposes: (1) increase voter registration, (2) enhance participation of voters in elections; (3) “protect the integrity of the electoral process;” and (4) “ensure that accurate and current voter registration rolls are

maintained.” 52 U.S.C. § 20501(b). Language echoing the fourth of these is found in 52 U.S.C. § 20507(i)(1) (i.e. “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”).

Tellingly, the Supreme Court has not directly characterized ensuring accuracy and currency as including the initial registration of voters or the processing of applications. Instead, it has stated the following:

The Act has two main objectives: increasing voter registration and **removing ineligible persons from the States' voter registration rolls**. See § 2, 107 Stat. 77, 52 U.S.C. § 20501(b).

To achieve the latter goal, the NVRA requires States to "conduct a general program that makes a reasonable effort to remove the names" of voters who are ineligible "by reason of" death or change in residence. § 20507(a)(4). The Act also prescribes requirements that a State must meet in order to remove a name on change-of-residence grounds. §§ 20507(b), (c), (d).

Husted v. A. Philip Randolph Inst., 138 S.Ct. 1833, 1838, 584 U.S. 756, 761 (2018) (emphasis added).

In other words, it is not unreasonable to equate “ensur[ing] that accurate and current voter registration rolls are maintained” with “conduct[ing] a general program that makes a reasonable effort to remove the names’ of voters who are ineligible ‘by reason of’ death or change in residence.”

The general program concerning removal on the basis of change of residence is reflected in 52 U.S.C. § 20507(b), (c), and (d) (i.e. Confirmation of Voter

Registration; Voter Removal Programs; and Removal of Names from Voting Rolls). In regard to implementation of this program by the county clerks, Hawaii Administrative Rules (HAR) § 3-177-157, entitled “National Voter Registration Act of 1993, as amended; general program to remove ineligible voters using change of address information supplied by the postal service,” lays out the details in a three-page rule that mirrors the NVRA and elaborates on various matters.

In essence, the program involves a voter being sent a confirmation notice indicating there is an apparent issue with their registration and they are asked to respond. If the voter does not respond and fails to vote “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,” then they can be removed as a registered voter. 52 U.S.C. § 20507(d).

Examples of these types of records are reflected in 52 U.S.C. § 20507(i)(2) (i.e. “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”) and serve as evidence of the type of records that are meant in 52 U.S.C. § 20507(i)(1) as being “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.”

The NVRA’s legislative history likewise reflects that the focus of 52 U.S.C. § 20507(i) was on programs and activities concerning the accuracy and currency of addresses in relation to removing voters from the rolls (e.g. those who moved out of the jurisdiction are no longer eligible to vote and should be removed).

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. The 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.

H. Rep. No. 103-9 at 19 (emphases added).

Having said that, Nago notes there are several cases that occurred before *Husted* and some after that do not directly address whether *Husted* is relevant for purposes of determining what constitutes “programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” These cases have followed some variation on the Fourth Circuit’s

interpretation of 52 U.S.C. § 20507(i)(1) in *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012). Specifically, the Fourth Circuit found that the voter registration affidavits themselves were covered by 52 U.S.C. § 20507(i) under the interpretation that the actual review of the voter registration application itself is a “program” or “activity” associated with ensuring accurate and current registration rolls. *Id.* at 335. Other cases have taken aspects of that analysis and have extended it to voter registration lists that they see as derivative of the voter registration affidavits that would already be subject to disclosure, subject to exclusions for possible things such as social security numbers or dates of birth. *Judicial Watch, Inc. v. Lamone*, 399 F.Supp.3d 425 (D. Md. 2019); *True The Vote v. Hosemann*, 43 F. Supp. 3d 693 (S.D. Miss. 2014). Recently, the First Circuit Court of Appeals cited *Project Vote* in its decision finding that 52 U.S.C. § 20507(i)(1) applied to Maine’s voter file. *Pub. Interest Legal Found., Inc. v. Bellows*, 92 F.4th 36, 46, 54-55 (1st Cir. 2024). Likewise, the Eleventh Circuit Court of Appeals cited *Project Vote* in its decision regarding Alabama’s voter registration records, which also addressed how public inspection under the NVRA was to actually operate. *Greater Birmingham Ministries v. Alabama*, 105 F.4th 1324, 1329, 1332-34 (11th Cir. 2024) (Finding that the “public inspection” language of 52 U.S.C. § 20507(i)(1) constitutes a “reading-room provision” that

does not mandate electronic disclosure and likewise that “photocopying” does not encompass electronic production.)

Putting aside *Husted*, which supports Nago’s position regarding the removal process as being equated with ensuring the accuracy and currency of the list of eligible voters, a statutory analysis of 52 U.S.C. § 20507(i) reflects the same result. The most critical phrase in the statute is “ensuring the accuracy and currency of official lists of eligible voters” as the records are to be related to accomplishing that purpose.

Given this, one naturally looks to see if the phrase is defined or clarified elsewhere in the statute. *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) (“A term appearing in several places in a statutory text is generally read the same way each time it appears.”). Similarly, “Words that can have more than one meaning are given content, however, by their surroundings.” *Arizona Inter Tribal Council of Ariz., Inc.*, 570, U.S. 1, 9 (2013) (citation omitted). The concept of “ensuring the maintenance of an accurate and current voter registration roll” is initially raised in 52 U.S.C. § 20507(b), with the caveat that the list maintenance “shall not result in the removal of the name of any person from the official list of voters registered to vote in an election or Federal office by reason of the person’s failure to vote.” 52 U.S.C. § 20507(b)(2). This subsection is immediately followed by 52 U.S.C. § 20507(c) and (d) concerning “voter removal programs” and “removal of names

from voting rolls.” As previously noted, 52 U.S.C. § 20501(b)(4) reflects similar language that has been interpreted as referring to the voter removal program.

Moving from that specific language to the ostensibly broad term “program” immediately outside of 52 U.S.C. § 20507(i) is used five times in 52 U.S.C. § 20507. Specifically, it is used in 52 U.S.C. §§ 20507(a)(4) and (b), along with three times in 52 U.S.C. §§ 20507(c), and each time it is referring to the removal of voters from the rolls. In other words, the context in which the term “program” is used in 52 U.S.C. § 20507(i) leads to the conclusion it concerns the programs the statute specifically mentions. Additionally, the term “activity” is used in 52 U.S.C. § 20507(b), in relation to a program or activity to ensure the maintenance of an accurate and current voter registration roll that complies with the Voting Rights Act of 1965 and does not result in the removal of someone due to a failure to vote. With the above in mind, the examples in 52 U.S.C. § 20507(i)(1) are clearly consistent with the context in which those terms were used.

- B. PILF failed to establish that Hawaii law conflicts with 52 U.S.C. § 20507 as Hawaii law provides for the release of the voter registration list for election or government purposes.

Second, to the extent 52 U.S.C. § 20507(i)(i) is interpreted to cover the voter registration list itself, Hawaii law does not directly conflict with its provisions concerning inspection and photocopying. Specifically, Hawaii law already provides for the provision of voter registration data, such as the voter registration

list to those with an election or government purpose. *See* HRS § 11-97 and HAR § 3-177-160.

However, as pointed out for the first issue on appeal, PILF has chosen to not submit an application to any of the county clerks in which it could have stated and elaborated on its actual purpose. As such, it has prevented the matter from becoming constitutionally ripe.

- C. PILF failed to establish that the NVRA prohibits Hawaii law or Nago from delegating to the county clerks responding to requests under 52 U.S.C. § 20507.

Third, to the extent 52 U.S.C. § 20507(i)(1) is interpreted to cover the voter registration list itself and an “election purpose” under state law would include using the list for an NVRA purpose, there is no reason to find that Hawaii’s structure in which the handling of requests for voter registration information is handled by the county clerks, as opposed to Nago, conflicts with the NVRA.

Specifically, 52 U.S.C. § 20507(i) merely indicates that “[e]ach State shall maintain . . . and shall make available for public inspection” certain records. It in no way defines how this will be accomplished or indicates that’s the state’s hands are tied as to how it will accomplish this.

Having said that, the NVRA does provide that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act.” 52 U.S.C. § 20509. Nago is

in charge of “coordination.” However, “coordination” does not require one to usurp the authority of the county clerks, which is recognized in state law and in federal law, under terms, such as “registrar” or “appropriate State election official.” *See* 52 U.S.C. §§ 20504 to 20508 and HRS §§ 11-11 to 11-26. Instead, depending on the context, it can be accomplished by referring requesters to the county clerks to address requests related to voter registration. The legislative history of the NVRA supports the ability of a state to have a local election official address various responsibilities under the law.

The terms “State election officials” and “appropriate State election official” refer to whatever election official under State law has the appropriate responsibility for the administration of voter registration and elections. **In some cases, this may be a local election official.**

S. Rep. No. 103-6 at 24 (Emphasis added).

The terms “State election officials” and “appropriate State election official” refer to whatever election official under State law has the appropriate responsibility. **In some cases, this may be a local election official.**

H. Rep. No. 103-9 at 8 (Emphasis added).

Consistent with this, county election officials and counties (i.e. “registrar’s and their jurisdictions) have been parties to cases involving the NVRA. *True The Vote v. Hosemann*, 43 F. Supp. 3d 693, 712 (S.D. Miss. 2014) (“Other courts confronted with NVRA lawsuits have likewise recognized that Counties or County officials were proper parties to the suit”). As such, it is reasonable to understand

that the NVRA envisions that the county clerks could be tasked with responding to requests citing 52 U.S.C. § 20507.

CONCLUSION

For the foregoing reasons, the decision of the lower court should be affirmed.

DATED: Pearl City, Hawai‘i, April 23, 2025.

/s/ Aaron H. Schulaner

AARON H. SCHULANER
General Counsel

ANNE E. LOPEZ
Attorney General of Hawai‘i

RANDALL NISHIYAMA
REESE R. NAKAMURA
Deputy Attorneys General

Attorneys for Defendant-Appellee
SCOTT T. NAGO

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ADDENDUM

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PUBLIC INTEREST LEGAL
FOUNDATION, INC.,

Plaintiff-Appellant,

vs.

SCOTT T. NAGO, in his official
capacity as the Chief Election Officer
for the State of Hawaii,

Defendant-Appellee.

C.A. NO. 24-6629

D.C. NO. 1:23-CV-00389-LEK-WRP

APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

STATUTORY ADDENDUM TO DEFENDANT-APPELLEE'S
ANSWERING BRIEF

DESCRIPTION

PAGE

United States Code (U.S.C)

52 U.S.C. § 20507 A-001

52 U.S.C. § 21083 A-008

52 U.S.C. § 21145 A-017

Hawaii Revised Statutes (HRS)

HRS § 11-97 A-019

Hawaii Administrative Rules (HAR)

HAR § 3-177-157 A-020

HAR § 3-177-160 A-023

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated

Title 52. Voting and Elections (Refs & Annos)

Subtitle II. Voting Assistance and Election Administration (Refs & Annos)

Chapter 205. National Voter Registration

52 U.S.C.A. § 20507

Formerly cited as 42 USCA § 1973gg-6

§ 20507. Requirements with respect to administration of voter registration

Currentness

(a) In general

In the administration of voter registration for elections for Federal office, each State shall--

(1) ensure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under [section 20504](#) of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under [section 20505](#) of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;**(3) provide that the name of a registrant may not be removed from the official list of eligible voters except--**

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under [sections 20504](#), [20505](#), and [20506](#) of this title of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any 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--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 ([42 U.S.C. 1973 et seq.](#))¹; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) 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.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal 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, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under [section 20509](#) of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include--

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(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.

(j) “Registrar’s jurisdiction” defined

For the purposes of this section, the term “registrar’s jurisdiction” means--

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

§ 20507. Requirements with respect to administration of voter..., 52 USCA § 20507

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

CREDIT(S)

(Pub.L. 103-31, § 8, May 20, 1993, 107 Stat. 82; Pub.L. 107-252, Title IX, § 903, Oct. 29, 2002, 116 Stat. 1728.)

Notes of Decisions (125)

Footnotes

¹ Redesignated as 52 U.S.C.A. § 10301 et seq.

52 U.S.C.A. § 20507, 52 USCA § 20507

Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

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§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated

Title 52. Voting and Elections (Refs & Annos)

Subtitle II. Voting Assistance and Election Administration (Refs & Annos)

Chapter 209. Election Administration Improvement

Subchapter III. Uniform and Nondiscriminatory Election Technology and Administration
Requirements

Part A. Requirements

52 U.S.C.A. § 21083

Formerly cited as 42 USCA § 15483

§ 21083. Computerized statewide voter registration list requirements and requirements for voters who register
by mail

[Currentness](#)**(a) Computerized statewide voter registration list requirements****(1) Implementation****(A) In general**

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the “computerized list”), and includes the following:

- (i)** The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii)** The computerized list contains the name and registration information of every legally registered voter in the State.
- (iii)** Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
- (iv)** The computerized list shall be coordinated with other agency databases within the State.

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.),¹ including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).²

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)),³ the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)),⁴ the State shall coordinate the computerized list with State agency records on death.

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)),⁵ that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

- (i) the name of each registered voter appears in the computerized list;
- (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and
- (iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.),¹ registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information**(A) Requiring provision of certain information by applicants****(i) In general**

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under [section 405\(r\)\(8\) of Title 42](#) (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c))⁶ and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under [section 21082\(a\)](#) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with [section 21082\(a\)](#) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 ([42 U.S.C. 1973gg-4](#))⁷ and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 ([42 U.S.C. 1973gg-4](#))⁷ and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

(C) who is--

- (i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act;
- (ii) provided the right to vote otherwise than in person under [section 20102\(b\)\(2\)\(B\)\(ii\)](#) of this title; or
- (iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 ([42 U.S.C. 1973gg-4](#))⁷ shall include the following:

- (i) The question “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
- (ii) The question “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.
- (iii) The statement “If you checked ‘no’ in response to either of these questions, do not complete this form.”.
- (iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 ([42 U.S.C. 1973gg et seq.](#))¹ before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 ([5 U.S.C. 552a](#) note).

(d) Effective date**(1) Computerized statewide voter registration list requirements****(A) In general**

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to “January 1, 2004” were a reference to “January 1, 2006”.

(2) Requirement for voters who register by mail**(A) In general**

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

CREDIT(S)

([Pub.L. 107-252, Title III, § 303](#), Oct. 29, 2002, 116 Stat. 1708.)

§ 21083. Computerized statewide voter registration list..., 52 USCA § 21083

Notes of Decisions (16)

Footnotes

¹ Redesignated as 52 U.S.C.A. § 20501 et seq.

² Redesignated as 52 U.S.C.A. § 20507.

³ Redesignated as 52 U.S.C.A. § 20507(a)(3)(B).

⁴ Redesignated as 52 U.S.C.A. § 20507(a)(4)(A).

⁵ Redesignated as 52 U.S.C.A. § 20503(b).

⁶ Redesignated as 52 U.S.C.A. § 20505(c).

⁷ Redesignated as 52 U.S.C.A. § 20505.

52 U.S.C.A. § 21083, 52 USCA § 21083

Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

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§ 21145. No effect on other laws, 52 USCA § 21145

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated

Title 52. Voting and Elections (Refs & Annos)

Subtitle II. Voting Assistance and Election Administration (Refs & Annos)

Chapter 209. Election Administration Improvement

Subchapter VII. Miscellaneous Provisions

52 U.S.C.A. § 21145
Formerly cited as 42 USCA § 15545

§ 21145. No effect on other laws

Currentness

(a) In general

Except as specifically provided in [section 21083\(b\)](#) of this title with regard to the National Voter Registration Act of 1993 ([42 U.S.C. 1973gg et seq.](#)),¹ nothing in this chapter may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

- (1) The Voting Rights Act of 1965 ([42 U.S.C. 1973 et seq.](#)).²
- (2) The Voting Accessibility for the Elderly and Handicapped Act ([42 U.S.C. 1973ee et seq.](#)).³
- (3) The Uniformed and Overseas Citizens Absentee Voting Act ([42 U.S.C. 1973ff et seq.](#)).⁴
- (4) The National Voter Registration Act of 1993 ([42 U.S.C. 1973gg et seq.](#)).¹
- (5) The Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)).
- (6) The Rehabilitation Act of 1973 ([29 U.S.C. 701 et seq.](#)).

(b) No effect on preclearance or other requirements under Voting Rights Act

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 ([42 U.S.C. 1973c](#))⁵ or any other requirements of such Act.

§ 21145. No effect on other laws, 52 USCA § 21145

CREDIT(S)

(Pub.L. 107-252, Title IX, § 906, Oct. 29, 2002, 116 Stat. 1729.)

Footnotes

¹ Redesignated as 52 U.S.C.A. § 20501 et seq.

² Redesignated as 52 U.S.C.A. § 10301 et seq.

³ Redesignated as 52 U.S.C.A. § 20101 et seq.

⁴ Redesignated as 52 U.S.C.A. § 20301 et seq.

⁵ Redesignated as 52 U.S.C.A. § 10304.

52 U.S.C.A. § 21145, 52 USCA § 21145

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§ 11-97. Records open to inspection, HI ST § 11-97

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 2. Elections

Chapter 11. Elections, Generally (Refs & Annos)

Part VII. Conduct of Elections

HRS § 11-97

§ 11-97. Records open to inspection

[Currentness](#)

(a) A voter's full name, district/precinct designation, and voter status shall be public; but all other personal information, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91.

(b) Voted materials shall not be open to the inspection of any voter until after the end of the contest period unless opened upon order of the court.

Credits

Laws 1970, ch. 26, § 2; Laws 1973, ch. 217, § 1(dd); Laws 1983, ch. 34, § 12; [Laws 1990, ch. 156, § 8](#); [Laws 1997, ch. 157, § 2](#).

[Notes of Decisions \(3\)](#)

H R S § 11-97, HI ST § 11-97

Current through the 2024 Regular and First Special Session.

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§ 3-177-157. National Voter Registration Act of 1993, as..., HI ADC § 3-177-157

West's Hawaii Administrative Code

Title 3. Department of Accounting and General Services

Chapter 177. Rules of the Office of Elections

Subchapter 4. Voter Registration

Haw. Admin. Rules (HAR) § 3-177-157

§ 3-177-157. National Voter Registration Act of 1993, as amended; general program to remove ineligible voters, using change of address information supplied by the postal service.

Currentness

(a) The clerk shall, in accordance with Section 8(a)(4) of the National Voter Registration Act of 1993, as amended, conduct a general program that makes a reasonable effort to remove the names of ineligible voters by reason of death or change in residence, in accordance with Section 8(b),(c), and (d), from the lists of eligible voters.

(b) The clerk may meet the requirements of subsection (a) of this rule by establishing a program under which --

(1) Change-of-address information supplied by the U.S. Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(2) If it appears from information provided by the U.S. Postal Service that--

(A) A registrant has moved to a different residence address in the same county in which the registrant is currently registered, the clerk changes the registration record to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(B) The registrant has moved to a different residence address not in the same county, the clerk uses the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to confirm the change of address.

(c) The clerk's use of change-of-address information supplied by the U.S. Postal Service through its licensees to identify registrants whose addresses may have changed, as described in subsection (b), to meet the requirements of subsection (a), does not preclude the clerk from using a different program to meet the requirements of subsection (a). The clerk may use other bases to justify using the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to remove registrants due to a change in residence including, but not limited to, the following:

(1) Sending a notice to every registered voter at specified intervals (e.g. once a year or before an election);

§ 3-177-157. National Voter Registration Act of 1993, as..., HI ADC § 3-177-157

(2) Sending a notice to those who have turned in their driver licenses;

(3) Sending a notice to those who have not voted or engaged in any voter activity for a period of two years. "Voter activity" means casting a ballot in any election, filing a voter registration form, making a written request for an absentee ballot, updating a voting address, or otherwise initiating contact with election officials that results in a notation in the voter's registration record; or

(4) Sending a notice to those that a government agency has informed election officials have moved out of the county.

(d) The clerk shall not remove the name of a registrant from the voter registration rolls on the ground that the registrant has changed residence unless the registrant--

(1) Confirms in writing that the registrant has changed residence to a place outside the county in which the registrant is registered; or

(2) Has failed to respond to a notice described in subsection (i) of this rule and has not voted or appeared to vote (and, if necessary, correct the clerk's record of the registrant's address) 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.

(e) A "confirmation notice" is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(1) If the registrant did not change his or her residence, or changed residence but remained in the county, the registrant should return the card not later than the time provided for mail registration under Section 8(a)(1)(B) of the National Voter Registration Act of 1993, as amended. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted 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, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and

(2) If the registrant has changed residence to a place outside the county in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

Credits

Adopted July 26, 2020.

(Auth: [HRS § 11-4](#), [52 USC § 20507](#)) (Imp: [HRS §§ 11-12](#), [11-16](#), [11-17](#), [11-18](#), [11-19](#), [11-20](#), [52 USC § 20507](#))

§ 3-177-157. National Voter Registration Act of 1993, as..., HI ADC § 3-177-157

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Haw. Admin. Rules (HAR) § 3-177-157, HI ADC § 3-177-157

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§ 3-177-160. Voter registration information; prohibited uses., HI ADC § 3-177-160

West's Hawaii Administrative Code

Title 3. Department of Accounting and General Services

Chapter 177. Rules of the Office of Elections

Subchapter 4. Voter Registration

Haw. Admin. Rules (HAR) § 3-177-160

§ 3-177-160. Voter registration information; prohibited uses.

Currentness

- (a) Voter registration forms, the general county register, the statewide voter registration system, or any lists or data prepared therefrom shall be released or used for election or government purposes only unless otherwise provided by law.
- (b) Notwithstanding subsection (a), a voter's full name, district/precinct designation, and voter status is public information available for any purpose.
- (c) Voter registration information that is not public under subsection (b), excluding the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, may, as determined by the clerk, be made available for an election purpose (e.g. the clerk may not disclose information they determine would interfere with the operations of elections or unduly compromise the privacy of voters). At a minimum, unless otherwise prohibited by law, the residence address and mailing address will be provided.
- (d) Voter registration information that is not public under subsection (b) may be made available to federal, state or county government agencies for government purposes.
- (e) The following constitutes a non-exhaustive list of election or government purposes, unless otherwise provided by law:
- (1) To support or oppose any candidate or incumbent for partisan or nonpartisan office;
 - (2) To support or oppose any proposed or existing ballot measure, proposition, or issue;
 - (3) To support or encourage voter registration or the voting process;
 - (4) To authorized government officials who, by the nature of their official responsibilities, must have access to the voter registration information for legitimate government purposes within the scope of their official duties;
 - (5) To challenge the right of any person to vote or to seek public office; or

§ 3-177-160. Voter registration information; prohibited uses., HI ADC § 3-177-160

(6) To satisfy the requirements of [HRS § 11-62](#) or [HRS § 11-113](#).

(f) Voter registration information that is not public under subsection (b) may not be used for any commercial purpose, such as mailing or delivering an advertisement or offer for any property, establishment, organization, product or service, or for the purpose of mailing or delivering any solicitation for money, services, or anything of value; provided that service bureaus may charge a fee for their services involving the use or disclosure of voter registration information that is not public under subsection (b) so long as the underlying election or government purpose is verified.

(g) A request for voter registration information that is not public under subsection (b) shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought;

(2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes;

(3) Where the requesting party is a government agency seeking the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, a statement setting forth reasons why such information is required; and

(4) A sworn certification by self-subscribing oath that the information will not be sold, released, distributed, or used in any way for commercial purposes, provided that service bureaus may charge a fee for their services in accordance with subsection (f).

Credits

Adopted July 26, 2020.

(Auth: [HRS § 11-4](#)) (Imp: [HRS §§ 11-14](#), [11-62](#), [11-97](#), [11-113](#), [19-6](#))

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Haw. Admin. Rules (HAR) § 3-177-160, HI ADC § 3-177-160

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**UNITED STATES COURT OF APPEALS
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Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

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9th Cir. Case Number(s) 24-6629

The undersigned attorney or self-represented party states the following:

- ☒ I am unaware of any related cases currently pending in this court.
- ☐ I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
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**UNITED STATES COURT OF APPEALS
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9th Cir. Case Number(s) 24-6629

I am the attorney or self-represented party.

This brief contains 11,556 **words**, including words

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I certify that this brief (*select only one*):

- ☒ complies with the word limit of Cir. R. 32-1.
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- ☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
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- ☐ a party or parties are filing a single brief in response to multiple briefs.
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants *(list each name and mailing/email address)*: ☐

Description of Document(s) *(required for all documents)*:

Defendant-Appellee's Answering Brief

Signature /s/ Aaron H. Schulaner

Date Apr 23, 2025

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