

*Voter Reference Foundation, LLC*

## **TABLE OF CONTENTS**

I.	Voter Reference Foundation & VoteRef.com.....	1
II.	The Defendant Secretary of State.....	4
III.	The Secretary Maintains and Controls Pennsylvania Voter Data in the SURE Database.....	5
IV.	Pennsylvania uses the SURE database to maintain the accuracy and currency of its rolls, as reflected in the data in SURE and the FVE.....	5
V.	The Secretary does not genuinely contest that the FVE is a “record” which must be made available under the NVRA.....	10
VI.	Pennsylvania’s current regulation of voter data.....	11
VII.	The “Internet Sharing Ban”.....	13
VIII.	VRF Obtains Pennsylvania Voter Data in 2021 and Publishes it on VoteRef.com.....	14
	A. VRF takes various measures to safeguard protected voters and the data on its Website.....	15
	B. VRF analyzed the Pennsylvania voter data and reached out to the Secretary to discuss it.....	17
IX.	The Secretary sends a takedown letter to VRF.....	18
X.	VRF Makes Additional NVRA Requests for Voters Data to the Secretary.....	20
	a. VRF’s March 7, 2022 Request for Voter Data & Denial.....	20
	b. VRF’s November 2, 2023 Request for Voter Data.....	22

c. November 2, 2023 NVRA Notice of Violation.....	23
d. Secretary’s Response to November 2, 2023 Request and NVRA Notice.....	24
e. VRF’s Second NVRA Notice of Violation on November 17, 2023.....	25
XI. The Internet Sharing Ban Severely Burdens VRF’s First Amendment Rights.....	26
XII. The Secretary has not demonstrated any compelling and narrowly tailored state interest to justify the Internet Sharing Ban.....	27
XIII. VRF’s Future Plans Involving New Mexico Voter Data.....	29

**STATEMENT OF UNCONTROVERTED FACTS (“SOF”)**

**I. Voter Reference Foundation & VoteRef.com**

1. Plaintiff Voter Reference Foundation, LLC (“VRF”) is a nonpartisan nonprofit company whose mission is to increase voter participation and transparency in elections at all levels so that the public can remain informed regarding electoral processes, ensure the integrity of elections across the country, and increase confidence in those elections, thereby increasing participation in the electoral process. **Ex. A, Transcript of 30(b)(6) Deposition of VRF’s Representative Gina Swoboda (“Swoboda”), 14:17-20; 20:11-21:4.**

2. Gina Swoboda is the Executive Director of VRF and has been since shortly after VRF was founded. **Swoboda, 9:22-10:1.**

3. VRF endeavors to publicize voter registration information in every state so that citizens can verify the accuracy of the information by “crowdsourcing” its review. **Swoboda, 20:16-21:10.**

4. The Website typically provides any voter data made public by the state, but VRF does not post some information, including: social security number, email address, telephone number, and voter ID number. **Swoboda, 24:14-18.**

5. Those who access the Website can search by name or address for registered voters and they also are able to peruse voting histories, a list of elections that voter

participated in, as well as other important election data obtained via official sources.

**Swoboda, 54:14-56:18.**

6. Citizens can check their own voting status, voting history, and those of their neighbors, friends, and others, and are thereby able to "crowd-source" the process of rectifying any errors. *Id.* at 54:14-56:18; 60:2-13.

7. If a citizen notices that information about a voter is incorrect, VRF encourages them to contact the relevant Secretary of State or election official to remedy the error. **Swoboda, 37:6-38:3; 60:14-61:16.**

8. Members of the public sometimes reach out to VRF identifying inaccuracies in the data. **Swoboda, 56:18-22.** In those cases, VRF directs them to reach out to the appropriate state election official and provides them with contact information to do so. **Swoboda, 56:23-57:6.** Individual voter pages likewise have instructions on what to do if a user believes the data is not accurate or if the voter is entitled to protected status. **Swoboda, 60:14-61:3.**

9. VRF creates and maintains the Website by requesting voter registration data from state agencies on a monthly basis. **Swoboda, 23:19-25, 26:1-4.**

10. Once VRF receives the file, it maps and imports the data to make it searchable. **Swoboda, 24:1-10.**

11. VRF redacts some data, such as when a state provides the last four digits of a social security number or state voter ID number. **Swoboda, 24:14-18.**

12. Before it posts the data online, VRF sends a letter to the chief election official providing them with a link to the data VRF received to verify that no protected voters are included. **Swoboda, 24:24-25:4.**

13. VRF then makes the voter data available to U.S. citizens so they can fulfill their oversight responsibilities under the NVRA. **Swoboda, 52:21-25.** The public is empowered to ensure that proper list maintenance is conducted, which can only be done if they have access to the list being maintained. ***Id.*, 53:1-10.**

14. It is hard for members of the public to access voters rolls, and that access is often cost prohibitive. **Swoboda, 54:14-22.** In most states, it is not possible for an average member of the public to download the file and open it as a searchable database. ***Id.*, 54:22-25.**

15. It is also hard for the public to use the data even if they request it. The Secretary's representative testified that in Pennsylvania, the Full Voter Export ("FVE") is produced in a .txt or similar file, not something like an Excel file or PDF.

**Ex. B, Transcript of 30(b)(6) Deposition of Secretary's Representative Johnathan Marks ("Marks"), 90:1-13.** The FVE consists of a full export of all voters by county and contains the following fields: voter ID number, name, sex, date of birth, date registered, status (i.e., active or inactive), date status last changed, party, residential address, mailing address, polling place, date last voted, all districts

in which the voter votes (i.e., congressional, legislative, school district, etc.), voter history, and the date the voter's record was last changed.

16. Because it is such a large data set, it must be imported using other tools to use in any meaningful way. **Marks, 90:14-16, 90:17-25.**

17. In order to give the public the ability to look at the rolls and to search for errors, VRF makes the data easily reviewable and provides tools to understand what the data means and how to use it. **Swoboda, 54:24-56:18.**

18. VRF intends to post this data for all states, including Pennsylvania, for the public to access and view free of charge so that the public can fulfill its oversight function under the NVRA. **Ex. C, Declaration of Gina Swoboda ("Swoboda Dec.") at ¶3.**

19. VRF currently has published 32 states and the District of Columbia on VoteRef.com. **Swoboda, 23:10-13; Swoboda Dec. at ¶4.**

## **II. The Defendant Secretary of State**

20. Defendant Albert Schmidt, sued in his official capacity only, is the duly elected Secretary of State for the Commonwealth of Pennsylvania and, in that capacity, is the chief election officer for Pennsylvania. **Marks, 19:5-12.**

21. The Secretary is responsible for the coordination of Pennsylvania's responsibilities under the NVRA. **Marks, 18:8-12.**

### **III. The Secretary Maintains and Controls Pennsylvania Voter Data in the SURE Database**

22.“SURE” is the Statewide Uniform Registry of Electors, Pennsylvania’s centralized voter registration database, **Marks, 9:16-21**, and is the official voter roll for Pennsylvania. *Id.*, **26:15-20**.

23.The Department of State (“DOS”) has a statutory obligation to maintain SURE and facilitates voter list maintenance. **Marks, 19:13-20**.

24.SURE stores any data that is provided on a voter registration application and all updates to a voter record are tracked and “logged” within the database. **Marks, 22:2-11; 39:2-14**.

25.The Secretary provides an online portal to the voter registration database, and anyone with the name, birthdate, county, and zip code of a voter can enter the information to access real-time voter information. **Available online at <https://www.pavoterservices.pa.gov/pages/voterregistrationstatus.aspx> (last visited December 5, 2024)**. The portal doesn’t require any affirmation by the user that they are using the portal only to look up their own information, or that the information is not being looked up for an improper purpose. *Id.*

### **IV. Pennsylvania uses the SURE database to maintain the accuracy and currency of its rolls, as reflected in the data in SURE and the FVE**

26.The NVRA requires states to 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) (the “Public Disclosure Provision”).

27.The Secretary admits that SURE is used to conduct voter list maintenance programs and activities in Pennsylvania. **Marks, 42:25-43:10.**

28.The official status of a voter, including their active or inactive status, is determined from SURE. **Marks, 36:2-11.**

29.Regardless of what method a person uses to register to vote, the voter’s data is added to the SURE database. **Marks, 27:17-23.**

30.SURE shows voters’ demographic information, as well as the date someone registered to vote, **Marks, 28:2-5**, and the method of registration, *id.*, **28:6-10.**

31.SURE documents if a voter cancels their registration. **Marks, 28:11-13**, and the reason for cancellation. *Id.*, **28:23-29:1.**

32.SURE documents if a voter moves, whether within Pennsylvania or outside the state. **Marks, 14-122.**

33.SURE documents a voter’s vote history, including showing which elections a voter voted in and the method of voting (whether in person or via mail). **Marks, 29:2-12.**

34.DOS plays a key role in facilitating activities that ensure the accuracy of the voter rolls. **Marks, 23:20-24.**

35.It does that by providing counties with information on, for example, the National Change of Address program (“NCOA”) under the NVRA, which is facilitated through the SURE Database. **Marks, 23:25-24:7; 33:17-34:6.**

36.DOS also receives information from the Electronic Registration Information Center (“ERIC”), the NCOA, the Department of Transportation, and individual counties that cause changes to a voter’s information in SURE. **Marks Tr., 30:5-19.**

37.SURE enables counties to identify voters that have moved or updated their address using data the department receives through ERIC. **Marks, 24:7-14.** DOS provides the ERIC information to counties to do list maintenance as required under the NVRA and state law. **Id., 24:15-18.**

38.DOS receives information from the Department of Health every two weeks on voters who have died and that data is updated in SURE. **Marks, 29:13-30:1.**

39.Updates brought about by the NCOA are done in SURE. **Marks, 33:17-34:6; 48:15-49:3.** If a voter’s address changed in the SURE system as a result of the NCOA program, there is an audit trail indicating that a voter’s record was placed on inactive status, for example, because they received a five-year notice or a notice of change of address. **Id., 50:6-17.**

40.If a voter is placed on inactive status because they received a voter list maintenance notice and did not respond, that would be documented in SURE. **Marks, 35:9-23.**

41.SURE maintains records of canceled voters back to the date of implementation of the SURE system, regardless of the reason for cancellation.

**Marks, 36:18-37:15; 37:24-38:9, 38:17-22.**

42.In state moves (ISM) is a list maintenance program through ERIC for movers that are not captured by the NCOA. **Marks, 50:19-51:3.** Updates made because of the ISM program are made in SURE. *Id.*, **51:8-11.**

43.Out of state moves (OSM) is another list maintenance program through ERIC for individuals who may have moved outside of Pennsylvania. **Marks, 51:15-21.** Updates made because of the OSM program are made in SURE after notice to the voter. *Id.*, **52:5-8.**

44.The potential duplicates activity is another list maintenance program through ERIC that indicates that there may be a duplicate record in Pennsylvania. **Marks, 52:13-23.** Changes from this program are documented in SURE. *Id.*, **54:1-4.**

45.There is a section of the SURE database that shows any updates to a voter's record, for example, whether the voter voted or updated their political party preference and the date on which the event occurred. **Marks, 38:23-39:10.** If there's a transaction or some action taken by the voter that results in an update to their record, it is recorded on the "changes" tab. *Id.*, **39:11-15.**

46.SURE exists and is used to ensure the integrity and accuracy of all registration records in the system by prohibiting unauthorized entry, modification, or deletion of registration records. **Marks, 40:9-22.**

47.SURE permits each commission and the Department to review and search the system and to permit the sending of notices to the appropriate officials regarding death, change of address, or other information which could affect the qualification of an applicant or the registration of a registered elector. **Marks, 41:12-22.**

48.SURE permits auditing of each registered elector's registration record from the day of its creation until the day it is canceled. **Marks, 42:6-12.**

49.DOS creates job aids that act as user guides for county officials, instructing them on how to complete list maintenance activities. **Marks, 45:6-11.**

50.DOS uses SURE to identify counties' progress on list maintenance activities and to send reminders as necessary deadlines approach. **Marks, 55:4-56:4.**

51.DOS believes it is in compliance with the NVRA, including its obligations to engage in list maintenance. **Marks, 57:6-16.**

52.The Secretary admits he has an interest in knowing if the public identifies errors with their voter record or even the voter record of another. **Marks, 17:7-16.**

53.Voters can engage in those type of review activities by requesting the FVE or other public information lists from the Secretary. **Marks, 17:18-18:15.**

54.If someone wanted to see whether Pennsylvania actually updated the data they need to change as a result of list maintenance activities, like the NCOA, they could ascertain that through a public information list by filing a records request in a given county or with the Secretary. **Marks, 49:4-20.**

**V. The Secretary does not genuinely contest that the FVE is a “record” which must be made available under the NVRA**

55.The Secretary testified that VRF’s efforts to crowdsource the correction of errors in the voting rolls is for a permissible purpose. **Marks, 64:17-65:3.**

56.The Secretary would provide VRF with the data it seeks to engage in these activities under the NVRA, so long as it agrees not to post the information on the Internet. **Ex. D, November 16, 2023 Letter from DOS to VRF** (conditionally granting request for FVE under NVRA so long as VRF agrees to refrain from publishing data on Internet).

57.The Secretary testified that if a requester makes a request for the FVE under the NVRA and signs the affirmation, the DOS would produce the FVE in response to that request. **Marks, 143:23-144:4.**

58.The Secretary admitted that SURE is used to conduct voter list maintenance and contains records of Pennsylvania’s programs and activities to ensure the accuracy and currency of its voter list. **Marks, 42:25-43:10.**

59.The Secretary testified that if a voter or concerned citizen wanted to see if Pennsylvania was actually completing the list maintenance programs and activities

it is required to undertake by state and federal law, they could request a copy of the FVE and review the relevant data. **Marks, 17:18-18:15; 49:4-20.**

60. When asked if it is the Department's position that the FVE is *not* a record that must be made available under the NVRA, the Secretary's representative testified:

I don't know that I would characterize it exactly that way. I mean I think it is—it may be a record that would be available under the NVRA, but it would still be our position that we can put reasonable safeguards on that...I don't know that the full voter export is a voter list maintenance program per se, but I'm not denying that the data or information contained in the full voter export may be responsive to an NVRA request.

**Marks, 142:3-25.**

61. The "reasonable safeguard[]" the Secretary's representative referred to is the Internet Sharing Ban. **Marks, 143:2-7.**

## **VI. Pennsylvania's current regulation of voter data**

62. Pennsylvania law dictates that Pennsylvania voter data may only be used for purposes related to elections, political activities, and law enforcement. **Marks, 71:13-72:9; 25 Pa.C.S. § 1401 et seq., 4 Pa. Code §§ 183.13 & 183.14**

63. Pennsylvania requires requestors of voter data to provide an attestation affirming that the requested data will only be used for those permissible purposes. **See Ex. E, Voter Data Request Form; Ex. F, FVE Website Request Form.**

64. The Secretary's voter data request form includes an affirmation which requires the requestor to agree:

I affirm that any information obtained from the records requested from the Department of State will not be used for commercial or other purposes, except purposes related to elections, political activities and law enforcement, as required by 25 Pa.C.S. §§ 1207(b) & 1404(c)(2). I further affirm that I will not publish any of the above lists on the Internet, as such publication is prohibited by 4 Pa. Code §§ 183.13 (g) & 183.14 (k).

I verify that this statement is true and correct. I understand that false statements made are subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

### **Ex. E, Voter Data Request Form**

65. The form requires the requestor's signature below this attestation. *Id.*

66. The Secretary's website, which offers the FVE for purchase, likewise requires a requestor to agree to the following:

I affirm that any information obtained from the records requested from the Department of State will not be used for commercial or other purposes, except purposes related to elections, political activities and law enforcement, as required by 25 Pa.C.S. sections 1207(b) & 1404(c)(2). I further affirm that I will not publish any of the above lists on the Internet, as such publication is prohibited by 4 Pa. Code sections 183.13 (g) & 183.14 (k).

I verify that this statement is true and correct. I understand that false statements made are subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

By submitting this form I understand that I am entering into an electronic transaction with the Pennsylvania Department of State as defined under 73 P.S. section 2260.301(b). By entering my name below I am submitting my signature electronically, which I recognize has the full legal effect and enforceability as a "wet" signature under 73 P.S. section 2260.301.

### **Ex. F, FVE Website Request Form.**

67.A requestor cannot receive a Public Information List or the FVE without agreeing to an affirmation like one of those described above. **Marks, 84:7-85:3.**

68.4 Pa. Code § 183.14 governs Public Information Lists, which are lists of registered voters the Elections Division makes available upon request for public inspection. **Marks, 68:12-18.**

69.The FVE is a Public Information List, **Marks, 71:9-12.**

70.Public Information Lists, particularly in the form of the FVE, are point in time data that are constantly changing. **Marks, 68:19-69:7.**

71.There is some data in SURE that is not provided as part of the FVE, including social security numbers, email addresses, driver's license numbers, and the specific source of voter registration. **Marks, 76:18-78:17.**

72.Public Information Lists may not be used for activities unrelated to elections, political activities, and law enforcement. **Marks, 71:13-72:4.**

73.Pennsylvania has two protected voter programs. **Marks, 72:10-73:2.** Data for protected voters is not included in the FVE. *Id.*, **74:9-23.**

## **VII. The “Internet Sharing Ban”**

74.Pennsylvania law prohibits any person from publishing information contained in a Public Information List on the Internet. **4 Pa. Code §§ 183.13, 183.14; Marks, 65:23-66:11; 75:15-76:5.**



75.The Secretary testified that because the FVE is a Public Information List, the Internet Sharing Ban in § 183.14 applies to the FVE. **Marks, 75:15-76:5.**

76.According to the Secretary, it is the prohibition in § 183.14(k) that renders VRF's publication of voter data on its website unlawful. **Marks, 75:25-76:5.**

77.The Secretary believes it is not unlawful for requestors to share voter data with other people and by other means, so long as it is not posted on the Internet. **Marks, 92:2-93:4.**

78.In fact, the Secretary is aware of other vendors that request voter data, including the FVE, and then sell that data to their customers. **Marks, 93:6-20.**

79.A requestor could email the FVE to others. **Marks, 93:7-98:5; 105:15-107:9.**

80.A requestor could mail the FVE to others. **Marks, 98:7-100:13; 104:7-14.**

81.A requestor could share the FVE on a website, so long as the website requires log in credentials to view the data. **Marks, 94:1-95:5.**

82.The Secretary does not monitor how requestors use the voter data they receive from the Secretary. **Marks, 139:5-11.**

#### **VIII. VRF Obtains Pennsylvania Voter Data in 2021 and Publishes it on VoteRef.com**

83.VRF posted Pennsylvania data obtained from a third-party vendor on VoteRef.com on August 27, 2021. **Swoboda, 87:16-19.**

84.VRF reached out to the Department before it posted the Pennsylvania data to ensure that no confidential or protected voter information was contained in the data.

**Marks, 114:5-21; Ex. G, August 19, 2021 Email from VRF to Secretary.**

85.The Secretary did not respond. **Swoboda Dec., ¶¶6-8.**

86.The Pennsylvania voter data was made available by VRF on the Website at no charge, subject to the user's agreement to the Website's terms of service.

**Swoboda Dec., ¶9.**

**A. VRF takes various measures to safeguard protected voters and the data on its Website.**

87.VRF does not redact addresses before posting data on its website, but does redact social security numbers, voter ID numbers, telephone numbers, and email addresses, if provided. **Swoboda, 28:11-24.**

88.VRF does not redact full dates of birth because that is sometimes the only way to differentiate between two voters with otherwise similar names and information. **Swoboda, 69:6-70:1.**

89.VRF is careful not to post the data of protected voters that have undergone the state process to become a protected voter. **Swoboda, 27:7-10.**

90.VRF also works with the U.S. Marshals service to redact the names of all judges, **Swoboda, 27:12-13**, and takes efforts to redact the information of law enforcement officers. **Id. at 27:24-28:1.**

91. Users must agree to VoteRef.com's terms of service before using the website, and if someone accepts those terms of service without reading them, then they have violated the terms of service from the start. **Swoboda, 40:17-41:8.**

92. If VRF became aware that someone had violated the terms of service, they would refer that person to the appropriate election official of the relevant state. **Swoboda, 45:4-13.**

93. VRF has never been informed of anybody violating the terms of service. **Swoboda, 45:14-18.**

94. VRF uses region blockers on its website to block certain IP addresses to prevent people from outside of the United States from accessing the website. **Swoboda, 46:25-47:14.**

95. VRF uses other vendors to make the site as secure as possible. **Swoboda, 48:23-49:4.**

96. VRF takes steps to ensure that search engines do not index the data of voters that are or should be protected or confidential. **Swoboda, 94:12-19.**

97. VRF has tools to prevent scraping of data from its site. **Swoboda, 96:15-19.**

98. VRF does not redact cancelled voters from the site. **Swoboda, 119:22-120:5.**  
The voter's voter status would instead be changed to cancelled. ***Id.*, 120:4-5.**

99.If VRF removed the cancelled voters, then people reviewing the rolls would think that there is an issue because the person would not show up as having voted in the elections in which they voted prior to cancellation. **Swoboda, 120:7-10.**

**B. VRF analyzed the Pennsylvania voter data and reached out to the Secretary to discuss it**

100. VRF maintains two related, but distinct projects. The first project, described above, is to share voter data online with citizens. The second project is accomplished in-house without the need to publish the data online and involves VRF election professionals comparing the total number of ballots cast in an election to the number of voters with a credit in their vote history file for having voted in that election. **Swoboda, 25:9-13.**

101. VRF then informs the state's chief election official if it identifies a discrepancy between those two numbers, **Swoboda, 25:13-24**, and invites a discussion about the discrepancy. *Id.*

102. VRF has identified discrepancies in other states and worked with state officials to explain the difference, including in Colorado, Alabama, Nevada, and Georgia. **Swoboda, 118:25-119:7.**

103. On August 19, 2021, prior to posting the Pennsylvania data, VRF emailed the Secretary's Office, via Deputy Secretary Marks and Director Mathis, to inform them that VRF identified a discrepancy between the total ballots cast in the

2020 general election and the number of registered voters in the state. **Ex. G, Aug. 19, 2021 Email from VRF to Secretary.**

104. VRF shared its analysis and raised a number of issues it identified in its review of the data. *Id.*

105. VRF told the Secretary: “We invite your feedback on these results. If there is a factor or factors that we may be unaware of that would explain the discrepancies, please let us know.” *Id.*

106. VRF also sent a link to a Google Drive containing the Pennsylvania voter data in its possession, and asking the Secretary to review that data set to ensure that no protected/confidential voters were mistakenly included. *Id.*

107. The Secretary did not respond. **Swoboda Dec., ¶8.**

#### **IX. The Secretary sends a takedown letter to VRF**

108. On January 21, 2022, Timothy Gates, DOS Chief Counsel, sent a letter to Doug Truax of Restoration Action demanding that the voter data on VoteRef.com be removed. **Ex. H, Jan. 21, 2022 Takedown Letter.**

109. At that point, the Pennsylvania data had been available on VoteRef.com for over 3 months. **Swoboda, 87:16-19** (data was posted August 27, 2021).

110. The Secretary investigated VRF and its activities before sending the takedown letter, including reviewing VoteRef.com. **Marks, 117:19-118:19.**

111. The Secretary's takedown letter did not allege that VRF's use of the data was for an impermissible use, that is, that it was not for an election, political, or law enforcement related purpose. **Ex. H, Jan. 21, 2022 Takedown Letter.**

112. Instead, it demanded that the information be removed from VoteRef.com only because: "Pennsylvania law prohibits such information from being published on the internet. Moreover, any party who obtains the information agrees to that prohibition." *Id.*

113. The Secretary did not, and does not, take issue with VRF's activities as being unrelated to elections, political activities, or law enforcement, but "we're here because of the publication aspect of this." **Marks, 64:17-65:3.**

114. The Secretary's takedown letter did not allege that VRF should not have been able to obtain the data in the first place. **Ex. H, Jan. 21, 2022 Takedown Letter.** The only issue raised in the takedown letter was that the data was posted on the Internet. *Id.*

115. As a result of the takedown letter, VRF removed the data on January 31, 2022, just ten days later. **Swoboda, 78:6-22, 86:8-21; Marks, 122:9-12.**

116. VRF has not reposted the data since. **Marks, 122:13-16.**

## **X.VRF Makes Additional NVRA Requests for Voter Data to the Secretary**

### **a. VRF's March 7, 2022 Request for Voter Data & Denial**

117. On March 7, 2022, VRF sent a voter data request to the Department, seeking a copy of the FVE. **See Ex. I, March 7, 2022 Request; Ex. J, Def.'s Responses to Second Requests for Admissions** (admitting request is a true and correct copy of that received by Department).

118. The request specified that the information would be used only for purposes allowed by law, including purposes related to elections, political activities, and law enforcement, and not for commercial purposes. **Ex. I, March 7, 2022 Request**

119. The request explained that, though there is a form available online to seek the FVE, VRF could not use the form because it required VRF to agree not to publish the information online; that is, the form required VRF to agree to restrictions which violate its First Amendment rights. ***Id.***

120. Because VRF wished to comply with those provisions governing access to the List that are consistent with the United States Constitution, it included an attestation stating that it would only use the FVE for statutorily permissible purposes relating to elections, political activities, and law enforcement as required by 25 Pa.C.S. § 1401 et seq. and 4 Pa. Code§ 183.14. ***Id.***

121. It did not, however, agree to refrain from publishing the requested data online. *Id.*

122. The Department denied VRF's request in a letter signed by the Department's Open Records Officer, Janelle Hawthorne. **See Ex. K, April 13, 2022 Denial Letter ("First Denial Letter"); Ex. J, Def.'s Responses to Second Requests for Admissions** (admitting Denial Letter is a true and correct copy of that sent by Department).

123. In the First Denial Letter, the Department stated that the requested records "are only available upon completion of an affirmation that the information will only be used for purposes relating to elections, political activities, and law enforcement," citing 25 Pa. C.S. § 1404 et seq. and 4 Pa. Code § 183.14. **Ex. K, First Denial Letter.**

124. As addressed above, VRF's March 7, 2022 request to the Department met that requirement: it included an affirmation agreeing to the various conditions outlined on the Department's website. **See Ex. I, March 7, 2022 Request; see also Marks, 126:18-127:20; 130:2-7.** It only omitted the agreement that the information would not be posted on the Internet. *Id.*

125. Thus, at the time it denied VRF's request, the Department had an affirmation from VRF that the information would only be used for purposes relating to elections, political activities, and law enforcement. *Id.* The First Denial Letter



ignored this and asserted the absence of that affirmation as grounds for denial. *See Ex. K, First Denial Letter.*

126. The Department then identified another basis for denying VRF's request. *Id.* It claimed VRF had previously obtained the FVE "but violated the voter registration law and the Department's regulations by publishing the information obtained on the Internet, namely, [its] website," and stated that "[a]s a result of those actions, your request for voter registration information is denied." *Id.* The Denial Letter did not cite any legal authority for denying a request on these grounds. *Id.*

127. The First Denial Letter did not cite VRF's refusal to agree to refrain from publishing the data on the Internet as a reason for denying the request. **Ex. K, First Denial Letter; Marks Tr., 130:18-131:5.**

**b. VRF's November 2, 2023 Request for Voter Data**

128. On November 2, 2023, VRF sent the Secretary a second request for the FVE under the NVRA. *See Ex. L, Nov. 2 Request; Ex. J, Def.'s Responses to Second Requests for Admissions* (admitting request is a true and correct copy of that received by Department).

129. VRF also made the Secretary and Department aware of its intent to use the data for two of its projects-one involving online posting and one that does not:

VRF intends to use the Voter List for two distinct projects. For its first project, just as VRF publishes voter data for many other states, VRF intends to publish the requested information on its website for election related purposes, allowing citizens who agree to the terms of VRF's

website to review the data and report any errors to the relevant election authority.

For its second project, VRF intends to analyze the records, information, and data provided in response to the above request in order to engage in a discrepancy review of the Pennsylvania voter rolls. For the second project, VRF intends to publish its analysis online, but will not post any voter data or the personal information of any individual voter in conjunction with the publication of that analysis.

Though VRF does not affirm that it will not publish the contents on the Full Export List online, VRF reaffirms that the requested records will not be used for commercial or other purposes, except purposes related to elections, political activities and law enforcement, as required by 25 Pa.C.S. §§ 1207(b) and 1404(c)(2).

**Ex. L, Nov. 2 Request.**

130. VRF's Nov. 2 Request did not include an affirmation promising that the requested data would not be posted online. *Id.*

**c. November 2, 2023 NVRA Notice of Violation**

131. On November 2, 2023, the same day it made the voter data request described above, VRF also sent the Secretary a separate Notice of Violation of the National Voter Registration Act (the "First NVRA Notice"). **See Ex. M, First NVRA Notice; Ex. J, Def.'s Responses to Second Requests for Admissions** (admitting notice is a true and correct copy of that received by Department).

132. In VRF's First NVRA Notice, VRF apprised the Secretary and Department that its denial of VRF's March 7, 2022 request for voter data violated the NVRA's Public Disclosure Provision. **Ex. M, First NVRA Notice.**

133. The First NVRA Notice also notified the Secretary that the Internet Sharing Ban is preempted by the Public Disclosure Provision. *Id.*

134. VRF requested that the Secretary correct the violation by making the requested information available, and notified him that VRF would seek legal recourse if he did not. *Id.*

**d. Secretary's Response to November 2, 2023 Request and NVRA Notice**

135. The Secretary responded to VRF's Nov. 2 Request and First NVRA Notice in a single letter on November 16, 2023. *See Ex. N State's Nov. 16 Response; Ex. J, Def.'s Responses to Second Requests for Admissions* (admitting Nov. 16 response is a true and correct copy of that sent by Department/Secretary).

136. As to VRF's First NVRA Notice, the Secretary argued that VRF's March 7, 2022 request for Pennsylvania voter data did not constitute a valid NVRA request because VRF did not specifically invoke the NVRA in that request. *See Ex. N, State's Nov. 16 Response.* Thus, the Secretary argued that VRF's First NVRA Notice was "defective." *Id.*

137. For VRF's Nov. 2 Request, the Secretary stated: "that request is granted on the condition that VRF completes the affirmation required for obtaining this data pursuant to Pennsylvania law. See 25 Pa.C.S. § 1404; 4 Pa. Code § 183.14." *Id.*

138. The Secretary did not acknowledge VRF's plans to publish the requested Pennsylvania voter data on the Internet. *Id.*

**e. VRF's Second NVRA Notice of Violation on November 17, 2023**

139. In response, VRF sent the Secretary a second NVRA notice on November 17, 2023, apprising the Secretary that he continued to violate the NVRA by failing to produce the requested records. **See Ex. O, Second NVRA Notice; Ex. J, Def.'s Responses to Second Requests for Admissions** (admitting notice is a true and correct copy of that received by Department).

140. VRF's Second NVRA Notice apprised the Secretary that the Internet Sharing Ban was preempted by the Public Disclosure Provision. *Id.*

141. VRF's Second NVRA Notice explained that what the Secretary referred to as a "conditional grant" of VRF's request was effectively a denial of VRF's request, because the Secretary knows VRF cannot satisfy that condition, and the conditional grant was another violation of the Public Disclosure Provision. *Id.*

142. VRF fully complied with the NVRA's pre-suit notice requirements as to the March 7, 2022, and November 2, 2023 NVRA requests before filing this Complaint. *Id.*

143. The only reason VRF's voter data requests were denied is because it will not agree to the Internet Sharing Ban. **Marks, 143:8-16.**

## **XI. The Internet Sharing Ban Severely Burdens VRF's First Amendment Rights**

144. The Internet Sharing Ban effectively muzzles VRF's transparency and voter outreach efforts before they can even get off the ground and, in doing so, violates VRF's First Amendment rights. **Swoboda Dec., ¶¶10-15.**

145. The Internet Sharing Ban limits VRF's ability to effectively speak in furtherance of its mission by sharing relevant voter and election related information with the public. **Swoboda Dec., ¶11.**

146. Pennsylvania's Internet Sharing Ban substantially inhibits VRF's transparency and voter outreach efforts because it makes it unlawful to use the easiest and cheapest method of communication—the Internet—to associate with individuals interested in monitoring Pennsylvania's list maintenance efforts. **Swoboda Dec., ¶10.**

147. VRF desires to post and distribute Pennsylvania voter data online. Doing so is far more effective than sharing the same information in person, by mail, or via any physical medium. **Swoboda Dec., ¶12.**

148. The cost of having to mail physical copies of the voter lists to all persons in a state would prevent VRF from carrying out its mission, especially because VRF would have to constantly mail updated physical copies of the list each time a new request is fulfilled, whereas a website can easily be updated with new data in real time. **Swoboda Dec., ¶13.**

149. However, because of the Internet Sharing Ban, VRF has refrained and will continue to refrain from exercising its core First Amendment political speech rights to disseminate and use the voter information out of fear of prosecution. **Swoboda Dec., ¶14.**

**XII. The Secretary has not demonstrated any compelling and narrowly tailored state interest to justify the Internet Sharing Ban**

150. DOS does not do anything to monitor how requesters use voter data after they get it from the Department. **Marks, 139:5-11.**

151. The Secretary is not aware of a law or regulation that prohibits VRF from obtaining voter data and emailing it out to third parties. **Marks, 97:7-98:5; 105:15-106:3; 106:19-107:9.**

152. The Secretary is not aware of anyone using VoteRef.com for illegal purposes while the Pennsylvania data was posted. **Marks, 139:14-18.**

153. The Secretary is not aware of VRF using the data it received or its website for any kind of commercial purpose. **Marks, 139:20-24.**

154. The Secretary is not aware of anyone using VoteRef.com to stalk or harass a Pennsylvania resident. **Marks, 140:8-10.**

155. The Secretary does not know if any voter canceled their voter registration because VRF posted Pennsylvania data online. **Marks, 140:11-16.**

156. DOS does not have evidence that VRF manipulated, altered, or misrepresented any voter data on its website. **Marks, 140:18-23.**

157. The Secretary is not aware of anything that would prohibit a requestor of voter data from sharing that data with a third person. **Marks, 92:2-15.**

158. In fact, the Secretary's representative testified as to his awareness of situations in which an organization will obtain voter data from Pennsylvania and then give their "clients" access to that data. **Marks, 92:8-15.**

159. The Secretary's understanding is that other organizations sign the affirmation and then only provide voter data to third parties that pay them for the data, and that is acceptable in the Department's view. **Marks, 99:17-100:13.**

160. The Secretary's understanding is that a requestor is legally allowed to provide voter data to third parties, including clients that pay for access to that data from the requestors rather than directly from the Department. **Marks, 92:17-93:20.**

161. The Secretary is not aware of whether these requestors that resell data make it available online, but understands that if made available online, they require a subscription and log in credentials and other safeguards to ensure that only members or clients can access the information. **Marks, 94:1-11.** The Secretary believes that distinction is important because it is different than publishing the data on the internet for the whole world to see. ***Id.*, 94:13-20.**

162. The Secretary's understanding is that "they're using it for appropriate purposes, and they are restricting access to it based on some subscriber status and log-in credentials so that it's not published on the internet." **Marks, 95:1-5.**

163. The Secretary believes it is significant that requestors who resell data “have never argued about signing the affirmation either.” **Marks, 94:21-25.**

164. The Secretary believes that the Internet Sharing Ban only applies to publication on “the worldwide web, and anybody being able to just go on and see the data.” **Marks, 95:7-17.** The Secretary does not believe that the Ban is violated when someone logs in to an online database housing the voter data. ***Id.*, 95:18-96:14.**

165. “Housing [voter data] in a database and giving...member or subscribers access to it through log-in credentials is not the same thing” as publishing it on the internet, “it’s not even close.” **Marks, 97:2-5.**

### **XIII. VRF’s Future Plans Involving New Mexico Voter Data**

166. VRF desires to access, post, distribute, and otherwise use publicly available Pennsylvania voter data on the Website in the future so that the public may become and remain informed regarding its elections and voter registration rolls and conduct the oversight envisioned in the NVRA. **Swoboda Dec., ¶15.**

167. VRF’s actual and proposed use is limited to that voter information which is publicly available under the NVRA, and it does not seek to disseminate or use any information prohibited from being disclosed by law, including voters’ social security numbers, a voter’s email address, or voters’ telephone numbers if provided by voters. **Swoboda Dec., ¶16.**



168. VRF desires to update its website over time with new data from the Secretary. **Swoboda Dec., ¶18.**

Respectfully submitted this 6th day of December, 2024.

**GRAVES GARRETT GREIM LLC**

/s/ Edward D. Greim

Edward D. Greim (MO 54034)\*

Matthew R. Mueller (MO 70263)\*

Jackson C. Tyler (MO 73115)\*

\* Admitted *Pro Hac Vice*

1100 Main Street, Suite 2700

Kansas City, Missouri 64105

Tel.: (816) 256-3181

edgreim@gravesgarrett.com

mmueller@gravesgarrett.com

jtyler@gravesgarrett.com

**BECKLEY & MADDEN, LLC**

Charles O. Beckley, II (PA 47564)

212 North Third Street, Suite 301

Harrisburg, PA 17101

Tel: (717) 233-7691

cbeckley@pa.net

*Attorneys for Plaintiff*

*Voter Reference Foundation, LLC*

**CERTIFICATE OF SERVICE**

I certify that, on December 6, 2024, I filed the above document with the Court's CM/ECF system. Service will be accomplished on all counsel of record through the CM/ECF system.

/s/ Edward D. Greim  
Attorney for Plaintiff

RETRIEVEDFROMDEMOCRACYDOCKET.COM