

United States District Court  
District of South Carolina  
Columbia Division

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**PUBLIC INTEREST LEGAL FOUNDATION, INC.**

*Plaintiff,*

v.

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

*Defendant.*

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

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**Plaintiff Public Interest Legal Foundation's**

**Motion for Summary Judgment and Memorandum of Law**

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Plaintiff Public Interest Legal Foundation (“Foundation”), moves for summary judgment on its one-count Complaint under Rule 56 of the Federal Rules of Civil Procedure. Compl. ¶¶ 13-36. There are no issues of material fact genuinely in dispute and the Foundation is entitled to judgment as a matter of law.

### **Introduction**

The Foundation seeks public records under the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501-20511. The NVRA requires election officials to make available for public inspection all records concerning efforts to maintain accurate and current official lists of registered voters. 52 U.S.C. § 20507(i)(1), (hereafter the “Public Disclosure Provision”)<sup>1</sup> Plaintiffs seek declaratory and injunctive relief. South Carolina asserts state statutory exemptions absolve the state from compliance with the NVRA.

The Supremacy Clause controls the outcome here. States cannot exempt themselves from federal law, and this issue was settled at the Constitutional Convention of 1787. U.S. Const. art. VI, cl. 2. “But it is said that the laws of the Union are to be SUPREME LAW of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy.” The Federalist No. 33 (Alexander Hamilton).

South Carolina conducts list maintenance activities utilizing the state’s computerized voter registration system known as VREMS, (Voter Registration and Election Maintenance System). These activities are conducted to maintain the accuracy of South Carolina’s official list of eligible voters. This official list of registered voters and attendant data (hereinafter the “Voter

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<sup>1</sup> “Programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” are referred to as “voter list maintenance” programs or activities.

File”), represents the end-product of the State’s list maintenance activities, and is made available upon request only to South Carolina registered voters and not anyone else, not even South Carolina residents.

On February 5, 2024, the Foundation asked the Director pursuant to the NVRA’s Public Disclosure Provision, for the opportunity to inspect or receive a copy of the Statewide Voter file. The Director denied the Foundation’s request, citing South Carolina law that only provides for disclosure of the Voter file to South Carolina registered voters. *See* S.C. Code § 7-3-20(D)(13).

South Carolina’s law that limits disclosure of the Voter file to the Foundation is in direct conflict with the NVRA’s Public Disclosure Provision and is pre-empted by the United States Constitution’s Supremacy Clause. *See Arizona v. Inter Tribal of Arizona*, 570 U.S. 1 (2013).

Here, Congress has determined that access to election records concerning list maintenance are to be made publicly available, period. Any state effort to block public access is void under the Supremacy Clause and the uniform weight of jurisprudence addressing this issue. Accordingly, South Carolina’s access restriction to the Voter File violates the NVRA and is pre-empted. Plaintiff is entitled to summary judgment and injunctive and declaratory relief.

#### **Summary of Admitted Material Facts**

1. On February 5, 2024, the Foundation sent to the Executive Director of the State Election Commission (the “SEC”) and the Executive Director received the letter filed in this case as ECF No. 1-1. Pursuant to the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. § 20507(i), the letter requested that the SEC reproduce or provide PILF the opportunity to inspect “[a] current or most updated copy of the South Carolina statewide voter registration list as described in S.C. Code § 7-5-186.” (“Statewide Voter Registration List”).

2. On February 20, 2024, the Executive Director sent a letter, and the Foundation received the letter filed in this case as ECF No. 1-2, denying the Foundation the requested records and explaining that the Statewide Voter Registration List was available for a fee but only to qualified electors in South Carolina, and that the Executive Director “does not have the discretion to abrogate S.C. Code § 7-3-20(D)(13) ....”

3. On February 21, 2024, the Foundation emailed a letter to the Executive Director, and the Executive Director received the letter filed as ECF No. 1-3, stating it was serving statutory notice pursuant to 52 U.S.C. § 20510(b)(1) that the Executive Director and the SEC were in violation of the NVRA for failure to permit inspection and reproduction of the Statewide Voter Registration List as required by the NVRA.

4. On March 12, 2024, the SEC emailed the Foundation explaining that the SEC does not have the authority under South Carolina law to send the Foundation the requested Statewide Voter Registration List and attached a Declaratory Judgment Action, *Knapp v. Pub. Int. Legal Found.*, C/A No. 2024-CP-40-001563, filed as ECF No. 18-1.

5. On May 9, 2024, this Declaratory Judgment Action was dismissed without prejudice by stipulation of both parties, C/A No. 3:24-cv-01687-JFA, filed as ECF No. 9.

6. Pursuant to the Help America Vote Act (“HAVA”), 52 U.S.C. §§ 20901, et seq., on August 24, 2006, the SEC adopted the final South Carolina State Plan (“HAVA Plan”). *See* [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf). (last visited May 4, 2024). The SEC developed and maintains a computerized Statewide Voter Registration List (“Computerized Registration List”) pursuant to the requirements of HAVA, section 303.

7. Pursuant to the requirements of HAVA, South Carolina currently maintains a single, uniform, official, centralized interactive computerized statewide voter registration system

(“Computerized Registration System”), housed at the State Data Center in Columbia, South Carolina, and maintained by the SEC. State and local election officials refer to the Computerized Registration System as VREMS (the Voter Registration and Election Maintenance System). All 46 County Boards of Voter Registration and Elections (“CBVRE”) are connected to the Computerized Registration System. Additions and changes required to maintain the accuracy of the Computerized Registration List are made by the CBVREs and SEC to the voter registration file and the system is interactive. *See* South Carolina HAVA PLAN, Sec. 303 (a)(1)(A) found at [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

8. The Computerized Registration System described in paragraph 6 serves as the single system for storing and managing the official list of registered voters throughout the state. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

9. This Computerized Registration List is the official voter registration list for the conduct of all elections in the State of South Carolina. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024). The list represents the accurate list of registered voters in South Carolina as authorized under the South Carolina HAVA Plan.

10. South Carolina registered voters may purchase a copy of the Statewide Voter Registration List maintained in the Computerized Registration System. The information contained in the Statewide Voter Registration List can be created based on any combination of information from the Computerized Voter Registration List:

a. County



- b. Voting District (house, senate, congressional, county council, city council, school district, etc.)
- c. Age
- d. Sex
- e. Race
- f. Household
- g. Participation in a particular election
- h. Date of registration

<https://scvotes.gov/resources/sale-of-voter-registration-lists/> (last visited May 1, 2024).

11. The SEC charges a fee for the purchase of the Statewide Voter Registration List, based on a sliding scale, dependent on the combination of information requested.

<https://scvotes.gov/resources/sale-of-voter-registration-lists/>. The SEC website also contains a “NOTICE TO ALL REQUESTORS OF RECORDS” informing them of the South Carolina laws that prohibit the use of public records, including the Statewide Voter Registration List, for commercial solicitation. <https://scvotes.gov/resources/sale-of-voter-registration-lists/> (last visited May 1, 2024).

12. All local and state election officials have access to the Statewide Computerized Registration List, which is maintained in the Computerized Registration System. Each election official is given a USERID and password that must be used to access the official file of registered voters in the database. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

13. CBVREs have access to the Computerized Registration System to enter new voter registrations or update a voter's record on a real-time basis. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

14. The SEC is the only agency authorized to remove a voter from the official statewide list of registered voters. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

15. Statewide voter list maintenance conducted by the SEC includes the monthly removal of registrants convicted of a felony upon a notification from the courts of felony convictions. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

16. Statewide voter list maintenance conducted by the SEC includes the removal of dead registrants monthly upon notification by the South Carolina Department of Health and Environmental Control ("DHEC"). [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

17. The name of each active registered voter appears on the Statewide Voter Registration List in an electronic format. In addition to the name of each registered voter it includes Address, Race, Gender, Date of Birth, Voter Registration Number, and Date Registered, County, Precinct, Voting District and Voter Participation History (past two statewide primaries and general elections). <http://scvotes.gov/resources/sale-of-voter-regisration-lists/>

18. The SEC performs maintenance of the Computerized Registration List through a quarterly comparison of dates of birth and social security numbers and a report is generated from the Computerized Registration List of all duplicate registrations and the report is given to county election boards for confirmation and then the confirmed matches are removed from the official

statewide voter registration list by the Commission. [https://scvotes.gov/wp-content/uploads/2022/08/Final\\_State\\_Plan\\_2006.pdf](https://scvotes.gov/wp-content/uploads/2022/08/Final_State_Plan_2006.pdf) (last visited May 1, 2024).

19. A registered voter’s social security number does not appear on the Statewide Voter Registration List, although it is maintained in the Computerized Registration List.

## Argument

### **I. Summary Judgement Standard**

“Summary judgment is appropriate when the facts properly supported by the record and taken in the light most favorable to the non-moving party ‘show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Latin Am. Music Co. v. Archdiocese*, 499 F.3d 32, 38 (1st Cir. 2007) (quoting Fed. R. Civ. P. 56(c)). “Cross motions for summary judgment do not change the standard.” *Id.*

### **II. The Foundation is Entitled to Summary Judgment.**

*Project Vote v. Long*, 682 F.3d. 331 (4th Cir. 2012) controls this motion and leaves no room for the Defendant’s position here. In *Project Vote*, the Fourth Circuit interpreted the NVRA broadly, and that it reaches “all” documents touching on list maintenance. *Id.* at 336. While the Defendant is correct that *Project Vote* did not involve precisely the same documents requested by the Foundation, no fair or credible reading of the Fourth Circuit opinion leaves any doubt that the NVRA scoops up the records sought here. For good measure, a case involving the same records as here – and the same efforts by a state to assert state exemptions to federal law – was *Pub. Int. Legal Found., Inc. v Bellows*, 92 F.4th 36, 46 (1st Cir 2024). The First Circuit also agreed with the Foundation’s position and struck down state efforts to exempt itself from the NVRA’s reach, as has every single federal court that has addressed the issues now before this Court, as briefed and cited fully below.

**A. The Foundation Requested the Voter File and the Secretary Denied the Foundation's Request.**

It is undisputed that the prior to the filing of this litigation, the Foundation requested from the Director a copy of the Official Statewide Voter list file which is described in S.C. Code § 7-5-186. Stipulation ¶ 2. The Foundation's request was made pursuant to the NVRA's Public Disclosure Provision, 52 U.S.C. 20507(i). Stipulation 2. It is also undisputed that the Director denied the Foundation's request for South Carolina's Official Voter Registration file. Stipulation ¶ 3. These facts are not genuinely in dispute.

**B. The Director's Denial of Access to the Voter File Violates the NVRA.**

The NVRA's Public Disclosure Provision is a broad mandate, requiring public 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[.]" 52 U.S.C. § 20507(i)(1) (emphasis added). The Voter File—a record that captures and reflects the most current maintenance of all voter record information—falls squarely within the scope of this disclosure command.<sup>2</sup>

The starting point for any issue of statutory interpretation is the language of the statute itself. The Supreme Court instructs that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). "When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Id.* at 254 (citations and quotations omitted). The text of

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<sup>2</sup> As the Director has not admitted that the Voter File is a "record" concerning the State's list maintenance activities, discoverable pursuant to the NVRA's public disclosure provision, the Foundation first addresses this issue for the Court.

the Public Disclosure Provision is unambiguous: “Each state ... shall make available for public inspection ... *all records* concerning the implementation of *programs and activities* conducted for the purpose of ensuring the *accuracy and currency* of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1) (emphasis added).

All records concerning activities means all records. The records the Foundation is seeking are records subject to inspection and disclosure by the plain text of the statute. As we shall see below, the voter file falls within the language Congress used.

**i. The voter file “Concern[s]” the “Implementation of Programs and Activities Conducted for the Purpose of Ensuring the Accuracy and Currency of Official Lists of Eligible Voters[.]”**

Every court within the Fourth Circuit has interpreted this issue in Plaintiff’s favor. This includes the Fourth Circuit Court of Appeals itself, twice. Every court outside the Fourth Circuit has also interpreted this language in plaintiff’s favor.

Interpreting the plain meaning of the NVRA’s terms, the Eastern District of Virginia concluded that “a program or activity covered by the Public Disclosure Provision is one conducted to ensure that the state is keeping a ‘most recent’ and errorless account of which persons are qualified or entitled to vote within the state.” *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 706 (E.D. Va. 2010); *see also True the Vote v. Hoseman*, 43 F. Supp. 3d 693, at. 19-20 (S.D. Miss. 2014) (“A list of voters is ‘accurate’ if it is ‘free from error or defect’ and it is ‘current’ if it is ‘most recent.’”) (citations omitted); (*Pub. Int. Legal Found., Inc. v Bellows*, 92 F.4th 36, 46 (1st Cir 2024) (“The activity of ‘expeditiously’ inputting voter registration information into the CVR is conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as Maine citizens register to vote.”).

*Pub. Int. Legal Found., Inc. v Bellows*, No. 1:20-cv-00061-GZS, 2023 US Dist. LEXIS 98829 (D. Me. June 7, 2023).

The Director stipulates that South Carolina has programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters. The Voter Registration and Election Maintenance System (VREMS) is used to carry out these programs and activities. Stipulations ¶¶ 6, 7, 8, 12, 14, 15, 17. Furthermore S.C. Code Ann. Chapter 5, § 7-5-186 (A) further requires the Director to conduct an annual general registration list maintenance program to maintain accurate voter registration records in the statewide voter registration system.

The categories of list maintenance activities to keep the ultimate voter roll accurate is vast. First, it starts with creating new voter registration records for people who are not registered to vote, thus adding them to the list of eligible voters. Each of the county registrars (CBVRE's) have access to the Computerized Registration List, which is maintained in the VREMS. Each election official is given a USERID and password that must be used to access the official file of registered voters in the Computerized System to enter new voter registrations or update a registrant's record on a real-time basis. (Stipulations ¶ 11,12).

S.C. Code Ann. Chapter 5 § 7-5-330 (2)(a)(3) mandates that county boards of voter registration and elections correct the official list of eligible registrants in accordance with change of residence information obtained pursuant to the procedures outlined in Sec. 7-5-330(2). New registrations and corrections are accomplished by using the VREMS database.

Another of South Carolina's voter list maintenance activities is removing registrants from the list of eligible voters. S.C. Code Chapter 5, § 7-5-340. The S.C. Code Ann. Chapter 5 § 7-5-340 mandates that this be done (1) at the request of the voter, (2) when the voter is adjudicated mentally incompetent, (3) the death of the voter, (4) when the voter is not a U.S. citizen, and (5)

for a change in the residence of the voter outside of the current county of residence when the confirmation of change is received from the voter. These required removals are reflected in the statewide voter registration list in order to maintain an accurate list of registered voters. *See also* S.C. Code Ann. Chapter 5, §7-3-20. When a registration record is removed from the official list of registered voters, the status of the registrant is reflected in the VREMS database.

South Carolina's voter list maintenance activities include the monthly removal of registrants convicted of a felony upon a notification from the courts of felony convictions. *See* Stipulation ¶ 14.

South Carolina's list maintenance activities include a quarterly comparison of dates of birth and social security numbers in the Computerized Registration database which generates a report of all duplicate registrations and the report is given to county election boards for confirmation and then the confirmed matches are removed from the official Computerized Registration List by the Commission. *See* Stipulation ¶ 17.

The Help America Vote Act, 52 U.S.C. §§ 20901, et seq., for example, requires South Carolina's election system to "include provisions to ensure that voter registration records in the State are accurate and are updated regularly." 52 U.S.C. § 21083(a)(4) (emphasis added). HAVA also provides that "[a]ll 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." 52 U.S.C. § 21083(a)(1)(A)(vi) (emphasis added). HAVA further requires "appropriate State or local election official[s to] perform list maintenance with respect to the computerized list on a regular basis . . . in a manner that ensures that . . . the name of each registered voter appears in the computerized list;" that "only voters who are not registered or who are not eligible to vote are removed from the computerized list;

and" that "duplicate names are eliminated from the computerized list." 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(i)(iii) (emphasis added).

This lengthy catalog shows that each of South Carolina's activities is a "program" or "activity" within the purview of the NVRA because it is conducted to make sure South Carolina's registration records and eligible voter list are "errorless" and contain the "most recent" information for each registrant, accomplished by updating the Voter File within the VREMS database.

**ii. The voter file "concerns" South Carolina's list maintenance programs.**

The Voter File is a record that "concern[s]" South Carolina's voter list maintenance programs. 52 U.S.C. § 20507(i)(1).

All courts that have addressed this question have supported plaintiff. As the First Circuit recognized in *Bellows*; by their very nature, these activities (hereinafter "voter list registration and maintenance activities") fall within Section 8(i)(1). The activity of "expeditiously" inputting voter registration information into the CVR is conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as Maine citizens register to vote. *See* Me. Rev. Stat. Ann. tit. 21-A, § 152(2); *see also* [\*\*14] 52 U.S.C. §21083(a)(1)(A)(vi). Similarly, the activities of updating voters' already-existing information in the CVR and removing ineligible voters from the CVR are conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as those voters move, die, or otherwise change their personal information. *See* 52 U.S.C. § 21083(a)(2)(A); Me. Rev. Stat. Ann. tit. 21-A, §§ 128(1), 129(2), 161(2-A) (A)-(B); *Pub. Int. Legal Found., Inc. v Bellows*, 92 F.4th 36, 46 (1st Cir. 2024).



Other district courts have also uniformly ruled that the list of eligible voters and their associated data is covered by the disclosure obligations of the NVRA. *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 941 (C.D. Ill. 2022)(concluding that, "the phrase 'all records,' as used in the Public Disclosure Provision, necessarily includes the statewide voter registration list" (quoting 52 U.S.C. § 20507(i)(1)); *Pub. Int. Legal Found., Inc. v. Bellows*, 588 F. Supp. 3d 124, 133 (D. Me. 2022)(concluding that "the Voter File is a 'record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters' within the meaning of the Public Disclosure Provision and thus is subject to disclosure under the NVRA" (quoting 52 U.S.C. § 20507(i)(1)); *Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 438-42 (D. Md. 2019)(concluding that a voter list is a "record" which is subject to disclosure under the NVRA's Public Inspection Provision); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 723 (S.D. Miss. 2014) (concluding that, "the Voter Roll is a 'record' and is the 'official list[] of eligible voters' under the NVRA Public Disclosure Provision," and that, therefore, "[t]he process of compiling, maintaining, and reviewing the voter roll is a program or activity performed by Mississippi election officials that ensures the official roll is properly maintained to be accurate and current" (quoting 52 U.S.C. § 20507(i)(1)). *Voter Reference Found., LLC v Torrez*, No. CIV 22-0222 JB/KK, 2024 US Dist. LEXIS 58803, at \*341-342 (D.N.M. Mar. 29, 2024).

This quote from *Bellows* is especially instructive to the inquiry:

The Voter File is an electronic report generated from the CVR, the database through which Maine carries out its voter list registration and maintenance activities. The Voter File captures voter record and voter participation history information from the CVR on eligible Maine voters as of the date the Voter File is generated. Accordingly, as of the date it is generated, the Voter File reflects the additions and changes made by Maine election officials in the CVR pursuant to federal and state law as part of Maine's voter list registration and maintenance activities. *The Voter File can thus be characterized as the output*

*and end result of such activities. In this way, the Voter File plainly relates to the carrying out of Maine's voter list registration and maintenance activities and is thereby subject to disclosure under Section 8(i)(1). (emphasis added)*

*Bellows*, 92 F.4th 36, at \*47.

**iii. The voter file reflects and is the end-product of South Carolina's voter list maintenance activities.**

South Carolina's VREMS final voter file is a list maintenance record subject to disclosure under the NVRA. It contains the following voter record information for each registered voter who is eligible to vote in South Carolina as of the date the file is generated:

The name of each active registered voter appears on the Statewide Voter Registration List in an electronic format. In addition to the name of each registered voter it includes Address, Race, Gender, Date of Birth, Voter Registration Number, and Date Registered, County, Precinct, Voting District and Voter Participation History (past two statewide primaries and general elections). Stipulation ¶ 16.

This information is maintained in the VREMS database and is updated as necessary during the implementation of South Carolina's voter list maintenance programs and activities. See Stipulation ¶ 6. The Voter File is generated using the VREMS system, and when generated the Voter File reflects and contains the "most recent" voter record information stored in the VREMS database for eligible voters and is used as the official list of voters for South Carolina elections. See Stipulation ¶ 8, 9, 16. The Voter File is the culmination and end product of the implementation of South Carolina's voter list maintenance activities. as the First Circuit recognized in *Bellows*; By their very nature, these activities (hereinafter "voter list registration and maintenance activities") fall within Section 8(i)(1). The activity of "expeditiously" inputting voter registration information into the CVR is conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as Maine citizens register to vote. See Me. Rev. Stat. Ann. tit. 21-A, § 152(2); see also [\*\*14] 52 U.S.C. § 21083(a)(1)(A)(vi). Similarly, the activities of updating voters' already-existing information in

the CVR and removing ineligible voters from the CVR are conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as those voters move, die, or otherwise change their personal information. *See* 52 U.S.C. § 21083(a)(2)(A); Me. Rev. Stat. Ann. tit. 21-A, §§ 128(1), 129(2), 161(2-A)(A)-(B); *Pub. Int. Legal Found., Inc. v Bellows*, 92 F.4th 36, 46 (1st Cir 2024). The requested Voter File squarely “concerns” South Carolina’s voter list maintenance activities and therefore falls within the scope of the NVRA’s Public Disclosure Provision.

**iv. Disclosure of the voter file is consistent with Congress’s intent.**

To find that the Voter File is not within the scope of the NVRA would frustrate the intent of Congress. The NVRA’s Public Disclosure Provision reflects Congressional intent by allowing the public to monitor the activities of government as they concern the right to vote:

[The NVRA’s Public Disclosure Provision is] available to **any member of the public** ... and convey[s] Congress’s intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials’ list maintenance programs. [52 U.S.C. § 20507(i)]. Accordingly, **election officials must provide full public access to all records related to their list maintenance activities, including their voter rolls.** *Id.* This mandatory public inspection right is designed to preserve the right to vote and ensure that election officials are complying with the NVRA. *Project Vote v. Long*, 682 F.3d. 331, 335 (4th Cir. 2012).

*Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at \*12-13 (S.D. Fla. Mar. 30, 2018) (emphasis added). *See also Bellows*, 92 F.4th 36 at \*54 (“Section 8(i)(1) requires the public release of the Voter File by mandating ‘all records concerning the implementation of Maine’s voter list registration and maintenance activities to be ‘ma[d]e available for public inspection.’”

The NVRA is concerned not only with enhancing voter registration and participation, but also with protecting the electoral process’ overall integrity and the accuracy of voter registration rolls. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 192 (2008) (Stevens,

J.)(plurality opinion)("In the [NVRA], Congress established procedures that would both increase the number of registered voters and protect the integrity of the electoral process."); *Am. Ass'n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1205 (D.N.M. 2010)(Browning, J.). *Voter Reference Found., LLC v Torrez*, No. CIV 22-0222 JB/KK, 2024 US Dist. LEXIS 58803, at \*328 (D.N.M. Mar. 29, 2024).

Indeed, Congress made *all* list maintenance records subject to public inspection precisely so that the public can enjoy a transparent election process and assess compliance with federal laws. *Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 364 (5th Cir. 1999) (private-right-of action meant to "encourage enforcement by so-called 'private attorneys general'" (quoting *Bennett v. Spear*, 520 U.S. 154, 157 (1997))). To find otherwise frustrates the provision's central purpose.

### **III. South Carolina's Law Denying the Foundation Access to the Voter File is Preempted by the NVRA.**

The Director has denied the Foundation access to the Voter File citing S.C. Code § 7-3-20(D)(13), which provides any South Carolina registered voter the ability to purchase a copy of the Statewide Voter Registration List.

South Carolina's access limitations are preempted, superseded and unenforceable under Article VI, Clause 2 of the United States Constitution (the Supremacy Clause), Article I, Section 4, Clause I of the United States Constitution (the Elections Clause), and the Supreme Court's decision in *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013). In *Inter Tribal*, the Supreme Court held in unambiguous terms that the NVRA is superior to any conflicting state

laws. In such situations, “the state law, ‘so far as the conflict extends, ceases to be operative.’”

*Inter Tribal*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. 371, 384 (1880)). The Court:

When Congress legislates with respect to the “Times, Places and Manner” of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States. Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent.... In sum, there is no compelling reason not to read Elections Clause legislation simply to mean what it says.

*Id.* at 14-15.

Moreover, the Fourth Circuit has determined that state laws that conflict with the NVRA are pre-empted. See *Project Vote/Voting for Am., Inc v. Long*, 813 F. Supp. 2d 738, (E.D. Va. 2011), *aff’d* 682 F.3d 331 (4<sup>th</sup> Cir. 2012). In *Project Vote*, the court was similarly confronted with a state specific exemption, namely Va. Code § 24-2-444, which the Commonwealth claimed limited the NVRA’s disclosure provision to only documents that reflected the actual removal of voters. In determining that the NVRA pre-empted the Virginia’s statute the court held (“[T]o the extent that any Virginia law, rule, or regulation forecloses disclosure of completed voter registration applications with the voters’ SSNs redacted, the court FINDS that it is preempted by the NVRA.” *Project Vote*, 813 F. Supp. 2d at 745.

In affirming the district court’s determination that the Virginia statute was pre-empted by the NVRA, the Fourth Circuit opined that the public disclosure provision’s “use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.” *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 290 (4<sup>th</sup> Cir. 1998). Given that the phrase “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” unmistakably encompasses

completed voter registration applications, such applications fall within Section 8(i)(1)'s general disclosure mandate. *Project Vote*, 682 F.3d at 336. Where, as here, "the statute's language is plain, the sole function of the courts . . . is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (internal quotation marks omitted). *Id.* at 340.

The relevant statutory text of the NVRA says that states must make available for inspection "all records" of their voter list maintenance programs.<sup>3</sup> 52 U.S.C. § 20507(i)(1). This Court must interpret that requirement to mean what it says - "all records." States cannot nullify federal law by restricting inspections only to a favored subset. *See ACORN v. Edgar*, 880 F. Supp. 1215, 1222 (N.D. Ill. 1995) ("[D]eclar[ing] that all provisions of Illinois law or regulations that conflict with the [National Voter Registration] Act are pre-empted by the [National Voter Registration] Act."); *Project Vote*, 813 F. Supp. 2d at 743.

The information contained in the Voter File is pulled directly from the official voter record information stored in the VREMS database. The Voter File like the voter registration applications that were subject to disclosure in *Project Vote* is a record covered by the NVRA

*Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019) addresses the specific question here. The court in *Judicial Watch* held that the NVRA preempted a Maryland law that required an applicant requesting a *voter registration list* to be a

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<sup>3</sup> See also *Pub. Int. Legal Found., Inc. v N. Carolina State Bd. of Elections*, 996 F3d 257, 266 (4th Cir. 2021) Affirming the Court's previous decision in *Project Vote* and concluding that the Board's efforts in the present case to identify noncitizen registrants qualify as a "program" or "activity" to ensure an accurate list of eligible voters. See 52 U.S.C. § 20507(i)(1).

Maryland registered voter. *Id.* at 443-445. After reviewing various types of preemption, the court found that limiting access to the voter registration lists to Maryland registrants “is an obstacle to the accomplishment of the NVRA’s purposes”—namely, “protect[ing] the integrity of the electoral process,” 52 U.S.C. § 20501(b)(3); and “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(4). The court specifically noted that “Section 8(i) of the NVRA provides for the disclosure of voter registrations in order to ‘assist the identification of both error and fraud in the preparation and maintenance of voter rolls.’” *Jud. Watch*, 399 F. Supp. 3d at 445 (D. Md. 2019) (quoting *Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012)). By limiting that disclosure to Maryland voters, Maryland law, “exclude[ed] organizations and citizens of other states from identifying error and fraud,” contrary to the NVRA’s purposes. *Id.* The court accordingly held, “It follows that the State law is preempted in so far as it allows only Maryland registered voters to access voter registration lists.” *Jud. Watch*, 399 F. Supp. 3d at 445.

Recently, the First Circuit similarly determined that Maine’s access restrictions to its voter file were preempted by the NVRA, holding that Maine’s “Voter File plainly relates to the carrying out of Maine’s voter list registration and maintenance activities and is thereby subject to disclosure under Section 8(i)(1).” *Bellows*, 92 F.4th 36 at \*47.

South Carolina law likewise limits disclosure of its eligible voter list—the Voter File—to South Carolina registered voters. *See* S.C. Code § 7-3-20(D)(13). It is therefore subject to (1) ordinary conflict preemption doctrine because “compliance with both federal and state regulations is a physical impossibility,” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992), or (2) as in *Judicial Watch*, obstacle preemption, because South Carolina law “stands as

an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995). Under either, doctrine, South Carolina law is preempted and cannot be applied to prevent disclosure to the Foundation.

### **Conclusion**

The NVRA means what it says - “**all records**” concerning voter list maintenance are subject to **public inspection**. For the reasons explained herein, that broad mandate includes South Carolina’s Voter File. Because there are no material facts genuinely in dispute, the Foundation is entitled to judgment as a matter of law.

### **Prayer**

For the reasons stated above, the Foundations prays for a judgment in its favor, holding that the South Carolina Voter file is a record subject to inspection pursuant to the NVRA, that the NVRA preempts South Carolina law limiting access to the Voter file to South Carolina registered voters, issuing a permanent injunction against the Defendant denying the Foundation access to the Voter file and ordering the Defendant to produce to the Foundation the records requested now and in the future and such other relief to which the Foundation may be justly entitled, including statutory attorney’s fees under the NVRA

Dated: June 14, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2024, I electronically filed the Motion for Summary Judgment and Memorandum of Law using the Court's ECF system, which will serve notice on all parties.

/s/ Richard L. Bolen  
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