

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Public Interest Legal Foundation, Inc.,

Case No. 0:24-CV-01561 (SRN - DJF)

Plaintiff,

vs.

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S SUR-REPLY**

Steve Simon,

Defendant.

INTRODUCTION

Plaintiff Public Interest Legal Foundation, Inc. (“PILF”), attempts to defend its constitutional challenge by stating that such challenges are not limited to states alone to raise. This argument both misstates the Secretary’s position and fails to further support PILF’s challenge to the NVRA.

ARGUMENT

The Secretary does not argue, as PILF suggests, that only states may raise Tenth Amendment claims. PILF misconstrues the Secretary’s argument to be that PILF “may not invoke the equal state sovereignty principle,” because to do so, it must have “standing to invoke the legal interests of U.S. states that are not party to this action.” (Doc. 22, Plaintiff’s Sur-Reply in Opposition to Defendant’s Motion to Dismiss at 1 (quoting Doc. 17., Defendant’s Reply Memorandum Supporting Motion to Dismiss at 6)). This incorrectly frames the Secretary’s argument. Rather, the Secretary maintains that PILF *has*

not demonstrated that Minnesota’s exemption from the NVRA’s disclosure provision violates principles of equal sovereignty and harms PILF so as to support a judiciable claim.¹

PILF relies on *Bond v. United States* for its contention that it properly raises a Tenth Amendment claim. There, defendant Bond was indicted for violating a federal statute that criminalized owning certain harmful chemicals pursuant to the Chemical Weapons Convention Implementation Act of 1988. *Bond v. United States*, 564 U.S. 211, 215 (2011) (citing 18 U.S.C.A. § 229). On appeal, Bond argued that the statute exceeded Congress’ constitutional authority and cited to, among other authority, the Tenth Amendment. The question arose as to whether Bond, an individual, had standing to raise a Tenth Amendment challenge.

The Supreme Court first summarily stated that Bond met the case and controversy requirements of Article III standing: “the incarceration ... constitute[d] a concrete injury, caused by the conviction and [was] redressable by invalidation of the conviction.” *Bond*, 564 U.S. at 217 (quotations omitted). The Court then turned to whether an individual could bring a claim under the Tenth Amendment, or if that authority was reserved solely to the states. *Id.* at 217-16. In its analysis, the Supreme Court differentiated the question of whether a litigant can show redressable injury from the question of whether the litigant is the proper party to raise a claim. *Id.* at 218. The Court explained that where a party can

¹ As the Secretary has previously explained, the NVRA’s nonapplicability to states that have continuously offered election-day polling-place registration is wholly unlike the “uncommon exercise of congressional power” the Supreme Court found to have implicated equal sovereignty in *Shelby County v. Holder*, and thus *Shelby County* does not invalidate Minnesota’s exemption from the NVRA. See *Shelby County v. Holder*, 570 U.S. 529, 545 (2013).

show “injury from governmental action taken in excess of the authority that federalism defines,” such a litigant can properly bring a Tenth Amendment claim. *Id.* at 220.

Ultimately, the *Bond* Court clarified that “[i]f the constitutional structure of our Government that protects individual liberty is compromised, individuals who suffer otherwise justiciable injury may object.” *Id.* at 223. That is not the case here. PILF’s reliance on *Bond* fails for two reasons: first, because PILF has not shown a redressable injury, and second, because it does not raise a proper constitutional challenge.

Fundamentally and dispositively, PILF has not met the case-and-controversy requirements of Article III standing. PILF’s only proffered injury is premised on a violation of the NVRA, an Act from which Minnesota is validly exempt. Thus, PILF attempts to meet this threshold requirement by arguing it was harmed by a *lack* of an Act of Congress. PILF has not identified a concrete, demonstrable, and redressable injury it has suffered and cannot do so by arguing that the Court should extend the NVRA beyond Congress’s expressed intent and apply it to Minnesota. *Nat’l Fed’n. of the Blind v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999) (“Standing may be found when there is a concrete and demonstrable injury to an organization’s activities which drains its resources and is more than simply a setback to its abstract social interests.”). Unlike in *Bond*, PILF has not met the initial requirements of Article III standing. Because PILF has not met this threshold requirement, it cannot properly raise a Tenth Amendment challenge to the NVRA.

Further, even if PILF could show it suffered a redressable injury, *Bond* does not support the claim that PILF is the proper party to assert a Tenth Amendment challenge to the NVRA. A fundamental difference between *Bond*’s holding and PILF’s claim here is

that Bond argued Congress had overreached its authority by passing the criminal statute that led to her conviction. *Bond* at 217. The Supreme Court concluded that Bond had the right to challenge the statute as overreaching because she was directly impacted by Congress's enactment of the statute under which she was convicted. ("The individual, in a proper case, can assert injury from *governmental action taken* in excess of the authority that federalism defines." *Bond*, 564 U.S. at 220 (emphasis added)). Conversely, here, PILF is requesting that the NVRA be extended further than Congress intended – that is, to read in an action that Congress elected *not* to take. PILF asks this Court to disregard the expressed intent of Congress while increasing the federal intrusion into the authority Minnesota is granted by the elections clause. This is not a harm, nor a remedy, contemplated by the Tenth Amendment. As such, PILF does not properly challenge the NVRA under the Tenth Amendment by arguing it should be extended further.

PILF attempts to circumvent this flaw by arguing that a so-called leveling-down remedy is appropriate here, whereby when a right to "equal treatment" is being invoked, an appropriate remedy is one that "mandate[s] equal treatment." (Doc. 16, Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss, at 26 (quoting *Heckler v. Mathews*, 465 U.S. 728, 740 (1984).) PILF cites the D.C. Circuit case *Ohio v. EPA* for the proposition that, for purposes of establishing standing, a state's injury to its sovereign equality can be redressed by reducing another state's greater authority. *Ohio v. EPA*, 98 F.4th 288, 307 (D.C. Cir. 2024). The crucial difference here, however, is that Congress did not *grant* greater authority to Minnesota by exempting it from the NVRA. Rather, Congress chose *not to regulate* Minnesota or other states that met the qualifications

for exemption. PILF provides no precedent for the extraordinary proposition that a court may constitutionally extend the ambit of an Act of Congress beyond what Congress intended, whether on behalf of an individual petitioner or a state.

PILF has not alleged a concrete, redressable injury and bases its claim for relief on a statute that Congress explicitly intended not to apply to states, like Minnesota, with continuous election-day polling-place voter registration. While *Bond* confirms that constitutional challenges are not solely for the states to raise, it does not support a finding that PILF has standing here.

CONCLUSION

For all the reasons described above, the Secretary respectfully requests that the Court grant his motion to dismiss PILF's Complaint in its entirety with prejudice.

Dated: July 31, 2024

Respectfully submitted,

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