

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

PUBLIC INTEREST LEGAL
FOUNDATION, INC.,

Plaintiff,

v.

HOWARD M. KNAPP, in his official capacity
as Executive Director of the South Carolina
Election Commission,

Defendant.

Case No.: 3:24-cv-01276-JFA

**DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Defendant Howard M. Knapp, in his official capacity as Executive Director of the South Carolina Election Commission, (“Knapp” or “Defendant”) answers the Complaint of Plaintiff Public Interest Legal Foundation, Inc. (“PILF” or “Plaintiff”) and, reserving all rights and remedies, would respectfully show unto the Court as follows:

1. Paragraph 1 is a statement of PILF’s legal contentions to which no response is required. Subject to that qualification, without waiving any rights to file a dispositive motion under Rule 12(b)(1) of the Federal Rules of Civil Procedure (“FRCP”), Knapp does not contest the Court’s jurisdiction pursuant to 28 U.S.C. § 1331 and 52 U.S.C. § 20510(b) at this time, and craves reference to those statutes.

2. Paragraph 2 is a statement of PILF’s legal contentions to which no response is required. Subject to that qualification, Knapp does not contest that venue is proper.

3. Knapp admits the allegations in the first sentence of Paragraph 3. Responding to the second sentence in Paragraph 3, Knapp denies that the NVRA itself has a general “Public

Disclosure Provision,” but 52 U.S.C. § 20507(i) only concerns “public disclosure of voter registration activities,” with the records subject to disclosure further described in 52 U.S.C. § 20507(i)(1) and (2). Knapp craves reference to 52 U.S.C. § 20507(i) and the NVRA in its entirety, denying any allegations in this paragraph to the extent they are inconsistent from the text of the statute. The remainder of the allegations in Paragraph 3 concern PILF’s activities, which Knapp lacks knowledge or information sufficient to admit or deny, and therefore denies same.

4. Knapp admits the allegations in the first sentence of Paragraph 4, except that the proper name for Knapp’s agency is the “State Election Commission” (hereinafter, “SEC”). Responding to the second sentence of Paragraph 4, Knapp craves reference to S.C. Code Ann. § 7-3-20 in its entirety and denies any allegations in this paragraph to the extent they are inconsistent with the text of the statute. Subject to that qualification, Knapp admits the allegations in the second sentence of Paragraph 4.

5. Knapp admits Paragraph 5, to the extent a response is required.

6. Paragraph 6 contains no allegations requiring a response, but is a statement of PILF’s legal contentions and a quotation from 52 U.S.C. § 20507(i)(1) of the National Voter Registration Act of 1993, 52 U.S.C.A. §§ 20501–20511 (“NVRA”). Knapp admits that the quotation is accurate, but denies that this excerpt from the statute is the only “relevant part” of the NVRA. Knapp also denies that the NVRA itself characterizes 52 U.S.C. § 20507(i)(1) as a general “Public Disclosure Provision,” but 52 U.S.C. § 20507(i) only concerns “public disclosure of voter registration activities,” with the records subject to disclosure further described in § 20507(i)(1) and (2). In further response, the voter lists are not “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to 52

U.S.C. § 20507(i) and the NVRA in its entirety, denying any allegations in this paragraph to the extent they are inconsistent from the text of the statute. Subject to those qualifications, Knapp admits the allegations in Paragraph 6.

7. Responding to Paragraph 7, Knapp admits that on February 5, 2024, PILF sent the SEC the letter attached to the Complaint as Exhibit A. Knapp craves reference to the letter itself, denying any inconsistent representations or allegations as to its contents.

8. Paragraph 8 contains no allegations requiring a response, but is a statement of PILF's legal contentions and characterizations or quotations from various non-precedential and/or impertinent judicial decisions. Subject to that qualification, Knapp denies that the NVRA itself characterizes 52 U.S.C. § 20507(i)(1) as a general "Public Disclosure Provision," but 52 U.S.C. § 20507(i) only concerns "public disclosure of voter registration activities," with the records subject to disclosure further described in § 20507(i)(1) and (2). In further response, voter registration lists are not "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to 52 U.S.C. § 20507(i) and the NVRA in its entirety, the judicial decisions themselves, and other applicable law, denying any inconsistent allegations. Subject to those qualifications, Paragraph 8 is denied.

9. Responding to Paragraph 9, Knapp admits that on February 20, 2024, the SEC sent PILF the letter attached to the Complaint as Exhibit B. Knapp craves reference to the letter itself, denying any inconsistent representations or allegations as to its contents.

10. Responding to Paragraph 10, Knapp admits that on February 21, 2024, PILF sent the SEC the letter attached to the Complaint as Exhibit C. Knapp craves reference to the letter itself, denying any inconsistent representations or allegations as to its contents.

11. Paragraph 11 contains no allegations requiring a response, but is an excerpt from a letter (attached to the Complaint as Exhibit C) reflecting PILF's legal contentions and citing to several non-precedential and/or impertinent judicial decisions. Knapp craves reference to the letter itself, the judicial decisions cited therein, the NVRA in its entirety, and other applicable laws, denying any inconsistent allegations. To the extent that Paragraph 11 makes any factual allegations requiring a response, those allegations are denied.

12. Paragraph 12 contains no allegations requiring a response, but is an excerpt from a letter (attached to the Complaint as Exhibit C) reflecting PILF's legal contentions and citing to a subsection of the NVRA. Knapp craves reference to the letter itself, the NVRA in its entirety, and other applicable laws, denying any inconsistent allegations. To the extent a further response is required, the letter accurately states that the date of the Republican Presidential Preference Primary was February 24, 2024 but inaccurately identifies the Executive Director of the SEC. To the extent that Paragraph 12 makes any other factual allegations requiring a response, those allegations are denied.

13. Responding to Paragraph 13, Knapp incorporates his preceding responses as if set forth verbatim.

14. Paragraph 14 is admitted.

15. Paragraph 15 contains no allegations requiring a response, but is a statement of PILF's legal contentions. Subject to that qualification, Knapp denies that the NVRA itself characterizes 52 U.S.C. § 20507(i)(1) as a general "Public Disclosure Provision," but 52 U.S.C. § 20507(i) only concerns "public disclosure of voter registration activities" which are further described in § 20507(i)(1) and (2). In further response, the voter lists are not "records concerning

the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to 52 U.S.C. § 20507(i) and the NVRA in its entirety, denying any allegations in this paragraph to the extent they are inconsistent from the text of the statute. To the extent a further response is required, the allegations are denied.

16. Paragraph 16 contains no allegations requiring a response, but is a statement of PILF’s legal contentions. Subject to that qualification, Knapp denies that the NVRA itself has a general “Public Disclosure Provision,” but 52 U.S.C. § 20507(i) only concerns “public disclosure of voter registration activities” which are further described in § 20507(i)(1) and (2). In further response, the voter lists are not “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to 52 U.S.C. § 20507(i) and the NVRA in its entirety, denying any allegations in this paragraph to the extent they are inconsistent from the text of the statute. To the extent a further response is required, the allegations are denied.

17. Responding to Paragraph 17, Knapp craves reference to S.C. Code § 7-3-20(D)(13), denying any inconsistent representations or allegations. Subject to that qualification, Paragraph 17 is admitted.

18. Paragraph 18 is denied as stated, because it lists only one of several reasons why PILF’s request was denied. Knapp denied the request on the following grounds:

- (a) S.C. Code § 7-3-20(D)(13)’s limitation of dissemination of the voter list to qualified voters;

- (b) that the SEC and Knapp “may not validly act in excess of [their] powers, nor [have they] any discretion as to the recognition of or obedience to a statute,” *see S.C. Tax Comm’n v. S.C. Tax Bd. of Rev.*, 299 S.E.2d 489, 491 (1983)(internal citation omitted); and
- (c) that PILF cited no controlling Fourth Circuit or state law precedent to indicate that § 7-3-20(D)(13) was pre-empted by federal law.

In further response, even if PILF is correct in its preemption argument and Knapp had the power to provide PILF the voter list, PILF still must pay a “reasonable price” for the voter list (*see* § 7-3-20(D)(13)) and adhere to the Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10, *et. seq.* (“Privacy Protection Act”), which prohibits use of voter personal information for commercial solicitation. In further response, the voter lists are not “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to S.C. Code Ann. § 7-3-20(D)(13), the NVRA, the Privacy Protection Act, and other applicable laws and case citations, denying any inconsistent allegations or characterizations. To the extent a further response is required, the allegations are denied.

19. Paragraph 19 contains no allegations requiring a response, but is a statement of PILF’s legal contentions. Subject to that qualification, Knapp craves reference to S.C. Code § 7-3-20(D)(13), the NVRA, the Privacy Protection Act, and other applicable laws, denying any inconsistent allegations. In further response, the voter lists are not “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 U.S.C. § 20507(i)(1) of the NVRA. To the extent a further response is required, the allegations are denied.

20. Paragraph 20 contains no allegations requiring a response, but is a statement of PILF's legal contentions. Subject to that qualification, Knapp denies that the NVRA itself has a general "Public Disclosure Provision," but 52 U.S.C. § 20507(i) only concerns "public disclosure of voter registration activities" which are further described in § 20507(i)(1) and (2). In further response, the voter lists are not "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" under 52 U.S.C. § 20507(i)(1) of the NVRA. Knapp craves reference to 52 U.S.C. § 20507(i) and the NVRA in its entirety, S.C. Code § 7-3-20(D)(13), the Privacy Protection Act, and other applicable laws, denying any allegations in this paragraph to the extent they are inconsistent from the text of the statute. To the extent a further response is required, the allegations are denied.

21. Paragraph 21 contains no allegations requiring a response, but is a statement of PILF's legal contentions. Knapp craves reference to S.C. Code § 7-3-20(D)(13), the NVRA, the Privacy Protection Act, the Supremacy Clause and Elections Clause of the U.S. Constitution, and other applicable laws. Subject to those qualifications, Paragraph 21 is denied as stated

22. Paragraph 22 contains no allegations requiring a response, but is a statement of PILF's legal contentions through reliance on a non-precedential and impertinent judicial decision. Knapp craves reference to the judicial decisions cited therein, the NVRA in its entirety, S.C. Code § 7-3-20(D)(13), the Privacy Protection Act, and other applicable laws, denying any inconsistent allegations. To the extent that Paragraph 22 makes any factual allegations requiring a response, those allegations are denied.

23. Paragraph 23 contains no allegations requiring a response, but is a statement of PILF's legal contentions. Subject to that qualification, Knapp admits that he is the State's chief election official. Knapp also admits that PILF sent the SEC the letter attached to the Complaint as

Exhibit C, but craves reference to Exhibit C itself, denying any inconsistent representations or allegations as to its contents. Knapp also craves reference to the NVRA in its entirety, as well as other applicable laws. Subject to those qualifications, Knapp denies that PILF's letter attached as Exhibit C meets the requirements in 52 U.S.C. § 20510(b)(1) and denies that PILF has otherwise met that requirement. In further response, Knapp avers that on March 12, 2024, the SEC responded by email to PILF's notice letter, acknowledging the letter, stating that under South Carolina law, the SEC does not have the authority to provide the requested information, and enclosing a courtesy copy of the Declaratory Judgment Action that the SEC filed (in recognition of PILF's explicit litigation threat) in the Richland County Court of Common Pleas. A copy of the March 12, 2024 email from SEC General Counsel Thomas Nicholson to Logan Churchwell and the attached Declaratory Judgment Action are attached hereto as Exhibit 1. Further answering, that matter presently has been removed to this Court; however, Defendant does not concede the propriety of that removal action and reserves its right to move for the matter to be remanded to the Richland County Court of Common Pleas.

24. Paragraph 24 contains no allegations requiring a response, but is a statement of PILF's legal contentions. Subject to that qualification, Knapp craves reference to Exhibit C and Exhibit 1 hereto, denying any inconsistent representations or allegations as to their contents. Knapp also craves reference to the NVRA in its entirety, as well as other applicable laws. In further response, Knapp denies that he or the SEC was required to "cure" any violation of the NVRA because it did not violate the NVRA. To the extent a further response is required, the allegations are denied.

25. Paragraph 25 contains no allegations requiring a response, but is a statement of PILF's legal contentions as to its standing to bring this lawsuit. Subject to that qualification, Knapp

denies that he or the SEC violated the NVRA. Knapp craves reference to the NVRA in its entirety, the United States Supreme Court decision of *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) detailing the requirements for statutory standing, as well as other applicable laws and legal precedent. Subject to those qualifications, Knapp denies the allegations in Paragraph 25.

26. Paragraph 26 contains no allegations requiring a response, but is a statement of PILF's legal contentions as to its standing to bring this lawsuit. Subject to that qualification, Knapp craves reference to the NVRA in its entirety, the United States Supreme Court decision of *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) detailing the requirements for statutory standing, as well as other applicable laws and legal precedent. Subject to those qualifications, Knapp denies the allegations in Paragraph 26.

27. Responding to Paragraph 27, Knapp lacks knowledge or information sufficient to admit or deny the allegations, including any allegations reflected on the link to PILF's website, and therefore denies same. Further answering, Knapp denies any allegation that the State's voter rolls are not accurate or current and further denies that South Carolina does not comply with applicable standards and best practices.

28. Paragraph 28 is admitted.

29. Responding to Paragraph 29, Knapp lacks knowledge or information sufficient to admit or deny the allegations, and therefore denies same.

30. Responding to Paragraph 30, Knapp lacks knowledge or information sufficient to admit or deny the allegations, and therefore denies same.

31. Responding to Paragraph 31, Knapp lacks knowledge or information sufficient to admit or deny the allegations, and therefore denies same.

32. Responding to Paragraph 32, Knapp denies the allegations insofar as they allege or imply that the SEC's refusal to provide PILF the voter list violates federal law. As to the remainder of the allegations, Knapp lacks knowledge or information sufficient to admit or deny their veracity, and therefore denies same.

33. Responding to Paragraph 33, Knapp lacks knowledge or information sufficient to admit or deny the allegations, and therefore denies same.

34. Responding to Paragraph 34, Knapp lacks knowledge or information sufficient to admit or deny the allegations regarding PILF's activities, and therefore denies same. Knapp denies Paragraph 34 to the extent the allegations are construed to allege that Knapp or the SEC violated federal law.

35. Responding to Paragraph 35, Knapp lacks knowledge or information sufficient to admit or deny the allegations, and therefore denies same.

36. Paragraph 36 contains no allegations requiring a response, but is a statement of PILF's future intent to request records, which Knapp lacks knowledge or information sufficient to admit or deny. Therefore, these allegations are denied. In further response, and to the extent it is argued otherwise, records that PILF intends to request in the future are irrelevant to this action. The letter attached to the Complaint as Exhibit C which purported to provide notice of a violation only requested and related to the South Carolina voter list. While Knapp denies that he or the SEC violated the NVRA or that the letter attached as Exhibit C met the statutory prerequisites for notice under the NVRA, at most, this action is based only on whether PILF is entitled to the voter list.

37. The "Prayer for Relief" contains no allegations of fact that require a response. To the extent a response is required, Knapp denies that PILF is entitled to any of its requested declaratory or injunctive relief.

FOR A FIRST DEFENSE
(General Denial)

38. To the extent any allegation of Knapp's Answer to the Complaint does not expressly address an allegation in the Complaint, such allegation is denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

39. The Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of Rule 12(b)(6), FRCP.

FOR A THIRD DEFENSE
(Reservation and Non-Waiver)

40. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of PILF's allegations. Defendant reserves any additional affirmative defenses as may be revealed or become available to him during the course of investigation and discovery in the case and are consistent with the Federal Rules of Civil Procedure and reserves the right to amend this Answer to assert any such defense.

FOR A FOURTH DEFENSE
(Lack of Irreparable Harm)

41. To the extent PILF is requesting injunctive relief, it has failed to allege facts sufficient to establish irreparable harm.

FOR A FIFTH DEFENSE
(Justiciability)

42. The allegations and prayer for enjoining Knapp from denying requests to inspect similar voter registration lists and voting histories in the future should be dismissed because it does not allege a justiciable case or controversy and seeks an advisory opinion.

FOR A SIXTH DEFENSE
(Statutory Standing)

43. The Complaint should be dismissed under Rule 12(b)(1), FRCP, because Plaintiff lacks statutory standing in that PILF has suffered no informational injury under the NVRA due to Knapp's failure to provide the requested voter list.

FOR A SEVENTH DEFENSE
(Good Faith)

44. At all times Knapp acted in good faith and satisfied all statutory, constitutional, common law, and ethical obligations owed, precluding PILF's claims for relief.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays for judgment against Plaintiff and request that this Court:

1. Deny Plaintiff's requested relief;
2. Issue an order finding that the NVRA does not preempt S.C. Code Ann. § 7-3-20(D);
3. Issue an order finding the plain and unambiguous language of S.C. Code Ann. § 7-3-20(D) prohibits Defendant from providing the voter list to Plaintiff;
4. Enter judgment in Defendant's favor;
5. Dismiss the Complaint in its entirety with prejudice for the reasons set forth above;
and
6. Grant such other and further relief as the Court deems appropriate.

[Signature Page Follows]

Respectfully submitted,

s/Michael R. Burchstead

Mary Elizabeth Crum (Fed. ID No. 372)
Tracey C. Green (Fed. ID No. 6644)
Michael R. Burchstead (Fed. ID No. 10297)
Benjamin R. Jenkins IV (Fed. ID No. 14138)
BURR & FORMAN LLP
PO Box 11390
Columbia, SC 29211
(803) 799-9800
lcum@burr.com
tgreen@burr.com
mburchstead@burr.com
bjenkins@burr.com

Thomas W. Nicholson (Fed. ID No. 12086)
STATE ELECTION COMMISSION
1122 Lady Street, Suite 500
Columbia, SC 29201
(803) 734-9063
tnicholson@elections.sc.gov

*Counsel for Defendant Howard M. Knapp, in his
official capacity as Executive Director of the South
Carolina Election Commission*

April 11, 2024
Columbia, South Carolina

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