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 Memorandum in Response to Plaintiff's Motion for Summary Judgment and In Support of its Cross-Motion for Summary Judgment

Howard M. Knapp (Knapp), in his official capacity as Executive Director of the South Carolina Election Commission, (SEC)[1] opposes Plaintiff's Motion for Summary Judgment and contends that it instead is entitled to summary judgment. The SEC contends that it is entitled to summary judgment because the list of eligible South Carolina voters at issue in this case (Voter List[2]) does not fall within the disclosure mandates of 52 U.S.C.A. § 20507(i)(1) (Section 8(i)(1)) of the National Voter Registration Act (NVRA) [3] and, even assuming that the Voter List is encompassed within Section 8(i)(1), the NVRA does not preempt certain state statutes pertaining

[1] Because Knapp is named in his official capacity only, defendant will be identified as the SEC unless otherwise noted.

[2] Stipulation of Facts ¶ 1, ECF No. 27, defines the document sought by Plaintiff as the "Statewide Voter Registration List." For purposes of brevity and preciseness, this Memorandum refers to this document as the "Voter List."

[3] The NVRA is codified as amended at 52 U.S.C.A. §§ 20501–20511. Section 20507 is commonly referred to as "Section 8" of the NVRA, because the provision first appeared as Section 8 when the NVRA was enacted. *See* National Voter Registration Act of 1993, Pub.L. No. 103–31, § 8, 107 Stat. 77 (1993); *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 786 (W.D. Tex. 2015).

to the receipt and use of the Voter List. The SEC contends that there is no dispute of material fact and it is entitled to judgment as a matter of law.

Introduction

On March 14, 2024, PILF initiated this action after the SEC refused its demand to receive a copy of the Voter List. PILF's demand was refused on the basis of S.C. Code Ann. § 7-3-20(D)(13), which requires the SEC Executive Director to "furnish at reasonable price any precinct lists to a qualified elector requesting them."[4] PILF is not a South Carolina qualified elector, but nevertheless contends that it is entitled to the Voter List under Section 8(i)(1), which it claims preempts § 7-3-20(D)(13).

The issues before this Court, at bottom, are as follows:

(1) Does the Voter List fall within the disclosure mandate of Section 8(i)(1) even though the list is not used by the SEC for evaluating the accuracy of its official list of registered voters and, thus, is not 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"?

(2) If the Voter List is determined to fall within the NVRA's disclosure mandates, does the NVRA preeempt certain state statutes controlling the persons who can receive the Voter List, imposing a fee for receiving the list, prohibiting the release of voter Social Security Numbers, and prohibiting the use of the Voter List for commercial purposes even though there is no suggestion in the text or legislative history of the NVRA that Congress believed disclosure under Section 8(i)(1) to be a significant objective of the legislation?

Statutory and Factual Background

In addition to the Stipulation of Facts, ECF No. 27, the SEC sets forth the following pertinent statutory background as well as additional relevant facts concerning this matter.

[4] On March 11, 2024, Knapp filed in the Richland County Court of Common Pleas a civil action styled *Knapp v. Public Interest Legal Foundation*, C/A No. 2024-CP-40-001563, filed in this action as ECF No. 18-1 which sought declaratory relief against PILF pursuant to the South Carolina Uniform Declaratory Judgments Act. The Court has dismissed that action in favor of proceeding in this docket.

1. The Parties

(1) The SEC is the South Carolina executive branch agency generally responsible for administering elections in this State. S.C. Code Ann. §§ 7-3-10, *et. seq.* Knapp is the Executive Director of the SEC, whose duties are prescribed in § 7-3-20 and elsewhere in Title 7 of the South Carolina Code. Among many other duties, Knapp "serve[s] as the chief state election official responsible for implementing and coordinating the state's responsibilities under the [NVRA]." § 7-3-20(A). The SEC and Knapp have

> only such powers as have been conferred upon [them] by law and must act within the granted authority for an authorized purpose. [They] may not validly act in excess of [their] powers, nor [have they] any discretion as to the recognition of or obedience to a statute. The agency must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon.

S.C. Tax Comm'n v. S.C. Tax Bd. of Rev., 299 S.E.2d 489, 491-92 (S.C. 1983) (cleaned up).

(2) The Foundation is a private entity exempt from federal income taxation pursuant to Internal Revenue Code § 501(c)(3). Although it is registered to solicit funds in South Carolina, PILF is incorporated in the state of Indiana and is neither a South Carolina corporation nor a Qualified Elector. PILF describes itself as a

> 501(c)(3) public interest law firm dedicated to election integrity. The Foundation exists to assist states and others to aid the cause of election integrity and fight against lawlessness in American elections.
>
> Drawing on numerous experts in the field, PILF protects the right to vote and preserves the Constitutional framework of American elections through litigation, investigation, research, and education.[5]

2. S.C. Code Ann. § 7-3-20(D)(13) and the Voter List.

(3) Pursuant to a South Carolina state statute passed in 1967, *see* 1967 S.C. Acts No. 457 § 1, the SEC Executive Director is required to "furnish at reasonable price any precinct lists

[5] *See* Mission & Impact, Public Interest Legal Foundation, (accessed July 12, 2024) https://publicinterestlegal.org/about/.

to a qualified elector requesting them." § 7-3-20(D)(13). The "precinct lists" are the Voter Lists at issue in this litigation.

(4) The South Carolina Supreme Court has held that "[t]he statute is explicit, admitting of no construction or application other than that which it clearly demands. It requires that the Executive Director of the Election Commission furnish 'any and all precinct lists' *to any qualified electors*." *Martin v. Ellisor,* 223 S.E.2d 415, 418 (S.C. 1976) (emphasis added).

3. The Voter List

(5) Pursuant to the Help America Vote Act, 52 U.S.C. § 20901, *et seq.*, (HAVA), the SEC is required to "implement, in a uniform and nondiscriminatory manner, a single uniform, official, centralized, interactive computerized statewide voter registration list (hereinafter, "computerized 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." 52 U.S.C. § 21083(a)(1)(A). Notwithstanding that HAVA defines this as a "Computerized List," it is better described as the Computerized Registration System. *See* Ex. A, Aff. of Brian Leach ¶ 6, July 12, 2024. In South Carolina, this Computerized Registration System is referred to by its users as VREMS (the Voter Registration and Election Management System). *See* Stipulation of Facts ¶ 6, ECF No. 27.

(6) VREMS contains the official voter registration list for the conduct of all elections in South Carolina. *See id.* ¶ 8; Ex. A, Leach Aff. ¶ 7.

(7) To be clear, the Voter List at issue in this case is not, and should not be confused with, the Computerized Registration List, the Computerized Registration System, or VREMS. *See* Ex. A, Leach Aff. ¶ 8. The Voter List is a report that is generated from VREMS. *See id.* The Voter List is a formatted text file, which is a widely used data exchange format because it is compatible with an Excel spreadsheet or similar applications. *See id.*

(8) The fields available on the Voter List are

> County, VR Number, Voter's name, Voting Residence Address, Mailing Address, Gender, Race, Date of Registration, Date of Birth, Date Last Voted, General Election Last Voted, General Election Previously Voted, Democratic Election Last Voted, Democratic Election Previously Voted, Republican Election Last Voted, Republican Election Previously Voted, Watershed District, Precinct Code, Precinct Name, Township, House District, Senate District, County Council District, School District, City Council District, Voter Status, Municipality Code, Municipality Name.

See id. ¶ 11.

(9) The fields available on VREMS include all of the fields available for the Voter List, but also include—but are not limited to—the following:

> social security number (or last four digits), person ID, address history table, documents uploaded or notes added by the counties, email, phone number, anything from the South Carolina Department of Motor Vehicles related to their driver's license number.

See *id.* ¶¶ 13-15.

(10) The SEC does not use the Voter List sold to qualified electors

(a) to ensure the accuracy and currency of the official list of eligible voters;

(b) to perform any responsibilities related to list maintenance; or

(c) to perform any responsibilities related to voter registration.

See id. ¶ 18.

(11) There is no reason why the SEC would ever use the Voter List to perform any list maintenance or voter registration responsibilities because the Voter List does not contain any information that would be material to the SEC when determining a voter's eligibility to vote. *See id.*

(12) The only reason the SEC ever generates the Voter List is in order to provide it to a qualified elector who requests one under § 7-3-20(D)(13). *See id.* ¶¶ 9 & 10.

(13) Through the public website for the SEC's List Sales Program, South Carolina qualified electors can obtain Voter Lists without any direct interface with the SEC.[6] Requestors can choose to obtain the statewide Voter List, or to filter the data by county, by Congressional, Senate, or House District. Requestors also have the option of choosing to filter this data further based on other criteria such as age and registration date. *See id.* ¶ 9; Stipulation ¶ 9, ECF No. 27.

(14) Whether a request is made on the List Sales Website or in a direct request to SEC staff, there are three conditions that must be fulfilled before the list can be created and provided. *First*, the requestor must provide information sufficient to prove that they are a qualified elector and certify that they are a qualified elector. *See* Ex. A, Leach Aff. ¶ 9. *Second*, requestors must certify that they will not use "personal information" obtained from the Voter List for "commercial solicitation." *Id.*; Stipulation ¶ 10, ECF No. 27.[7] *Third*, the requestor must pay for the Voter List. Per the current fee schedule, effective March 1, 2022, the price for the statewide Voter List is $2,500. Ex. A, Leach Aff. ¶ 9.

4. The NVRA

(15) The NVRA became effective for South Carolina on January 1, 1995. The legislation is popularly known as the Motor Voter Act, based on its widely-known requirement that each State

[6] *See* https://scvotes.gov/resources/sale-of-voter-registration-lists/ (accessed July 12, 2024).The SEC respectfully requests that this Court take judicial notice of the SEC List Sales Website. *See United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (noting that federal courts "routinely take judicial notice of information contained on state and federal government websites").

[7] Using the information for commercial solicitation would be a criminal violation of the South Carolina Family Privacy Protection Act, S.C. Code Ann. §§ 30-2-10 to -50 (Privacy Protection Act). S.C. Code Ann. § 30-2-30(1) defines "[p]ersonal information" as "information that identifies or describes an individual including, but not limited to, an individual's … social security number, date of birth, … name, home address, … identification number issued by or used, or both, by any federal or state governmental agency …, and any credit records or reports." Section 30-2-30(3) defines "[c]ommercial solicitation" as "contact by telephone, mail, or electronic mail for the purpose of selling or marketing a consumer product or service."

establish procedures for enabling voter registration simultaneously with an application for driver's license. 52 U.S.C.A.§ 20503(a).[8]

(16) Section 2 of the NVRA sets forth the specific findings and purposes of Congress which are stated in the legislation itself. Congress' findings were that

> (1) the right of citizens of the United States to vote is a fundamental right; (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

See § 20501(a). Congress's stated purposes were

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained.

See § 20501(b).

(17) Although the NVRA has multiple purposes, the primary purpose of Congress was to make it easier, not harder, for citizens to vote. *See, e.g.*, *Nat'l Coal. For Students With Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 285 (4th Cir. 1998) ("Congress passed the NVRA—dubbed the 'Motor Voter Law'—to encourage increased voter registration for elections involving federal offices. . . . The Act adopts procedures designed to make it easier to register to vote, and it requires the states to put these procedures into place."); *Condon v. Reno*, 913 F. Supp. 946, 962 (D.S.C. 1995) (finding that the NVRA was based on "Congress [ ] determin[ing] that remedial legislation was needed to facilitate voter registration and participation

[8] Congress has identified "Motor Voter bill," as one of the NVRA's "popular titles." *See* https://www.congress.gov/bill/103rd-congress/house-bill/2/titles.

in federal elections"); *Colon-Marrero v. Velez*, 813 F.3d 1, 10 (1st Cir. 2016) (noting the "NVRA's primary emphasis is on simplifying the methods for registering to vote in federal elections."); *Common Cause/New York v. Brehm*, 344 F. Supp. 3d 542, 554 (S.D.N.Y. 2018) (rejecting interpretation of NVRA at odds with its "primary purpose" of "increas[ing] the number of eligible citizens to register to vote") (*quoting United States v. Louisiana*, 196 F.Supp.3d 612, 670 (M.D. La. 2016), *vacated on other grounds*, No. 3:11-CV-470-JWD-RLB, 2017 WL 4118968 (M.D. La. Aug. 21, 2017)); *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1324 (N.D. Ga. 2016) ("The NVRA's primary emphasis is to simplify the methods for registering to vote in federal elections and maximize such opportunities for a state's every citizen.") (internal citations and quotations omitted); *Pub. Int. Legal Found., Inc. v. Way*, No. CV 22-02865 (FLW), 2022 WL 16834701, at *3 (D.N.J. Nov. 9, 2022) (same).

(18) PILF has initiated this action based on Section 8(i)(1), titled "[p]ublic disclosure of voter registration activities," which provides in pertinent part:

> 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.

§ 20507(i)(1).

(19) The title of Section 8, of which Section 8(i)(1) is a part, is "[r]equirements with respect to administration of voter registration." Section 8 is designed to ensure to the maximum extent that eligible voters are included on the voter rolls and ineligible voters are not. First, States have certain duties to "ensure that any eligible applicant is registered to vote in an election …." § 20507(a)(1). States must "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of registered voters" if the registrant dies or moves, and the State must comply with specified procedures in carrying out this general program.

§ 20507(a)(4), (b), (c), & (d). Other than removal under this general program, a registered voter can only be removed (1) at the registrant's request; (2) under a disqualifying criminal conviction; or (3) declaration of mental incapacity under state law. § 20507(a)(3).

(20) In 1995, the State of South Carolina sued the United States government in the U.S. District Court for the District of South Carolina, seeking to enjoin implementation of the NVRA on Tenth Amendment grounds. *See Condon v. Reno*, *supra*. The constitutionality of the entirety of the NVRA was at issue in *Condon v. Reno*. However, the only mention of Section 8(i)(1) in the district court's decision upholding the NVRA's constitutionality and requiring South Carolina to implement it was a simple restatement of the language of that it "requir[ing] states to maintain and make available for public inspection records regarding the implementation of voting registration procedures and roll maintenance …." 913 F. Supp. at 954. The district court's decision addressed at length the core purpose of the NVRA of making it easier to vote and referenced multiple parts of the House and Senate Conference Reports generated in the enactment of the NVRA. *See id.* at 950, 954.

(21) The Conference Reports of the House and Senate are reported in H.R.Rep. No. 103–9, 103rd Cong., 1st Sess. (1993), *reprinted in* 1993 U.S.C.C.A.N. 105 (the House Report), and S.Rep No. 103–6, 103rd Cong., 1st Sess. (1993) (the Senate Report). These Conference Reports are lengthy and include a detailed discussion on many features of the NVRA, specifically the sections of the NVRA designed to fulfill Congress' principal objective of making it easier to vote. Neither Conference Report meaningfully discusses Section 8(i)(1), with both the House Report and the Senate Report containing identical language which essentially restates the language of the statutory subsection. *See* H.R. Rep. No. 103-9, Section 8, at 12-13 (1993); S. Rep. No. 103-6, Section 8, at 22-25 (1993). Concurrently, the House Report states that "[t]he NVRA is a seminal

piece of legislation *designed to expand access to voter registration for all eligible Americans* and improve civic participation." H.R. Rep. No. 103-9 at 17 (emphasis added). There is no contemplation of allowing out of state corporations to use disclosure under the NVRA for commercial purposes such that contrary state laws are preempted.

(22) On August 30, 1996, Act No. 466 of 1996 of the South Carolina General Assembly became law. The Act added an Article 4 to Chapter 5, Title 7, S.C. Code Ann., in order to "Enact Provisions For Multiple Site Voter Registration And Responsibilities Of The South Carolina State Election Commission In Implementing The National Voter Registration Act Of 1993."

5. Other Relevant Statutes Regarding Voter Registration List Maintenance

(23) The SEC's list maintenance duties to carry out the duties described under Section 8 of the NVRA are principally set forth in S.C. Code Ann. § 7-5-340. The SEC is required to

> ensure that the name of a qualified elector is removed from the official list of eligible voters within seven days of receipt of information confirming:
> (a) the request of the qualified elector to be removed;
> (b) the elector is adjudicated mentally incompetent by a court of competent jurisdiction;
> (c) the death of the qualified elector;
> (d) the elector is not a citizen of the United States; or
> (e) a change in the residence to a place outside the county in which the qualified elector is registered when such confirmation is received from the qualified elector in writing.

§ 7-5-340(A)(1). Meanwhile, § 7-5-340(A)(3) describes the SEC's general program to remove ineligible voters required by the NVRA. *Cf.* §§ 20507(a)(3) & (4), (b), (c), & (d); *see also* § 7-3-20(D)(5) (requiring the SEC Executive Director to delete the name of any elector on substantially similar grounds to those § 7-5-340(A)).

(24) Under numerous statutes, the SEC receives data necessary to carry out its list maintenance duties. *See* S.C. Code Ann. § 7-3-40 (requiring Bureau of Vital Statistics to furnish SEC Executive Director a monthly report containing the personal information of all individuals 18

years old and older who have died); S.C. Code Ann. § 7-3-70(b) (requiring South Carolina Department of Motor Vehicles (SCDMV) to furnish SEC executive director a monthly report containing the personal information of all persons reported as deceased by the Social Security Administration); S.C. Code Ann. § 7-3-60 (requiring court clerks to annually report to SEC executive director those convicted of election crimes); S.C. Code Ann. § 7-3-45 (requiring county probate courts to furnish SEC executive director a monthly report containing the personal information of all persons 18 years or older who have been declared mentally incapacitated).

(25) Several provisions of HAVA also require the SEC to perform list maintenance in the Computerized Registration System, and to otherwise ensure the accuracy and currency of the database. *See*, *e.g.,* § 21083(a)(4) (requiring states to create a "computerized list" to "ensure that voter registration records in the State are accurate and are updated regularly"); *see also* § 21083(a)(2) & (5).[9]

6. Requests at Issue

(26) The correspondence between PILF and the SEC prior to the initiation of this lawsuit is detailed in the Stipulation of Facts, Stipulation ¶¶ 1-4, ECF No. 27. In none of this pre-suit correspondence, nor at any other time in the course of this litigation or otherwise, has PILF represented to the SEC its willingness to pay the $2,500 for the Voter List or refrain from using voters' personal information for commercial solicitation in violation of the Privacy Protection Act. *Id.*

[9] The "NVRA's primary emphasis is on simplifying the methods for registering to vote in federal elections, ... while HAVA's voter registration provisions are focused on achieving greater accuracy by improving technology and administration …." *Colon-Marrero*, 813 F.3d at 10.

7. Relevant case law

(27) Upon information and belief, from when the NVRA was passed in 1993 until 2010—17 years—no reported or unreported court decision interpreted the scope of Section 8(i)(1) of the NVRA. The first such cases were in *Project Vote/Voting For Am., Inc. v. Long*, 752 F. Supp. 2d 697 (E.D. Va. 2010) and 813 F. Supp. 2d 738, 740 (E.D. Va. 2011), the latter of which was affirmed by the Fourth Circuit in *Project Vote/Voting For Am., Inc. v. Long,* 682 F.3d 331 (4th Cir. 2012) (*Project Vote*). These cases did not concern whether a Voter List or similar record fell within the disclosure provisions of Section 8(i)(1), but were limited to whether voter registration applications were covered records.

(28) To date, there is no precedential case in this circuit interpreting whether a Voter List or similar record is covered by Section 8(i)(1) of the NVRA, nor any precedential case deciding whether Section 8(i)(1) (or any other provision of the NVRA) preempts any state statute similar to § 7-3-20(D)(13).

Standard

Federal Rule of Civil Procedure 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment should be granted "when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). In ruling on a motion for summary judgment, the evidence is construed in the light most favorable to the non-moving party and the Court draws all reasonable inferences in that party's favor. *Worden v. SunTrust Banks, Inc.*, 549 F.3d 334, 340 (4th Cir. 2008).

Argument

The SEC respectfully contends that PILF's motion should be denied and the SEC's motion be granted because the Voter List is not a Section 8(i)(1) record.[10] It is a document created for South Carolina registered voters, but it is not information that the SEC relies on or uses in "ensuring the accuracy and currency of official lists of eligible voters." § 20507(i)(1). Therefore, it does not fall within the statutory scheme of the NVRA and PILF is not entitled to the document. But even if the Court does find that the document is encompassed within Section 8(i)(1), the State statutes governing disclosure of the Voter List are not preempted and remain applicable and PILF is not entitled to receive the document because it is not a "qualified elector."

1. The Voter List is not a Section 8(i)(1) record.

The Voter List is not a § 8(i)(1) record because it has nothing to do with "the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." § 20507(i)(1). As such, NVRA does not confer on PILF any right to obtain the Voter List in contravention of a state statute. Pursuant to § 7-3-20(D)(13), as it has done for more than 55 years, the SEC generates the Voter List when a South Carolina qualified elector requests one. However, the Voter List does not reflect any "programs or activities" under Section 8(i)(1) because the SEC never generates or uses this document to fulfill the registration list maintenance duties described in Section 8 of the NVRA,52 U.S.C.A. § 20507, nor in the state statute passed to comply with Section 8, § 7-5-340. *See* Ex. A, Leach Aff. ¶ 17. Nor does the SEC generate or use the Voter List to fulfill any duties or activities that could otherwise possibly be interpreted as being related to "ensuring the accuracy and currency

[10] *See Norfolk S. Ry Co. v. City Of Alexandria*, 608 F.3d 150, 157 (4th Cir. 2010) (The "principle of constitutional avoidance … requires the federal courts to strive to avoid rendering constitutional rulings unless absolutely necessary.").

of official lists of eligible voters." *See id*. ¶ 18. Some examples of information that the SEC uses in VREMS for determining voter eligibility are the voter's person ID and social security number (SSN). This information is not included in the Voter List and is vastly more reliable than any of the information contained on the Voter List at specifically identifying a voter. PILF is entitled to learn under the NVRA about "programs and activities" described in Section 8 of the NVRA. The Voter List, however, is a document provided to registered voters for their use under a statute that was in place 26 years before the NVRA was passed, not a document that the SEC uses in discharging any of its NVRA responsibilities.

Contrary to PILF's position, the Fourth Circuit's *Project Vote* decision does not change this conclusion. At issue in *Project Vote* was the plaintiff's right to access voter registration applications. The Fourth Circuit held that reviewing voter registration applications was "a 'program' because it [was] carried out in the service of a specified end—maintenance of voter rolls—and it [was] an 'activity' because it is a particular task and deed of Virginia election employees." 682 F.3d at 335. (internal citation omitted). The Fourth Circuit also held that the voter registration applications were "clearly records concerning the implementation of this program and activity," because they are "the means by which an individual provides the information necessary for the Commonwealth to determine his eligibility to vote." *Id.*

The Voter List contains none of the characteristics held to be significant in *Project Vote* for constituting a record of a program and activity encompassed within Section 8(i)(1). Whereas the review of voter registration applications was a crucial step in the Virginia election officials' assessment of voter eligibility, the Voter List is simply a document provided to registered voters for their own use and not for the use of the SEC. Additionally, unlike the situation with the voter registration applications in *Project Vote*, the Voter List is not "the means by which an individual

provides the information necessary" to the SEC to evaluate the eligibility of voters. *Id.* at 335. The SEC creates the Voter List report to provide it to registered electors who request one for their uses (subject to the statutory restrictions). As such, it is not a Section 8(i)(1) record and PILF is not entitled to it.

PILF mistakenly contends that must be given the Voter List because, based on *Project Vote*, it is entitled to "'all' documents *touching on* list maintenance." *See* Pl.'s Mem. at 11, ECF No. 28-1 (emphasis added). But PILF is only entitled to 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." § 20507(i)(1). As discussed above, the Voter List does not meet this requirement because it is not a record of any program or activity undertaken by the SEC to ensure that the current list of eligible voters is accurate. Moreover, under PILF's reading of the statute, the words "the implementation of programs and activities conducted for the purpose of ensuring" would erroneously be rendered superfluous by a determination that PILF is entitled to whatever document it wants merely by asking. *See, e.g., Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."). PILF is entitled to the records defined in the statute, but the Voter List is not one of those records.

Notwithstanding the Voter List's disconnection from anything the SEC does regarding assessing voter eligibility, PILF nonetheless contends that it is entitled to the document and relies on the non-Fourth Circuit opinion in *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36 (1st Cir. 2024) to support that contention. *Bellows* is the only appellate court decision to decide whether a

document similar to the Voter List[11] here is covered by Section 8(i)(1). The First Circuit took an expansive view of § 8(i)(1) and determined that Maine's Voter List was encompassed within the NVRA. The SEC contends that the First Circuit erred in its analysis because it essentially read the word "implementation" out of the statutory language. *See id.* at 47-48.

The Voter List, which has nothing to do with the implementation of programs and is not in any event a document relied on by the SEC to fulfill any NVRA-related duties, does not fall within the meaning of Section 8(i)(1). And as touched on above, while PILF may be entitled to "all" records contemplated by Section 8(i)(1), it first is necessary to determine what records are subject to the disclosure provision. For the reasons discussed above, the Voter List is not one of those records. And although the *Bellows* court held that Maine's Voter List was covered because it was "the output and end result of" the state's voter list registration and maintenance activities, 92 F.4th at 47, that conclusion is not supported by the statutory language because it has nothing to do with the implementation of programs for determining the accuracy of South Carolina's list of eligible voters. *Cf. Matthews*, 589 F. Supp. 3d at 94-041 (concluding that the argument that "the NVRA only mandates the public disclosure of data or programs designed to maintain the statewide voter registration list … puts an *unbalanced emphasis*" on the pertinent statutory phrases) (emphasis added).

The fundamental flaw in *Bellows*' finding that a Voter List was a Section 8(i)(1) record is shared by *Matthews* and *Lamone*. In all three of these cases, the court found some record other

[11] The other two cases relief upon by PILF that concern a Voter List or similar document are *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932 (C.D. Ill. 2022) and *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019), discussed *infra*. In *Bellows*, this document at issue is referred to as a "Voter File," in *Matthews*, it is a "statewide voter registration list," and in *Lamone*, it is a "voter list." For ease of reference, and because the SEC is informed and believes these cases relate to a similar document to the one at issue here, hereinafter "Voter List" will be used to describe the relevant document.

than the Voter List was a Section 8(i)(1) record, then found the Voter List was a derivative or the "output" of that record, and then determined without further meaningful analysis that the Voter List was also a Section 8(i)(1) record. *See Bellows,* 92 F.4th at 47*; Matthews*, 589 F. Supp. 3d at 941; *Lamone,* 399 F. Supp. 3d at 438. As discussed above, these decisions do not apply Section 8(i)(1) as it is written and, rather than avoiding an "unbalanced emphasis" on the actual language, read the statutory language to say more than it actually does. *See Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 770 (2019) ("Really, to accomplish all it wants, Virginia Uranium would have to persuade us to read 13 words out of the statute and add 2 more …. That may be a statute some would prefer, but it is not the statute we have.") (plurality opinion).

Aside from *Bellows*, *Matthews*, and *Lamone*, the other cases relied upon by PILF to support its position that Voter Lists were Section 8(i)(1) records did not involve an actual controversy about a Voter List.[12] PILF's reliance on the dicta in *Hosemann* and *Kemp* is notable, given that the reasoned analysis of the records at issue in those cases does not square with PILF's position in this case that the statutory language should be disregarded. *See Hosemann*, 43 F. Supp. 3d at 725 (concluding that poll books are not Section 8(i)(1) records "[b]ecause … they are not records that are reviewed to ensure the accuracy and currency of 'official lists of eligible voters.'"); *Kemp*, 208 F. Supp. 3d at 1338, 1343 (concluding that, to fall within Section 8(i)(1), the record must "relate

[12] *See True the Vote v. Hosemann,* 43 F. Supp. 3d 693, 723 (S.D. Miss. 2014) (dismissing as moot the claim for the Voter Roll, where "there is no live controversy regarding disclosure of the Voter Roll" and plaintiff "already has a copy of the Voter Roll."); *Kemp,* 208 F. Supp. at 1320) (not analyzing a Voter List); *Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617 (S.D. Fla. Mar. 30, 2018) (case did not concern Section 8(i)(1) claim at all, only alleged "failure to make reasonable efforts to conduct voter list maintenance programs in violation of Section 8 of NVRA and HAVA."); *Voter Reference Found., LLC v. Torrez*, CIV 22-0222 JB/KK, 2024 WL 1347204, at *7 (D.N.M. Mar. 29, 2024) (case concerned disclosure of "[c]urrent voter registration data, including voter history, for all active, inactive, suspended, and cancelled status voters (including any registration status other than active [sic]," which is not a Voter List, but was mistakenly analyzed as being a Voter List).

to fulfilling, performing, carrying out, or putting into effect by means of a definite plan or procedure (1) systems or (2) specific actions to ensure that the State's official list of individuals entitled to vote is current and accurate," and "concern the status or completeness of an individual's application or otherwise relate to the evaluation of an individual's eligibility to vote"*)*; *cf.* Mem. at 11, ECF No. 28-1 (PILF alleges that it is entitled to "'all' documents touching on list maintenance").[13]

In sum, PILF is not entitled to the Voter List because the SEC does not use that document as part of its "programs and activities" undertaken to ensure the accuracy or currency of the official list of eligible voters. *See* § 20507(i)(1).Thus, the SEC is entitled to summary judgment in its favor.

2. The NVRA does not preempt the § 7-3-20(D)(13) restriction on providing the list only to "any qualified elector."

If the Court nevertheless determined that the Voter List is a Section 8(i)(1) record, it next must determine whether the NVRA preempts § 7-3-20(D)(13)'s limitations on dissemination of the Voter List only to South Carolina qualified electors. The SEC contends that no Congressional intent to preempt statutes like § 7-3-20(D)(13) can be found in the NVRA.

A. In evaluating whether the NVRA preempts certain South Carolina election statutes, the Court must determine the intent of Congress.

In analyzing preemption, Courts "are guided first and foremost by the maxim that 'the purpose of Congress is the ultimate touchstone in every pre-emption case.'" *Am. Petroleum Inst. v. Cooper*, 718 F.3d 347, 354 (4th Cir. 2013) (*quoting Wyeth v. Levine,* 555 U.S. 555, 565 (2009)); *see also New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) ("Pre-emption claims turn on Congress's intent."). A second guiding principle for

[13] What PILF also misses throughout its argument is that the Voter List may not be used the same way by the relevant election officials in different States. It may very well be the case that other States use a document similar to a Voter List for voter eligibility. This is not so in South Carolina.

courts is that there is a general presumption against preemption "unless that was the clear and manifest purpose of Congress." *Wyeth,* 555 U.S. at 565. Among other reasons why, "[t]he preemption of state laws represents a serious intrusion into state sovereignty." *Virginia Uranium,* 587 U.S. at 773 (2019) (plurality opinion) (cleaned up); *see also Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 336 (4th Cir. 2023) ("But we must not presume federal law preempts state law. In fact, any analysis of preemption begins 'with the basic assumption that Congress did not intend to displace state law'") (*quoting Maryland v. Louisiana*, 451 U.S. 725. 746 (1981)), *cert. denied*, 144 S. Ct. 1458 (2024); *Fitts v. Kolb*, 779 F. Supp. 1502, 1513 (D.S.C. 1991) (noting that the presumption a state statute is constitutional "will prevail unless there is a clear showing that the statute transgresses constitutional limitations") (cleaned up).

In this instance, any consideration of the preemptive effect of Section 8(i)(1) must take into account the Elections Clause:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators.

U.S. CONST. art. 1, § 4, cl. 1. Simply put, the states can choose the time, place, and manner of holding elections for Senators and Representatives but Congress can make changes to those laws or regulations. Although PILF essentially and mistakenly contends that the Court should make a presumption *for preemption* by mere virtue of a statute Congress passed under the Elections Clause being involved, Dkt. 28-1 at 21, the Supreme Court has not extended the preemptive effect of the NVRA that far. Rather, the Supreme Court has held that, in enacting the NVRA, Congress "erected a complex superstructure of federal regulation atop state voter-registration systems." *Arizona v. Inter Tribal Council of Arizona, Inc.,* 570 U.S. 1, 4 (2013). By using the word "atop," the Court recognized that Congress did not intend to occupy completely the voter registration landscape, but

to allow the states to have registration/implementation requirements that are not in conflict with the NVRA.

Thus, if the Court finds it necessary to reach the issue of preemption, it must determine whether Congress intended to preempt the legislative policy choices of the State of South Carolina reflected in § 7-3-20(D)(13). *See Inter Tribal Council*, 570 U.S. at 14 (holding that the Elections Clause "'invests the states with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices'") (*quoting Foster v. Love*, 522 U.S. 67, 69 (1997)); *Travelers Ins. Co.*, 514 U.S. at 655 ("Pre-emption claims turn on Congress's intent.").

B. Field and express preemption are inapplicable in this case, leaving PILF with claiming that there is conflict preemption.

Congress can preempt state law in three ways: express preemption, field preemption, and conflict preemption. *See, e.g., Murphy v. Nat'l Collegiate Athletic Ass'n,* 584 U.S. 453, 477 (2018). Section 8(i)(1) does not expressly preempt state law. *See H & R Block E. Enterprises, Inc. v. Raskin,* 591 F.3d 718, 723 n.9 (4th Cir. 2010) (holding that "express preemption occurs when Congress has clearly expressed an intention to preempt state law") (*quoting College Loan Corp. v. SLM Corp*., 396 F.3d 588, 595-96). Congress has never expressed the intent, through the NVRA or otherwise, to regulate the entire field of elections. *See, e.g., Burdick v. Takushi,* 504 U.S. 428, 433 (1992) (discussing the framework for reviewing state election regulations)*; Young v. Fordice,* 520 U.S. 273, 286 (1997) (holding that "[t]he NVRA still leaves room for policy choice" on the part of the states and that the "NVRA does not list … all the other information the State may—or may not—provide or request"). Thus, because neither express nor field preemption are applicable, PILF is left with claiming conflict preemption.

C. There is no conflict preemption because disclosure under Section 8(i)(1) was not a "significant objective" of Congress in passing the NVRA.

Conflict preemption only applies when state law "actually conflicts" with federal law. *Dalton v. Little Rock Family Planning Servs.,* 516 U.S. 474, 476 (1996). State law can be preempted by a federal statute when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Virginia Uranium, Inc. v. Warren*, 848 F.3d 590, 594 (4th Cir. 2017), *aff'd,* 587 U.S. 761 (2019). "Determining whether a state law stands as an obstacle to federal law is a two-step process. First, [Courts] determine Congress's 'significant objectives' in passing the federal law." *Id. at* 599 (*quoting Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011)). Courts determine the "significant objective" of Congress by "examination of the regulation, including its history, the promulgating agency's contemporaneous explanation of its objectives, and the agency's current views of the regulations pre-emptive effect." *Williamson* 562 U.S. at 330. Courts "then turn to whether the state law stands 'as an obstacle to the accomplishment of a significant federal regulatory objective.'" *Virginia Uranium,* 848 F.3d at 599 (quoting *Williamson,* 562 U.S. at 330).

"In [preemption analysis], as in any field of statutory interpretation, it is our duty to respect not only what Congress wrote but, as importantly, what it didn't write." *Virginia Uranium*, 587 U.S. at 765. "Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law." *Id.* at 767 (*quoting Puerto Rico Dep't of Consumer Affs. v. ISLA Petroleum Corp.*, 485 U.S. 495, 503 (1988)). Here, a review of the text and, in the context of the NVRA, the scant legislative history concerning Section 8(i)(1), does not even reveal a suggestion that disclosure of voter registration activities was a "significant objective" of the NVRA. The Conference Reports on the NVRA only

recite the text of Section 8(i)(1) and certainly express no Congressional intent to preempt. *See* H.R. Rep. No. 103-9, Section 8, at 12-13 (1993); S. Rep. No. 103-6, Section 8, at 22-25 (1993). Yet these reports do speak at great length about what was truly the guiding principle and most significant objective of the NVRA: making it easier for all citizens to vote. *See id.* Without evidence of any Congressional intent in the text or legislative history, there is nothing on which the Court can base a finding that Congress considered disclosure a "significant objective." *See English v. Gen. Elec. Co.*, 496 U.S. 72, 89 (1990) ("Absent some specific suggestion in the text or legislative history of § 210, which we are unable to find, we cannot conclude that Congress intended to pre-empt all state actions that permit the recovery of exemplary damages."). In short, "it is not enough 'for any party or court to rest on a supposition (or wish) that 'it must be in there somewhere.'" *Virginia Uranium,* 587 U.S. at 767.

D. S.C. Code § 7-3-20(D)(13) is not preempted because it is no obstacle to the accomplishment of a significant federal regulatory objective of the NVRA and, therefore, the SEC can limit distribution of the Voter List to qualified South Carolina electors.

Because Section 8(i)(1) is not a "significant objective" of the NVRA, finding that § 7-3-20(D)(13)'s qualified elector restriction is preempted by the NVRA is not appropriate because the state statute is not "'an obstacle to the accomplishment of a significant federal regulatory objective.'" *Virginia Uranium, Inc*., 848 F.3d at 599 (*quoting Williamson,* 562 U.S. at 330). That is especially so here because the focus of Section 8(i)(1) is the disclosure of "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." *See* § 20507(i)(1).This case is not even about the actual activities of ensuring the accuracy and currency of official lists of eligible voters, but *records concerning* such activities. If the Voter List is determined to fall within the parameters of Section 8(i)(1), even in the overall pecking order of records concerning such voter

eligibility determination, the Voter List document is not of the same nature as are voter registration applications themselves and other records that are directly involved in the actual "implementation of programs and activities" as expressly stated by the NVRA. Stated another way, even if it is determined that disclosure of the Voter List was contemplated by the NVRA, disclosure of records that are the product of the "programs and activities" is not a significant objective of the statute. *See Guthrie,* 79 F.4th at 341-42 ("States are separate sovereigns that should have the freedom, at least generally, to create causes of action as they see fit. While preemption limits this freedom, we do not presume preemption. And we likewise should not 'seek[ ] out conflicts between state and federal regulation where none clearly exists.'") (*quoting English*, 496 U.S. at 90).

Section 8(i)(1) also does not preempt § 7-3-20(D)(13) because Congress' objectives are fulfilled, and certainly in no way contradicted, by the SEC allowing the more than three million South Carolina voters in this State, if they choose, the option of publicly accessing their own state's voter list. The fact that a state statute that was passed 26 years before the NVRA, and which operates independently of the NVRA, prevents an out-of-state non-profit from receiving the Voter List in no way lessens the fulfillment of disclosure. This is particularly true given the Voter List's disconnection from any activity contemplated within Section 8(i)(1), but the conclusion remains even if the Court finds the Voter List is a Section 8(i)(1) record.

The NVRA also does not preempt § 7-3-20(D)(13) because the SEC allows public access through the provision of electronic files at the requestor's choosing. In fact, Plaintiff's Section 8(i)(1) request letter asked the SEC to "reproduce or provide [Plaintiff] the opportunity to inspect the statewide voter registration list as described in S.C. Code § 7-5-186." Compl., Ex. A, ECF No. 1-1. Because the plain language of Section 8(i)(1) only authorizes public access to covered documents either in the form of public inspection or of photocopying and contains no limitations

on the method used by a state to provide information, § 7-3-20(D)(13) allows for and the SEC provides more information than required by the NVRA. *Project Vote,* 682 F.3d at 336 (holding that "because [the applicable documents] are covered by Section 8(i)(1)'s general mandate, they must be made 'available for public inspection and … photocopying'"); *see also Greater Birmingham Ministries v. Sec'y of State for Alabama*, ___ F.4th ___, ___, No. 22-13708, 2024 WL 3169102, at **6-8 (11th Cir. June 26, 2024) (analyzing inspection and photocopying language of Section 8(i)(1)). There is no language in Section 8(i)(1) or any other section of the NVRA that limits the method used by a state to comply with the disclosure section or to prohibit it from charging a reasonable fee for providing the Voter List.

Similarly, the NVRA does not preempt the state statutory requirement that the SEC collect a "reasonable fee" for providing the Voter List. § 7-3-20(D)(13). Notably, PILF has not alleged that the Defendant cannot charge a reasonable fee[14] for the List or that the fee is not reasonable. Regardless, Section 8(i)(1) requires a state to maintain records covered by the NVRA and make the records available: (1) for public for inspection and, (2) if available, *photocopying at a reasonable cost.* Thus, a state, under Section 8(i)(1) can charge a reasonable cost for photocopying. By using the term "reasonable cost," Congress intended that states be able to determine a reasonable price for the provision of information. What is "reasonable" depends the cost of fulfilling the request depends of the individual state's methods and systems used to implement the requirements of NVRA and its sister legislation, HAVA, which requires the development of the

[14] Plaintiff has stipulated to the fact that the SEC website also contains a "NOTICE TO ALL REQUESTORS OF RECORDS" notifying them that South Carolina law prohibits the use of the Voter List for commercial solicitation. *See* Stipulation ¶ 10, ECF No. 27; *see also* https://scvotes.gov/resources/sale-of-voter-registration-lists/ (last visited July 12, 2024).

centralized Voter Registration Computerized System used to generate the Voter List. *See* Stipulation ¶¶ 5-8, ECF No. 27. The cost in one state will not be the cost in another state.

In sum, Section 8(i)(1) does not preempt either the qualified elector, reasonable fee, or electronic disclosure provisions of § 7-3-20(D)(13).

E. Section 8(i)(1) does not preempt the S.C. Code Ann. § 7-5-170(1) and § 30-2-310(A)(1)(e) prohibitions against providing a voter's social security number with the Voter Registration List.

Section 8(i)(1) also does not preempt the state law restrictions in S.C. Code Ann. § 7-5-170(1) and § 30-2-310(A)(1)(e) prohibitions against providing a voter's SSN with the Voter Registration List. In the Personal Identifying Information Privacy Protection Act, S.C. Code Ann. §§ 30-2-300 to -340 (PIIPA), the South Carolina General Assembly expressly enacted the following finding:

> The social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to the individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

S.C. Code Ann. § 30-2-300(1). Sections 7-5-170(1) and 30-2-310(A)(1)(e) both prohibit the SEC from including SSNs in the Voter List available to the general public.

PILF's request letters asked for Statewide Voter Registration List. Compl., Exs. A and C, ECF Nos. 1-1 and 1-3. SSNs are not referenced. PILF stipulated to the fact that the Statewide Voter Registration List does not contain SSNs. Stipulation ¶¶ 9 and 18, ECF No. 27. In *Project Vote*, the Fourth Circuit decided the question of whether Section 8(i)(1) applies to the completed registration voter applications for the State of Virginia, which registration applications, like South Carolina, contain SSNs. *See* § 7-5-170(1). Virginia contended that the text of Section 8(i)(1) does not require the disclosure of completed voter registration lists and cited, among other arguments,

privacy concerns resulting from release of personal information, including SSNs. In support of its privacy concerns, specifically regarding the release of SSNs, the Virginia Board relied on *Greidinger v. Davis,* 988 F.2d 1344 (4th Cir. 1993), where the court determined that conditioning voting on the public release of SSNs "creates an intolerable burden on the right [to vote] as protected by the First and Fourteenth Amendments." The district court in *Project Vote* granted Project Vote access to the completed voter registration applications, but with the SSNs redacted based on how sensitive and subject to abuse SSNs are. *See Project Vote*, 682 F.3d at 339.

On appeal, the Court held *Greidinger* inapposite, since the plaintiff had not asked for registration applications with unredacted SSNs and did not object to the district court's redaction:

> Plaintiff has never requested completed applications with unredacted Social Security numbers and does not object to the district court's redaction requirement. Accordingly, there is no danger that this *uniquely sensitive information* will be compromised by Section 8(i)(1) public disclosure requirement.

Id. (emphasis added). Plaintiff in this case has not specifically requested SSNs, but has stipulated to the fact that the Voter List it requested does not include SSNs. *See* Stipulation ¶¶ 9 and 14, ECF No. 27.

More recently, in *Pub. Int. Legal Found., Inc. v. N. Carolina State Bd. of Elections*, 996 F.3d 257 (4th Cir. 2021), PILF sought a broad array of documents pursuant to Section 8(i)(1) related to North Carolina voters whom the North Carolina election board had identified as potentially failing to satisfy the state citizenship requirement. The Fourth Circuit cited *Project Vote* for the proposition that a district court can require redaction of uniquely sensitive information such as SSNs and held:

> We also upheld the district court's requirement that disclosed voter applications be redacted to omit applicants' social security numbers, which qualified as "uniquely sensitive information." *Id.* at 339 (citing *Greidinger v. Davis*, 988 F.2d 1344, 1355 (4th Cir. 1993) (holding that requiring disclosure of social security numbers on voter registration application records created an "intolerable burden" on the right to vote in violation of the First and Fourteenth Amendments)). (Footnote omitted).

996 F.3d at 266. Additionally, the court held that the phrase "all records" included within the disclosure provision does not "encompass any relevant record from any source whatsoever," but rather it must be read in conjunction with other statutes enacted by Congress that ensure the protection of an individual's privacy. *Id.* at 264.

Even more recently, albeit not in the context of an NVRA challenge, the Fourth Circuit in *Fusaro v. Howard*, 19 F.4th 357 (4th Cir. 2021), upheld Maryland's interest in restricting access to the Voter List and restricting use of the list to purposes related to the electoral process under a substantially similar law to §7-3-20(D)(13), holding as follows:

> [T]he State's asserted interests for maintaining the Use Provision are not novel, and restricting access on how a state voter list can be utilized is not a unique proposition either. *See, e.g., R.I. Ass'n of Realtors, Inc. v. Whitehouse*, 51 F. Supp. 2d 107, 113 (D.R.I. 1999) (explaining that State of Rhode Island has legitimate and substantial interest in protecting privacy rights of citizens by establishing appropriate limitations on access to or use of personal information citizens are compelled to furnish to government agencies), *aff'd*, 199 F.3d 26 (1st Cir. 1999). As the Second Circuit has recently observed, states have "legitimate interest[s] in encouraging new voter registration" and participation in the electoral process. *See Van Allen v. Cuomo*, 621 F.3d 244, 249 (2d Cir. 2010).
>
> Indeed, the Maryland General Assembly has expressly determined that, in order to protect Maryland registered voters from harassment and abuse, use of the List should be limited to those applicants who certify that they will use it for purposes that are related to the electoral process. We must give due regard to Maryland's determination that its "citizens should not face an onslaught of communication[s] or solicitations irrelevant to the electoral process as the price of participation in the electoral process." *See Fusaro*, 472 F. Supp. 3d at 259. And we are satisfied that the Use Provision imposes a reasonable, nondiscriminatory burden and is justified as a means for enforcing "comprehensive and . . . complex elections codes." *See Anderson*, 460 U.S. at 788.

19 F.4th at 370. South Carolina's limitation on use of the Voter List are even more narrowly circumscribed than those at issue in *Fusaro.*

As the South Carolina General Assembly found in adopting PIIPA, the unnecessary release of SSNs constitutes a grave threat to individual privacy and security. § 30-2-300(1). As such, the possibility of release of a voter's SSN is arguably likely to have a "chilling" effect on a voter's

decision to register to vote, thus defeating one of Congress' primary purposes in enacting the NVRA. Allowing a voter to feel safe from unwarranted and/or illegal invasion of his personally identifying information enhances the likelihood of a citizen registering to vote. Even assuming that PILF is seeking SSNs, that information should not be released or included in the electronic Voter List.

South Carolina's statutory requirements preventing the disclosure or inspection of voter SSNs are in accord with the Fourth Circuit's statutory interpretation of Section 8(i)(1) and are not in conflict with the purposes of and, thus, not preempted by the NVRA.

F. Section 8(i)(1) does not preempt the S.C. Code Ann. § 30-2-50 prohibition against use for commercial solicitation.

As a condition precedent to receiving the Statewide Voter Registration List, PILF must agree not to use the List information for commercial solicitation purposes. S.C. Code Ann. § 30-2-50. Examining the plain and unambiguous language of the NVRA, nothing in the act can be construed to preempt South Carolina's commercial solicitation prohibition. South Carolina's pertinent statute defines "commercial solicitation" as "contact by telephone, mail, or electronic mail for the purpose of selling or marketing a consumer product or service." § 30-2-30(3).

South Carolina's prohibiting voter personally identifying information for commercial solicitation does not prohibit PILF from "'seek[ing] to promote the integrity of elections nationwide,' using public records laws to gather information about voters and producing 'reports, articles, [and] blog and social media posts' to advance its mission." *N. Carolina State Bd. of Elections*, 996 F.3d at 259-260 (quoting PILF mission statement). Requiring that PILF agree not to use the information contained in the Voter List to communicate with voters to sell a product or service in no way diminishes PILF's ability to carry out its activities outlined in paragraphs 27 through 36 of the Complaint. PILF can still carry out its private enforcement functions for

violations of the NVRA, even with the imposition of the commercial solicitation restriction. In short, there is no preemption and the SEC can comply with both the provisions of NVRA and § 30-2-30(3).

Conclusion

For the reasons stated above, the SEC respectfully requests that the Court grant its Motion for Summary Judgment and deny PILF's Motion for Summary Judgment.

Respectfully submitted,

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