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**From:** John Gore (b)(6) [redacted]@gmail.com]  
**Sent:** 9/27/2017 11:22:53 PM  
**To:** Gore, John (CRT) [John.Gore@crt.usdoj.gov]  
**Subject:** Fwd: Chicago vote problems

----- Forwarded message -----

**From:** John Gore (b)(6) [redacted]@gmail.com>  
**Date:** Wed, Sep 6, 2017 at 6:36 PM  
**Subject:** Re: Chicago vote problems  
**To:** Christy McCormick (b)(6) [redacted]@aol.com>

Christy:

Thanks. I'll put Chris Cleveland in touch with you directly.

I hadn't heard about the ACLU suit, but that is unbelievable.

I am thrilled for Maureen that the opportunity opened up for her. I am sure she is knocking it out of the park! Would love to catch up at some point, particularly once we have our confirmed head, which after today is looking much better.

We are doing what we can to fight the good fight - glad to be in the trenches with you!

Best,  
John

On Tue, Sep 5, 2017 at 11:44 PM, Christy McCormick (b)(6) [redacted]@aol.com> wrote:  
Hi John,

Hope you are well. I sent the info on the Chicago issue (deleting your email address and messages from it) to the staff of the presidential commission a couple of months ago so we can co super it and hopefully investigate it. Please feel free to give Chris Cleveland my contact info. I'd be happy to talk to him.

Did you see the ACLU lawsuit against California for throwing out 40,000 or so ballots? I read that California's defense was that the ballots were tossed because signatures on them didn't match. If that's not admitting that there is voter fraud, then is it otherwise admitting to voter suppression? I have 't read the actual filings, but given the Secretary of State out there says there's no voter fraud, I find it quite fascinating.

I know you must be crazy busy, but would love to catch up soon - maybe we can find some time in October. I spoke to Maureen this week and she told me about her detail to the Western District of Virginia. I honestly don't know how you're doing it! God bless you!!!

Best,  
Christy

Duplicate

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**From:** John Gore (b)(6) [redacted]@gmail.com]  
**Sent:** 9/27/2017 11:21:27 PM  
**To:** Gore, John (CRT) [John.Gore@crt.usdoj.gov]  
**Subject:** Fwd: Chicago vote problems

----- Forwarded message -----

**From:** Christy McCormick (b)(6) [redacted]@aol.com>  
**Date:** Mon, May 15, 2017 at 3:59 PM  
**Subject:** Re: Chicago vote problems  
**To:** John Gore (b)(6) [redacted]@gmail.com>

Thanks so much John. Sometimes I dream of a peaceful life, but we can't afford to cede any territory!

Duplicate

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**From:** Christy McCormick [CMcCormick@eac.gov]  
**Sent:** 4/12/2017 10:16:06 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** HAVA Grant Report  
**Attachments:** Final FY 2015 Grants Report.pdf

Hi Maureen,

Here is the HAVA Grant Report that shows the HAVA monies provided to each state and the balances. This report is the latest we have - in fact, another one was due a couple of weeks ago, but our grants people have not provided it to me yet. As soon as I get a copy, I will forward it to you. I think they were waiting on some of the reports that are due from the states.

Please let me know if you have any questions.

I still need to provide you with a link to whatever NVRA list maintenance guidance we have - as soon as I get that, I will send it to you.

Thanks!

Christy

Christy A. McCormick | Commissioner

U.S. Election Assistance Commission

1335 East West Highway | Suite 4300

Silver Spring | MD | 20910

(301) 563-3965 office | (202) 243-9476 cell

cmccormick@eac.gov | www.eac.gov

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THE U.S. ELECTION ASSISTANCE COMMISSION

**ANNUAL GRANT EXPENDITURE REPORT**

FISCAL YEAR 2015

March 2016

## Overview

The Election Assistance Commission (EAC) was created by Congress in 2002 to improve the administration of elections for Federal offices through funding, guidance and policy development under the Help America Vote Act of 2002 (HAVA). HAVA funds support State and local voting districts in upgrading systems for casting votes, registering voters in statewide voter registration databases, providing provisional voting options, and implementing other improvements to the administration of Federal elections that include training for election officials and poll workers, polling place accessibility improvements, and information on how and where to vote.

*EAC has administered nearly \$3.3 billion in Federal funds to States and other eligible entities since its inception.*

## Grants Expenditure Summary

Through September 30, 2015, a total of \$3,247,294,645<sup>1</sup> has been made available to the 50 States, American Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico and the United States Virgin Islands (hereinafter referred to as States) under HAVA. States have reported total expenditures of \$3,197,438,400 or 89% percent of total Federal funds and accrued interest available under Sections 101, 102 and 251 of HAVA (See Attachment A).

### **Election Reform—Formula Funds**

#### **HAVA Section 101 Payments**

Supports activities that improve the administration of Federal elections.

**Year: 2003**

**Award amount: \$349 million**

**Status: 85% Expended**

Funds are available to States until expended

#### **HAVA Section 251 Requirements Payments**

Supports States in becoming compliant with Title III of HAVA

**Years: 2003, 2004, 2008, 2009, 2010, 2011** **Amount: \$2.604 billion** **Status: 89% Expended**

Funds available to States until expended

<sup>1</sup> This includes \$300.3 million in Section 102 funds that were appropriated for the replacement of punch card or lever voting machines. Thirty States received Section 102 funds. States were required to expend funds under this section by November 2010 and return any remaining funds to EAC for disbursement as Section 251 funds.

# HAVA SECTION 101 Funds

A total of \$349,182,267 was disbursed to States in 2003 under Section 101 of HAVA, which provided funds to States for activities to improve the administration of Federal elections. As of September 30, 2015, States reported total expenditures of \$338,048,344 or 85 % percent of the funds awarded and accrued interest. Twenty three (23) States have spent all of their Section 101 funds and interest and another 14 States have spent at least 90 percent of their funds. Table 1 provides a full accounting of expenditures by State.

*Table 1 Section 101 HAVA Funds as of September 30, 2015*

<i>State</i>	<i>Total Section 101 Funds Received</i>	<i>Interest Earned</i>	<i>Expenditures</i>	<i>Balance</i>
Alabama	\$4,989,605	\$445,493	\$4,807,364	\$627,735
Alaska	\$5,000,000	\$652,810	\$5,000,000	\$652,810
American Samoa	\$1,000,000	\$66,224	\$1,000,000	\$66,224
Arizona*	\$5,451,369	\$1,010,134	\$2,095,600	\$4,365,903
Arkansas	\$3,593,165	\$226,288	\$3,819,453	\$0
California	\$26,804,708	\$2,617,759	\$26,250,396	\$3,172,071
Colorado	\$4,860,306	\$1,043,874	\$5,587,361	\$316,818
Connecticut	\$5,000,000	\$682,868	\$5,682,868	\$0
Delaware*	\$5,000,000	\$472,080	\$5,467,766	\$4,314
District of Columbia	\$5,000,000	\$408,108	\$5,000,000	\$408,108
Florida	\$14,447,580	\$1,761,907	\$13,771,795	\$2,437,692
Georgia	\$7,816,328	\$697,814	\$8,596,161	-\$82,019
Guam	\$1,000,000	\$12,773	\$1,012,773	\$0
Hawaii	\$5,000,000	\$1,320,346	\$2,980,533	\$3,339,814
Idaho	\$5,000,000	\$1,807,418	\$6,807,418	\$0
Illinois	\$11,129,030	\$1,241,700	\$11,833,832	\$536,898
Indiana	\$6,230,481	\$938,781	\$7,196,262	-\$27,000
Iowa*	\$5,000,000	\$684,225	\$5,449,329	\$234,896
Kansas	\$5,000,000	\$1,310,653	\$2,916,433	\$3,394,220
Kentucky	\$4,699,196	\$971,742	\$2,508,325	\$3,162,613
Louisiana	\$4,911,421	\$935,334	\$5,846,755	\$0
Maine	\$5,000,000	\$608,534	\$4,647,246	\$961,288
Maryland	\$5,636,731	\$875,980	\$6,078,722	\$433,989
Massachusetts	\$6,590,381	\$904,363	\$7,494,744	\$0

**Table 1 Cont.** 2015 Section 101 HAVA Funds as of September 30, 2015

State	Total Section 101 Funds Received	Interest Earned	Expenditures	Balance
Michigan	\$9,207,323	\$1,513,968	\$2,194,720	\$8,526,570
Minnesota	\$5,313,786	\$64,724	\$5,378,510	\$0
Mississippi	\$3,673,384	\$443,500	\$4,116,884	\$0
Missouri	\$5,875,170	\$945,672	\$6,693,768	\$127,074
Montana	\$5,000,000	\$389,141	\$5,277,221	\$111,920
Nebraska	\$5,000,000	\$998,292	\$5,998,292	\$0
Nevada	\$5,000,000	\$452,843	\$5,452,843	\$0
New Hampshire*	\$5,000,000	\$1,137,916	\$2,087,863	\$4,050,053
New Jersey	\$8,141,208	\$650,000	\$8,167,547	\$623,661
New Mexico	\$5,000,000	\$292,244	\$5,292,244	\$0
New York	\$16,494,325	\$3,258,502	\$15,629,062	\$4,123,765
North Carolina	\$7,887,740	\$719,611	\$9,495,422	-\$888,071
North Dakota	\$5,000,000	\$63,997	\$5,063,997	\$0
Ohio	\$10,384,931	\$426,837	\$10,811,768	\$0
Oklahoma	\$5,000,000	\$349,057	\$5,109,818	\$239,239
Oregon	\$4,203,776	\$59,199	\$4,262,975	\$0
Pennsylvania*	\$11,323,168	\$1,301,492	\$12,624,660	\$0
Puerto Rico	\$3,151,144	\$327,023	\$3,447,240	\$30,927
Rhode Island	\$5,000,000	\$140,275	\$5,140,275	\$0
South Carolina	\$4,652,412	\$872,041	\$5,258,794	\$265,658
South Dakota	\$5,000,000	\$1,865,665	\$2,906,831	\$3,958,834
Tennessee	\$6,004,507	\$1,013,414	\$4,668,031	\$2,349,890
Texas	\$17,206,595	\$3,568,968	\$13,633,597	\$7,141,966
Utah	\$3,090,943	\$560,156	\$3,651,099	\$0
Vermont	\$5,000,000	\$580,051	\$5,580,051	\$0
Virgin Islands*	\$1,000,000	\$21,806	\$999,018	\$22,788
Virginia	\$7,105,890	\$1,130,578	\$7,637,378	\$599,090
Washington	\$6,098,449	\$259,047	\$6,357,496	\$0
West Virginia	\$2,977,057	\$104,747	\$3,081,804	\$0
Wisconsin	\$5,694,036	\$1,752,247	\$4,978,961	\$2,467,321
Wyoming	\$5,000,000	\$1,543,659	\$5,199,041	\$1,344,617
	<b>\$348,646,145**</b>	<b>\$48,503,878</b>	<b>\$338,048,344</b>	<b>\$59,101,679</b>

\*2015 financial reports have not yet been submitted--2014 expenditures levels reported here.  
 \*\*Reflects a deobligation of \$536,122 as a result of an Audit finding. Total awarded was 349,182,267.  
**Note: Negative balances indicate that States have expended state matching in addition to spending all Federal funds**

# HAVA SECTION 251 Funds

Section 251 funds, known as Requirements Payments, were distributed to the States using a formula based on a percentage equal to the quotient of the voting age population of each State and the total voting age population of all States. HAVA requires that States deposit Section 251 money in interest bearing state election accounts. As of the September 2015, Ten (10) States have reported using 100 percent of their

*With over 85% of HAVA Section 251 expended, state spending is accelerating. In FY 2015 annual spending was \$108 million, up from \$75.5 million in 2014 and \$65 million in 2013.*

HAVA Requirements Payment funds (including interest) while another 24 States reported using almost 90 percent of their funds and interest. States reported cumulative expenditures of \$2,559,820,225 (86% percent of funds and accrued interest) through September 30, 2015 (See Table 2)

*Table 2 Section 251 HAVA Funds as of September 30, 2015*

<i>State</i>	<i>Total Section 251 Funds Received</i>	<i>Interest Earned</i>	<i>Total Expenditures</i>	<i>Balance of Funds and Interest<sup>2</sup></i>
ALABAMA	\$40,227,863	\$2,486,471	\$39,824,971	\$2,889,363
ALASKA	\$13,021,803	\$2,644,284	\$12,192,872	\$3,473,215
AMERICAN SAMOA	\$2,490,652	\$292,118	\$2,505,381	\$277,389
ARIZONA	\$45,516,688	\$5,438,176	\$49,179,627	\$1,775,238
ARKANSAS *	\$24,233,666	\$2,500,856	\$25,124,459	\$1,610,063
CALIFORNIA	\$296,375,482	\$42,166,410	\$280,364,188	\$58,177,705
COLORADO	\$38,767,048	\$4,686,455	\$42,024,447	\$1,429,056
CONNECTICUT	\$31,095,158	\$3,607,104	\$33,092,005	\$1,610,256
DELAWARE*	\$13,021,803	\$1,311,579	\$13,004,721	\$1,328,661
DISTRICT OF COLUMBIA	\$13,021,803	\$1,904,604	\$10,149,191	\$4,777,216
FLORIDA	\$148,633,043	\$21,733,507	\$143,326,786	\$27,039,768
GEORGIA	\$70,674,392	\$754,430	\$66,701,603	\$4,727,219
GUAM	\$2,319,361	\$48,049	\$2,367,410	\$0

<sup>2</sup> Negative balances indicate that States have expended state matching in addition to spending all Federal funds.



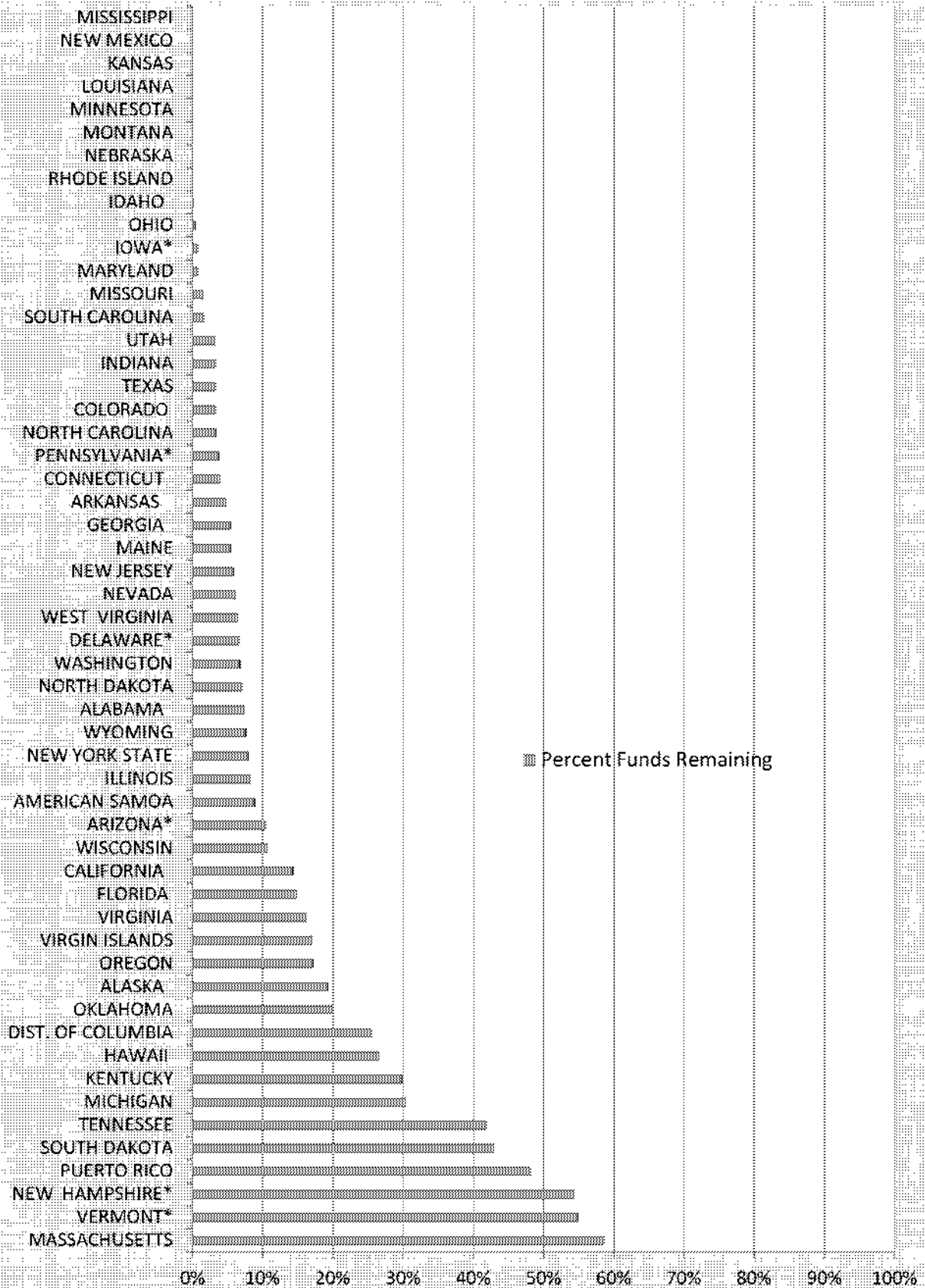
Table 2 Cont.

## Section 251 HAVA Funds as of September 30, 2015

State	Total Section 251 Funds Received	Interest Earned	Total Expenditures	Balance of Funds and Interest
HAWAII	\$13,028,257	\$976,297	\$11,937,648	\$2,066,906
IDAHO	\$13,021,803	\$1,267,652	\$14,243,966	\$45,489
ILLINOIS	\$110,593,988	\$9,208,291	\$117,446,540	\$2,355,739
INDIANA	\$54,440,282	\$2,280,602	\$54,277,323	\$2,443,561
IOWA*	\$26,645,880	\$1,464,690	\$28,083,331	\$27,240
KANSAS	\$24,033,426	\$2,222,954	\$30,853,941	-\$4,597,561
KENTUCKY	\$36,901,642	\$4,421,500	\$30,304,260	\$11,018,881
LOUISIANA	\$39,350,512	\$3,552,964	\$42,903,476	\$0
MAINE	\$13,021,803	\$1,522,238	\$14,398,763	\$145,278
MARYLAND	\$47,663,156	\$3,888,041	\$51,527,784	\$23,413
MASSACHUSETTS	\$57,005,182	\$10,053,616	\$22,343,759	\$44,715,040
MICHIGAN	\$88,535,685	\$7,286,592	\$70,384,601	\$25,437,676
MINNESOTA	\$43,962,194	\$3,747,120	\$48,180,437	-\$471,123
MISSISSIPPI	\$25,152,465	\$1,588,892	\$26,741,357	\$0
MISSOURI	\$50,394,880	\$4,234,453	\$53,652,234	\$977,098
MONTANA	\$13,028,257	\$618,633	\$13,979,996	-\$333,106
NEBRASKA	\$15,442,405	\$1,046,167	\$16,488,572	\$0
NEVADA	\$18,155,632	\$1,258,728	\$17,882,670	\$1,531,691
NEW HAMPSHIRE*	\$13,021,803	\$2,236,212	\$7,671,634	\$7,586,381
NEW JERSEY	\$76,360,392	\$5,807,374	\$76,882,167	\$5,285,599
NEW MEXICO	\$15,599,671	\$271,854	\$15,871,525	\$0
NEW YORK	\$172,076,865	\$32,936,224	\$194,021,980	\$10,991,109
NORTH CAROLINA	\$73,421,775	\$7,202,871	\$76,659,083	\$3,965,563
NORTH DAKOTA	\$13,028,257	\$1,354,370	\$13,006,503	\$1,376,124
OHIO	\$102,069,874	\$6,304,474	\$107,616,051	\$758,297
OKLAHOMA	\$30,200,723	\$3,763,721	\$26,347,576	\$7,616,867
OREGON	\$31,243,106	\$3,755,463	\$27,944,962	\$7,053,607
PENNSYLVANIA*	\$112,821,809	\$16,582,153	\$123,275,965	\$6,127,997
PUERTO RICO	\$5,868,252	\$208,118	\$1,503,921	\$4,572,449
RHODE ISLAND	\$13,021,803	\$485,182	\$13,506,985	\$0
SOUTH CAROLINA*	\$36,384,617	\$903,394	\$37,117,847	\$170,164
SOUTH DAKOTA	\$13,021,803	\$2,347,642	\$9,771,273	\$5,598,172
TENNESSEE	\$51,877,745	\$6,355,592	\$32,127,127	\$26,106,211
TEXAS	\$180,251,805	\$12,381,621	\$192,786,497	-\$153,071
UTAH	\$18,481,440	\$676,642	\$18,215,640	\$942,442
VERMONT*	\$11,596,803	\$3,054,249	\$3,530,397	\$11,120,655
VIRGIN ISLANDS*	\$2,319,361	\$71,885	\$1,832,412	\$558,834
VIRGINIA	\$64,449,288	\$9,259,683	\$60,279,328	\$13,429,644
WASHINGTON	\$52,928,051	\$6,453,154	\$55,434,180	\$3,947,025
WEST VIRGINIA	\$17,184,961	\$1,149,810	\$16,730,545	\$1,554,227
WISCONSIN	\$48,296,088	\$3,526,370	\$48,296,088	\$3,526,369
WYOMING	\$13,028,257	\$1,065,835	\$13,852,252	\$241,840
<b>Total</b>	<b>\$2,598,330,763</b>	<b>\$278,367,367</b>	<b>\$2,559,820,255</b>	<b>\$316,877,875</b>

\*2015 financial reports have not yet been submitted. 2014 expenditures levels reported here.

# Attachment A: HAVA Remaining Funds + Interest by State



\*Reporting 2014 expenditures- State has not yet submitted 2015 Reports.

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**From:** Christy McCormick [CMcCormick@eac.gov]  
**Sent:** 2/9/2017 4:14:49 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** Re: Meeting...

Meeting went well. Good discussion on elections including EAC, DOJ and DHS. Was told Senator McConnell is very interested in elections.

Sitting in the car dealership re-reading the district court opinion in NC. SMH -again - on how partisan the Appeals Court opinion was.

> On Feb 8, 2017, at 7:53 AM, Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov> wrote:

>

> Let me know how your meeting goes today!

>

> -----Original Message-----

> From: Christy McCormick [mailto:CMcCormick@eac.gov]

> Sent: Tuesday, February 7, 2017 4:20 PM

> To: Riordan, Maureen (CRT) <Maureen.Riordan@crt.usdoj.gov>

> Subject: Re: Meeting...

>

> 2 works great! Thank you!

>

> Christy

>

>> On Feb 7, 2017, at 4:18 PM, Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov> wrote:

>>

>> How does Monday at 11 or 2 work?

>>

>> Maureen Riordan

>> Attorney

>> Voting Section Civil Rights Division

>> U.S. Department of Justice

>

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**From:** Christy McCormick [CMcCormick@eac.gov]  
**Sent:** 2/14/2017 6:59:45 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** Re: Tuesday meeting time

Hey - downstairs but they don't have clearance from you.

> On Feb 14, 2017, at 7:26 AM, Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov> wrote:

>  
> Thank you Christy. Look forward to seeing you this afternoon! This list is awesome!

> -----Original Message-----

> From: Christy McCormick [mailto:CMcCormick@eac.gov]  
> Sent: Monday, February 13, 2017 10:51 PM  
> To: Riordan, Maureen (CRT) <Maureen.Riordan@crt.usdoj.gov>  
> Subject: Re: Tuesday meeting time

> Hi Maureen,

> Long day!  
> Here are some topics for the meeting:

> (b)(5)

> I hope this is a helpful starting point on several areas in which we could cooperate. Not sure we have time to thoroughly discuss them all, but even if we just touch on them it would be good.

> See you tomorrow!  
> Christy

>> On Feb 13, 2017, at 9:44 AM, Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov> wrote:

>> Major miscommunication. We are back to 2pm. Ill call you later today and explain.

>> -----Original Message-----

>> From: Christy McCormick [mailto:CMcCormick@eac.gov]  
>> Sent: Monday, February 13, 2017 7:18 AM  
>> To: Riordan, Maureen (CRT) <Maureen.Riordan@crt.usdoj.gov>  
>> Cc: Wheeler, Tom (CRT) <Tom.Wheeler@crt.usdoj.gov>; Gore, John (CRT) <John.Gore@crt.usdoj.gov>  
>> Subject: Re: Tuesday meeting time

>> Good morning Maureen,

>> That works for me. See you then!

>> Christy

>>> On Feb 13, 2017, at 5:23 AM, Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov> wrote:

>>> Morning Christy

>>> We were wondering if you could come earlier on Tuesday? One of our meetings was rescheduled to 3pm. We want to have sufficient time to meet with you. Does 1pm work for you?

>>> Thanks in advance

>>> Maureen

>>> Maureen Riordan

>>> Attorney

>>> Voting Section Civil Rights Division

>>> U.S. Department of Justice

>>  
>

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**From:** Kossack, Andrew J. EOP/OVP (b)(6)  
**Sent:** 6/14/2017 12:26:25 AM  
**To:** Wheeler, Tom (CRT) [Tom.Wheeler@crt.usdoj.gov]  
**Subject:** EO

Great to see you today. Hope all goes well (b)(6)

Here's the EO for the Presidential Commission on Election Integrity: <https://www.whitehouse.gov/the-press-office/2017/05/11/presidential-executive-order-establishment-presidential-advisory>

I'm in (b)(6) at EEOB.

(b)(6) wasn't in the office this afternoon, but I'll track him down tomorrow.

Andrew J. Kossack  
Associate Counsel  
Office of the Vice President

Email: (b)(6)

Cell: (b)(6)

---

**From:** Maureen Riordan (b)(6) [comcast.net]  
**Sent:** 7/10/2017 3:04:55 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** Fwd: Read these. Awesome briefs  
**Attachments:** Memorandum opposing motion to dismiss REED.pdf; rebuttal.pdf; Order denying motion to dismiss.pdf

Sent from my iPhone

Begin forwarded message:

**From:** "Christian Adams" <a@electionlawcenter.com>  
**Date:** July 10, 2017 at 10:30:16 AM EDT  
**To:** "maureen riordan" (b)(6) [comcast.net]  
**Subject:** **Read these. Awesome briefs**  
We won in EDVA on these briefs (PILF vs. [Manassas City])

**United States District Court  
Eastern District of Virginia  
Alexandria Division**

**The PUBLIC INTEREST LEGAL FOUNDATION**

*Plaintiff,*

v.

**SUSAN REED, in her official capacity as General  
Registrar for the City of Manassas,**

*Defendant.*

No. 1:16-CV-1375-GBL-MSN

**RESPONSE IN OPPOSITION  
TO DEFENDANT’S MOTION  
TO DISMISS**

**RESPONSE IN OPPOSITION TO SUSAN REED’S  
MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)**

Plaintiff Public Interest Legal Foundation (“PILF”), through counsel, files this response in opposition to the Defendant Susan Reed’s Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. 8).

**SUMMARY OF THE ARGUMENT**

This is an action brought under the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501, *et seq.*, to enforce obligations of election officials to allow inspection and photocopying of election records. 52 U.S.C. § 20507(i)(1). Plaintiff seeks election records from Defendant cataloging the list maintenance of registrations of those registrants found ineligible to vote because of problems with the registrant’s United States citizenship status. The Defendant

does not contest that she has failed to make the requested records available to Plaintiff. The Defendant has repeatedly refused to provide these list maintenance records even though multiple local election registrars from other jurisdictions in the Commonwealth have already provided Plaintiff the same records for their respective counties. (Compl. ¶ 8-16, 33-34.) Defendant's motion relies entirely on a single statute to deny inspection rights. This statute, part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 300002(a), 108 Stat. 1796 (1994), codified at 18 U.S.C. § 2721, has nothing to do with election list maintenance records or this case. Lastly, Defendant's motion is contrary to the unanimous weight of authority in rulings by the Fourth Circuit Court of Appeals, the United States District Court for the Eastern District of Virginia and other federal courts which have held that list maintenance records must be disclosed, even if the records contain derivative data originally captured by motor vehicle departments or contain arguably private information.

#### **12(b)(6) STANDARD**

The standard of review governing a Rule 12(b)(6) motion to dismiss is well established. While a complaint need not contain detailed factual allegations, it must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). A Rule 12(b)(6) motion should be granted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). In addition, this Court must "accept as true all well-pleaded allegations" and should construe those allegations in the light most favorable to a plaintiff. *Mylan Labs., Inc. v. Matkari*,



7 F.3d 1130, 1134 (4th Cir. 1993). “Rule 12(b)(6)’s purpose is to test the sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (quotations and citations omitted). A Rule 12(b)(6) motion should be granted “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Swierkiewicz*, 534 U.S. at 514.

**I. The statute relied on by the Defendant has no relevance to this case.**

The Complaint states that, beginning on August 8, 2016, the Plaintiff repeatedly and unsuccessfully sought particular election records from the Defendant. (Compl. ¶ 8-16). The Plaintiff sought, *inter alia*, the list of registrants whose registration the Defendant cancelled due to problems with the registrant’s United States citizenship status.

The National Voter Registration Act provides Plaintiff broad rights to inspect election list maintenance records upon request. Records “concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” must be made available to members of the public upon request directed to a custodian of those records pursuant to the NVRA. 52 U.S.C. § 20507(i)(1). The statute does not merely require the defendant to photocopy the records and at some point mail the records to a requesting party, such as a state freedom of information act statute typically requires. It mandates that defendant “shall make available for public inspection” the records. *Id.* The NVRA public inspection provisions are far more expansive than most typical state freedom of information act statutes, and certainly Virginia’s. *Compare* 52 U.S.C. § 20507(i)(1) *with* Va. Code § 2.2-3704(C) (NVRA has no procedure to extend or delay right to immediate inspection of records). The NVRA does not provide a deadline by which an election official must provide

the records, and instead relies on the statutory notice period before a suit may be brought found in 52 U.S.C. § 20510(b), a notice period which is not in issue in this motion and has been satisfied by the Plaintiff. Moreover, “where available,” requestors have a right to “photocopying at a reasonable cost” of these records. 52 U.S.C. § 20507(i)(1). As we shall see below, courts have interpreted these NVRA public inspection rights to election list maintenance records broadly, and fatally to Defendant’s motion to dismiss. Requesting parties may both physically inspect election list maintenance records as well as photocopy them pursuant to 52 U.S.C. § 20507.

The Defendant has denied, and continues to deny, access to publically inspect these records and would not provide duplications to the Plaintiff. (Compl. ¶¶ 11-12). Specifically, on August 8, 2016, the Plaintiff sought the following, as plead in the Complaint:

1. *Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any information source, including information obtained from the Virginia Department of Motor Vehicles or from the Virginia State Board of Elections since 2011. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant’s registration (if any) and the date of the action. This request extends to electronic records capable of compilation.*
2. *All communications regarding your list maintenance activities relating to #1 above to the Commonwealth’s Attorney, Virginia Attorney General, Virginia State Police, any other state law enforcement agencies, the United States Attorney’s office, or the Federal Bureau of Investigation.*
3. The total voting-age population in your jurisdiction as of the date of your response; and
4. The total number of voters registered in your jurisdiction as of the date of your response.

(Compl. ¶ 8.) It is true that the Plaintiff's request mentioned documents "including information obtained from the Virginia Department of Motor Vehicles," but the requests went far beyond that category of documents and unambiguously went far beyond motor vehicle records. Indeed, the request detailed in the Complaint included election list maintenance records that facially have nothing to do with the Virginia Department of Motor Vehicles.

### **Three Sub-classes of Records Sought**

The request above included requests for these sub-classes of documents, none of which have been provided by Defendant:

a. **Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any information source.**

b. Documents that provide the **names of the registrant** who were identified as potentially not satisfying the citizenship requirements for registration **from any information source**.

c. All documents providing the nature and content of **any notice sent** to any registrant potentially not satisfying the citizenship requirements for registration, including the **date of the notice, the response** (if any) of the registrant, and **actions taken regarding the registrant's registration** (if any) and the **date of the action**.

Note that these three subclasses of requested documents listed in the Complaint make no mention of motor vehicle information and specifically seek election list maintenance records having nothing to do whatsoever with motor vehicle records. Nevertheless, Defendant's sole defense relies on a federal statute that has nothing to do with the above three subclasses of list maintenance records: the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 300002(a), codified at 18 U.S.C. § 2721.

A closer examination of the plain language of 18 U.S.C. § 2721 reveals it has nothing to do with this case. It states:

(a) In General.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9).

18 U.S.C. § 2721. Personal information is defined by 18 U.S.C. § 2725(3) as: “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” The only possible information sought by the Plaintiff that even appears on this list is a name. As discussed below, Defendant’s argument regarding 18 U.S.C. § 2721 would produce an absurd result in interpreting the NVRA public records provisions.

“Highly restricted personal information” is defined by 18 U.S.C. 2725(4) is “an individual’s photograph or image, social security number, medical or disability information.” Nothing of that sort has even been sought by the Plaintiff. Thus, the only arguable record which 18 U.S.C. § 2721 prevents from release is a name. As discussed below, withholding the name of a registrant is plainly not permitted by the NVRA.

Defendant’s reliance on this statute to deny public review of election records is misplaced for multiple reasons. Remember, Plaintiff sought election list maintenance documents from the three classes of records discussed above regarding registration records which were ultimately

*scrutinized or cancelled for problems with citizenship status* of the registrants.<sup>1</sup> Plaintiff's requests were not made to a state motor vehicle agency. The requests were made to the Defendant county general election registrar. Plaintiff's requests do not involve motor vehicle information. They seek list maintenance records of a local registrar tasked with maintaining voter rolls free of non-citizens.

Yet the plain language of the statute relied upon by the Defendant does not pertain to a local general election registrar. The statute relied on restricts only state motor vehicle departments. The statute's reach is limited to a "State department of motor vehicles, and any officer, employee, or contractor." 18 U.S.C. § 2721(a). Defendant is not within the reach of the statute. Defendant is not the Virginia Department of Motor Vehicles. Defendant is not an "officer" of the Virginia Department of Motor Vehicles, nor an "employee." Nor is the Defendant a contractor with the Virginia Department of Motor Vehicles. Contractor is defined as "one that contracts, a party to a bargain: one that formally undertakes to do something for another." Webster's Third New International Dictionary, 2002, or "a party to a contract, 2. More specif., one who contracts to do work or provide supplies for another." Blacks Law Dictionary, 9<sup>th</sup> ed. 2009. Defendant has no contractual relationship whatsoever with the Virginia Department of Motor Vehicles, much less one envisioned by the term "contractor" in § 2721(a). Defendant is a stand-alone local constitutional office, and not a contractor under § 2721(a).

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<sup>1</sup> Multiple federal felony statutes implicate non-citizens who register to vote. 18 U.S.C. § 611 makes it a felony for non-citizens to vote in federal elections. 18 U.S.C. § 1015 makes it a felony to make false statements, including on voter registration forms, in order to register to vote or to vote in any Federal, State, or local election. 52 U.S.C. § 20511 makes the fraudulent submission of voter registration applications and the fraudulent casting of ballots a felony. It is also a felony for an individual to simply "falsely and willfully represent[] himself to be a citizen of the United States." 18 U.S.C. § 911. The Virginia Constitution also mandates that only American citizens may register to vote. Va. Const., Art. II, Sec. 1.

Defendant is not even a state officer of any sort. In any event, Defendant carries the heavy burden of a motion to dismiss and has made no showing whatsoever to the contrary that Defendant is a “contractor” as envisioned by § 2721(a). Nor could it because a 12(b)(6) motion may not test “the applicability of defenses.” *Presley*, 464 F.3d at 483. Defendant’s motion is better suited as an affirmative defense or basis to seek summary judgment.

But the fact that Defendant’s office is not covered by the plain meaning on § 2721(a) is just the first of several problems with Defendant’s reliance on 18 U.S.C. § 2721. Next, the Plaintiff has sought information from voter registration records, not motor vehicle records. Section 2721 only pertains to motor vehicle records. Plaintiff has not sought records “obtained by the [motor vehicle] department *in connection with a motor vehicle record*” as used in § 2721(1)(emphasis added). It has sought election list maintenance records such as notices mailed by a local election official to potential non-citizens on the registration rolls, the dispositions of those election inquiries by an election official, and records of cancellations of election registrations pursuant to those inquiries.

The Plaintiff’s inquiry, as demonstrated by the responses from numerous other general registrars to the Plaintiff across the Commonwealth, has nothing to do with motor vehicle records. For example, Plaintiff included as “Exhibit B” to Plaintiff’s Complaint the first page of a response from the Prince William County general registrar to an identical request. Prince William was one of multiple counties which provided, rather than denied, the requested records. Exhibit B does not come from the Virginia Department of Motor Vehicles and plainly contains

no motor vehicle information whatsoever. It is an election list maintenance record, not a motor vehicle record. Plaintiff seeks the same record for the Defendant's county.<sup>2</sup>

The Plaintiff requested election records maintained by the Defendant to conduct voter roll list maintenance. Plaintiff requested records that have nothing to do with the motor vehicle records or state department of motor vehicles covered by 18 U.S.C. § 2721. It is true that Plaintiff's request provided a multipart request "including information obtained from the Virginia Department of Motor Vehicles or from the Virginia State Board of Elections." But the mention of the Virginia Department of Motor Vehicles sourced records was inclusive, not exclusive. Defendant's motion inappropriately lumps all of Plaintiff's discrete requests, no matter the source, into one motor vehicle category – as if Plaintiff had asked for all records "**only** from the Virginia Department of Motor Vehicles." Plaintiff made no such request, and Defendant cannot now rely on a statute which has nothing to do with the three subclasses of records sought.

Finally, if Defendant is actually arguing that any list maintenance record which can trace its heritage to any nexus with a state motor vehicle agency, it has reduced the point to the absurd. The only record the Defendant can plausibly bar under personal information listed in 18 U.S.C. § 2725(3) would be the *name* of the registrant. Defendant's argument would prohibit the release of the name of any registered voter to any party. It would fully eradicate the public records rights enacted by the NVRA (also known as "Motor Voter") when it made both DMV and social service agencies voter registration entities. Motor vehicle agencies are not the only agencies

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<sup>2</sup> Contrary to assertions made by the Defendant, the Plaintiff has *absolutely not* received the requested records regarding the Defendant's county from any other source or even been offered the same. Even if Plaintiff had received the requested records from any other source, it would not absolve Defendant's obligation under the NVRA to permit an inspection of the same.

where voter registration is mandated under the NVRA. Even if motor vehicle records provided to general registrars may not be disclosed, the derivative list maintenance activities certainly must be disclosed, particularly the cancellation of voter registrations.<sup>3</sup> To accept Defendant's argument would obliterate public inspection rights to any election records which can trace its origin to some prior processing by a motor vehicle agency. Accepting Defendant's extreme position would fundamentally reorder the political landscape of the Commonwealth and deny voter information to Legislators and other entities who have relied on it for decades or more. It is *reductio ad absurdum* if a registration record could never be disclosed to anyone if it contained the name of someone that once provided information to a motor vehicle agency pursuant to NVRA.

**II. The Motion to Dismiss should be denied because the unanimous weight of authority supports Plaintiff.**

The overwhelming weight of authority supports denial of Defendant's motion and Plaintiff's rights under the NVRA to inspect the requested documents. Under strikingly similar circumstances, the United States District Court for the Eastern District of Virginia, the Fourth Circuit and other federal courts found that public inspection and information rights under the NVRA support denial of the Defendant's motion. *See Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. Va. 2012) (affirming summary judgment in favor of plaintiff NVRA records requestor); *Project Vote Voting for America v. Long*, 752 F. Supp. 2d 697, 703-704 (E.D. Va.

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<sup>3</sup> For example, Plaintiff's three subsets of requested records detailed in this response do not include any records subject to Virginia Code Ann. § 24.2-410.1(B), which is a motor vehicle department non-citizen list. To the extent that Plaintiff was denied inspection rights to that discrete subset of information sought (and which is plainly not contained in the three classes detailed in this response), any denial based on Virginia Code Ann. § 24.2-410.1(B) would be invalid based on the Supremacy Clause and inspection rights to list maintenance records under 52 U.S.C. § 20507(i)(1). Contrary to Defendant's motion, Plaintiff is not pressing that claim and has sought three subclasses of records which are facially not DMV records in the Complaint.



2010) (denying defendants 12(b)(6) motion in NVRA public inspection case); *Project Vote Voting for America v. Long*, 813 F.Supp.2d 738, 742-43 (E.D. Va. 2011) (granting summary judgement for plaintiff/requestor in NVRA public inspection rights case); *Project Vote v. Kemp*, No. 1:16-cv-2445-WSD, 2016 WL 5092512, \_\_\_ F. Supp.3d \_\_\_, \*11-14, (N.D. Ga., Sept. 20, 2016) (denying defendant’s motion to dismiss in NVRA public inspection case and granting injunctive relief to plaintiff records requestor).

There can be no debate that “the NVRA provides a public right to information.” *Project Vote Voting for America v. Long*, 752 F. Supp. 2d at 703. Plaintiffs therefore “need show [no] more than that they sought and were denied specific agency records.” *Id.* at 703 (internal citations omitted) (brackets in original). The two *Project Vote* rulings in the same litigation regarding public inspection rights under the NVRA by the United States District Court for the Eastern District of Virginia as well as the Fourth Circuit’s affirmation in *Project Vote* strongly support denial of Defendant’s motion. In *Project Vote*, plaintiffs sought voter registration and list maintenance records, namely voter registration forms. *Id.* at 699. Defendants there raised similar arguments to the arguments now being raised by the Defendant in this case— namely, that the NVRA did not require the disclosure of the requested information and various other federal statutes and state exemptions superseded NVRA public inspection rights. All three opinions by the district court and Fourth Circuit Court of Appeals in *Project Vote* are contrary to the Defendant’s position.

In the first opinion in *Project Vote*, the district court denied a 12(b)(6) motion to dismiss. As a preliminary matter “the court must first determine what constitutes a program or activity conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” *Project Vote Voting for America v. Long*, 752 F. Supp. 2d at 705. In this case, Plaintiff

seeks records specifically related to activities aimed at ensuring the accuracy of the official lists of eligible voters, namely whether certain registrations were examined or canceled due to problems with citizenship status. It is hard to imagine a record more germane to public inspection rights of the NVRA. The “process by which the Commonwealth determines whether a person is eligible to vote certainly falls within the purview of the federal statute, as such a process, by its very nature, is designed to ensure that the Commonwealth’s lists are current and accurate.” *Id.* at 706.

The district court rejected the defendant’s arguments in *Project Vote* that disclosure under the NVRA of certain personally identifying information, such as names of registrants subject to cancellation, would frustrate the purposes of the NVRA.

The court disagrees. As a general matter, the statute identifies the information which Congress specifically wished to keep confidential, and sections of the statute require that the state inform applicants that such information will be kept confidential and used for limited purposes. . . . **Similarly, the statute explicitly requires that other information related to voter registration, which to some persons may be considered sensitive, be disclosed to the public.** See 42 U.S.C. § 1973gg-6(i)(2) (subjecting to disclosure lists including the “names and addresses” of persons to whom notices are sent regarding their removal from the voter rolls.)

*Project Vote Voting for America v. Long*, 752 F. Supp. 2d at 710 (emphasis added). This is precisely the sort of information the Plaintiff requested in the three subclasses of information sought— including names of registrants who received notices of possible citizenship defects and the ultimate disposition of those inquiries and the date of disposition.

In granting the plaintiff’s motion for summary judgment in *Project Vote*, the United States District Court for the Eastern District of Virginia also rejected the defense that public inspection rights were inconsistent with other federal statutes, and should so again here. “The court disagrees with this position. The instant dispute only involves the proper interpretation of

the NVRA's Public Disclosure Provision. Disclosure of the completed voter registration applications does not implicate" either the Military and Overseas Voter Empowerment Act or Help America Vote Act.<sup>4</sup> *Project Vote Voting for America v. Long*, 813 F. Supp. 2d at 743. The district court also specifically rejected the defense that various state laws prohibited the inspection of election records: "Furthermore, to the extent that any Virginia law, rule, or regulation forecloses disclosure of completed voter registration applications with the voters' SSNs redacted, the court FINDS that it is preempted by the NVRA." *Id.* If Virginia law prohibits disclosure of documents pertaining to list maintenance activity, that state statute is preempted.

Defendant's effort to narrow the scope of the holdings in *Project Vote* should be rejected. Remember, in denying the defendant's 12(b)(6) motion to dismiss in *Project Vote*, the court considered it an elementary question that records related to actual list maintenance and registrant removal programs were unquestionably subject to disclosure under the NVRA. *Project Vote Voting for America v. Long*, 752 F. Supp. 2d at 706. The plaintiff sought information beyond actual list maintenance and registrant removal records—namely the voter registration forms themselves. At issue in *Project Vote* was whether underlying voter registration forms (some of which were likely filled out in a motor vehicle agency) were also subject to disclosure even though they were not specifically mentioned in the NVRA disclosure provisions.

The district court ruled against the defendant and held that the NVRA reaches beyond mere list maintenance records. Whether records related to list maintenance and cancellation of registrations were subject to disclosure was not a close call. The court relied on the plain text of the statute and ruled that the records subject to disclosure were expansive. "As the statute

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<sup>4</sup> 52 U.S.C. § 20301, *et seq.*, and Pub.L. No. 107–252, 116 Stat. 1666, respectively.

requires disclosure of ‘all records’ relating to voter registration procedures, *a fortiori* voter registration applications, which obviously so relate, must also be disclosed.” *Project Vote Voting for America v. Long*, 752 F. Supp. 2d 697 at 706 n.14. Thus, the court rejected the defendant’s 12(b)(6) motion to dismiss because NVRA public inspection rights superseded any state created exemptions and were not in conflict with other federal laws. Accordingly, even registration forms were subject to disclosure.

Defendant’s argument that *Project Vote* “is factually distinguishable from the requested information in the current matter” (Mot. to Dismiss ¶ 22) somehow manages to misunderstand the posture of *Project Vote* and the fact no party in that case disputed that list maintenance documents detailing the processing of registrant cancellations are subject to disclosure under NVRA. *Project Vote* was a dispute about whether voter registration forms are also list maintenance records. Defendant somehow misunderstands this central characteristic of *Project Vote*.

After denying a motion to dismiss, the United States District Court for the Eastern District of Virginia subsequently granted *summary judgment to the requesting NVRA plaintiff* in the second *Project Vote* opinion. *Project Vote Voting for America v. Long*, 813 F.Supp.2d at 742-43. Defendants there sought to treat an NVRA public inspection request like a Virginia Freedom of Information Act request and limit actual physical inspection rights. The district court rejected the defense: “Additionally, to the extent that the Virginia statute limits the availability of the Requested Records to the public for inspection and photocopying, it is superseded by the NVRA, pursuant to the Supremacy Clause of the United States Constitution.” *Project Vote Voting for America v. Long*, 813 F.Supp.2d at 741.

In granting summary judgment to the plaintiff-record requestor, the district court again interpreted the NVRA public inspection rights broadly. A “program or activity covered by the Public Disclosure Provision is one conducted to ensure that the state is keeping a ‘most recent’ and errorless account of which persons are qualified or entitled to vote within the state.” *Id.* at 742 (internal citation omitted). The three subclasses of information sought by the Plaintiff are virtually synonymous with what the *Project Vote* court held is subject to disclosure under NVRA.

In entering injunctive relief for the requesting plaintiff in *Project Vote*, the United States District Court for the Eastern District of Virginia ordered the release of all requested information, save for social security numbers, and ordered that “the defendants will need to remove language on Virginia’s voter registration application that claims the application is not subject to public disclosure.” *Project Vote Voting for America v. Long*, 813 F.Supp.2d at 746. Thus, the district court found that there could be no genuine issue of material fact when a defendant election official denies public inspection rights to any list maintenance record or voter registration form that does not include social security numbers and granted the plaintiff summary judgment.

The Fourth Circuit Court of Appeals affirmed the district court’s denial of the defendant’s motion to dismiss and grant of summary judgment to a plaintiff requestor under NVRA. *Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. Va. 2012).

Finally, as explained above, Section 8(i)(1) of the NVRA mandates public disclosure of voter registration activities. It generally requires states to 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.

*Id.* at 334 (internal citations and quotations omitted). The court rejected the argument that only “voter removal” records were subject to disclosure and held the reach of documents subject to inspection included voter registration forms. “First, the process of reviewing voter registration applications is a ‘program’ and ‘activity.’ Under Virginia law, election officials must examine completed voter registration applications and register applicants that possess the necessary qualifications.” *Id.* at 335. It again bears mention that both the district court and Fourth Circuit found it a settled question that “voter removal” records of the sort sought by Plaintiff here are certainly within the reach of the NVRA, even if Defendant seeks to “factually distinguish” *Project Vote* from this case. Defendant’s effort to limit the reach of the *Project Vote* cases is misguided.

The court noted that voter registration forms were subject to disclosure because evaluating their completeness was “conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” *Id.* The importance of disclosing records regarding “accuracy” and “currency” were the touchstones of public disclosure requirements under the NVRA to the Fourth Circuit. Records related to the accuracy and the currency of the registration lists simply must be disclosed. Records related to whether registrants were removed for defective citizenship status is squarely within this obligation.

“Finally, the fact that [Section 8(i)(1)] very clearly requires that ‘**all records**’ be disclosed brings voter registration applications within its reach.” *Project Vote v. Long*, 682 F.3d at 336 (emphasis added). The Fourth Circuit went further on this point: “As this court has recognized, ‘the use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.’” *Id.* (brackets in original). “Because the NVRA requires disclosure of all materials described in Section 8(i)(1), including voter registration records,

defendants must permit inspection of the completed applications, as instructed by the district court.”<sup>5</sup>

The Fourth Circuit lastly rejected the defendant’s claim that other federal statutes prohibit the disclosure of information for the same statutory construction reasons this Court should reject Defendant’s similar defense: “Appellants’ argument ignores the plain language of the MOVE Act, which expressly limits the application of its security and privacy provisions to personal data conveyed during the voter form request process.” *Project Vote v. Long*, 682 F.3d at 338. For the reasons discussed above, the plain language of the statute Defendant relies on to block release of information offers no defense.

The Fourth Circuit held that the importance of transparency in the election process through NVRA disclosure outweighs any privacy concerns. “Public disclosure promotes transparency in the voting process, and courts should be loath to reject a legislative effort so germane to the integrity of federal elections.” *Id.* 339-40. As Defendant does here in this case before this Court regarding the public disclosure provisions of the NVRA, “[i]n the end, appellants ask us to revisit issues already resolved by the Congress.” *Project Vote v. Long*, 682 F.3d 331, at 340.

Lastly, Defendant could resolve this dispute by providing a document that would take minutes to print from computers in Defendant’s office, as many other local general registrars have already done for the Plaintiff. The fact that the data is in electronic form does not absolve

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<sup>5</sup> Nor was the court willing to entertain that a list in the NVRA of some documents subject to disclosure precluded documents not listed. “First, the statute clearly states that ‘all records’ falling under Section 8(i)(1) must be publicly disclosed, not just those explicitly listed in Section 8(i)(2). Moreover, as the district court recognized at the motion to dismiss hearing, the term ‘shall include’ sets ‘a floor, not a ceiling.’” *Project Vote v. Long*, 682 F.3d at 337 (internal citations omitted).

Defendant from compliance with the NVRA. The district court denied a motion to dismiss and granted summary judgment for a plaintiff-NVRA requestor in the recent case of *Project Vote v. Kemp*, No. 1:16-cv-2445-WSD, 2016 WL 5092512, \_\_\_ F. Supp.3d \_\_\_, \*11-\*14, (N.D. Ga. Sept. 20, 2016). There, the court rejected the defense that electronic records are not subject to disclosure. “Interpreting ‘records’ to exclude information contained within electronic databases also would allow States to circumvent their NVRA disclosure obligations simply by choosing to store information in a particular manner. Given the ubiquity and ease of electronic storage, this would effectively render Section 8(i) a nullity.” *Id.* at \*12. The district court accordingly denied a motion to dismiss and entered injunctive relief against the defendant ordering the disclosure of records.

For these reasons, Defendant’s motion to dismiss should be denied.

\_\_\_\_\_  
/s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of December, 2016, a true and correct copy of the foregoing Memorandum Supporting Response in Opposition to Motion to Dismiss Pursuant to Rule 12(b)(6) was served on all parties via this Court's ECF system, which notified the following counsel of record:

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

THE PUBLIC INTEREST LEGAL	)	
FOUNDATION, INC.	)	
	)	
Plaintiff,	)	
	)	Civ. No. 1:16-CV-1375
v.	)	
	)	
SUSAN REED, in her official capacity as	)	
General Registrar for the City of Manassas,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

**SUSAN REED’S REPLY TO PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANT’S MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(b)(6) AND MEMORANDUM OF POINTS AND AUTHORITIES**

Susan Reed (“Defendant”), in her official capacity as General Registrar for the City of Manassas, by counsel, respectfully submits this Reply to Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). In connection therewith, Defendant respectfully states as follows:

**Procedural Background**

The Public Interest Legal Foundation, Inc. (“Plaintiff”) commenced this adversary proceeding by filing a Complaint on October 31, 2016 seeking declaratory and injunctive relief to compel Defendant’s compliance with Section 8 of the National Voter Registration Act of 1993 (“NVRA”). Defendant filed a motion to dismiss on November 25, 2016. Plaintiff filed its Memorandum in Opposition to Defendant’s Motion to Dismiss on December 6, 2016.

## Argument

### **I. Non-Citizenship Cancellation Reports Derived from the DMV Are Prohibited From Disclosure**

Plaintiff asserts that its requests for non-citizenship cancellation reports “do not involve motor vehicle information” and that they “seek list maintenance records of a local registrar tasked with maintaining voter rolls free of non-citizens.” Specifically, Plaintiff argues that its requests pertain to three subclasses of information that relate to all list maintenance. However, all of the information requested related to the non-citizenship of persons and their identities is entirely derived from Department of Motor Vehicle (“DMV”) records, and is therefore only property disclosed under discrete circumstances found in 18 U.S.C. § 2721(b) and (c). The plaintiff falls outside of the class of persons to whom this information is lawfully available.

The NVRA specifies that list maintenance documents are “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.” 42 U.S.C. § 1973gg-67(i)(I). Plaintiff may access such information through inspection of the voter rolls and voter registration documents. In its Complaint, Plaintiff focuses its request on “records showing individuals whose voter registrations have been cancelled because they were determined to not be United States citizens.” Comp. ¶ 10. While the disclosure requirements have been interpreted broadly, there is no authority establishing that non-citizenship cancellation reports must be disclosed under the NVRA. The information in non-citizenship cancellation reports derives from the DMV. As

such, the non-citizenship cancellation reports are distinctly different from the list maintenance documents created and maintained in the Office of the General Registrar.

Plaintiff erroneously posits that 18 U.S.C. § 2721 applies only to disclosures by the DMV. This contention is flawed. Section 2721(b) allows the DMV to disclose “personal information” to “any government agency, including any court of law enforcement agency, in carrying out its function . . . .” Consequently, the DMV is permitted to disclose non-citizenship cancellation reports to the General Registrar, an official of a government agency; however, this disclosure does not extend to list maintenance requests made by private citizens. Section 2721(c) prohibits re-disclosure by an authorized recipient (the General Registrar) to those who fall outside of the exceptions enumerated in Section 2721(b). The plaintiff does not fall under the exception found in paragraph (b)(1) and cannot reasonable be said to be assisting any government agency in carrying out its functions. Rather, providing the personal information to the General Registrar for the express purpose of disclosing the information to a private citizen would be a direct violation of the prohibition established in Section 2721.

Additionally, Plaintiff contends that the information requested relates to voter registration records and not motor vehicle records. Specifically, Plaintiff requests documents “regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from *any information source*”; “provid[ing] the names of the registrant who were identified as potentially not satisfying the citizenship requirements for registration from any information source”; and “provid[ing] the nature and content of any notice sent to any registrant potentially not satisfying the citizenship requirements for registration.” Despite these initial vague requests, in its Complaint, Plaintiff elaborates and solely focuses solely on disclosure of “duplicate records showing individuals whose voter registrations have been cancelled because

they were determined not to be United States citizens (hereafter, the “noncitizen cancellation reports”).” Compl. ¶ 10.

While Plaintiff argues that its request is not restricted to the DMV, all of the information requested by the Plaintiff derives from the DMV. Mandating disclosure of the information would require the DMV to knowingly provide the information to the General Registrar for disclosure to a non-governmental private entity. Such disclosure would contradict the express prohibitions under Section 2721. Accordingly, the information is prohibited from disclosure.

## **II. *Project Vote* Pertained to Voter Registration Information and Is Distinguishable**

Plaintiff argues that the “overwhelming weight of authority” supports denial of Defendant’s motion by contending that the *Project Vote* cases are dispositive of the current matter. *Project Vote* dealt with a non-profit group that sought to increase voter registration. See *Project Vote Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012); *Project Vote Voting for Am., Inc. v. Long*, 813 F. Supp. 2d 738 (E.D. Va. 2011); *Project Vote Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697 (E.D. Va. 2010). The plaintiffs in *Project Vote* specifically requested

“completed *voter registration applications* of any individual who timely submitted an application at any time from January 1, 2008, through October 31, 2008, who was not registered to vote in time for the November 4, 2008 general election,” as well as “documents identifying the reasons the applications were rejected.”

682 F.3d at 332 (emphasis added). In the current matter, Plaintiff request “duplicate records showing individuals whose voter registrations have been cancelled because they were determined not to be United States citizens.” Consequently, the information requested is not voter registration applications and is entirely different than the requested information at issue in *Project Vote*.

First, as previously established, the information requested is directly derived from the DMV and is prohibited under Section 2721(a). Additionally, while the voter registration information in *Project Vote* did not deal with non-citizenship cancellation requests, the Fourth Circuit did address information relating to citizenship under the NVRA. Specifically, the Fourth Circuit found

[w]ithout verification of an applicant's *citizenship*, age, and other necessary information *provided by registration applications*, state officials would be unable to determine whether that applicant meets the statutory requirements for inclusion in official voting lists. Thus, *completed applications* not only "concern[ ] the implementation of" the voter registration process, but are also integral to its execution

682 F.3d at 336 (emphasis added). In analyzing Plaintiff's request for voter registration applications, the Fourth Circuit suggests that citizenship information can be provided by registration applications. *Id.* The relevant non-citizenship information requested by Plaintiff is accessible through the normal information divulged by state election officials in voter registration applications. While not presented with a request for non-citizenship cancellation reports, the Fourth Circuit found that voter registration applications were sufficiently detailed to provide citizenship information when determining whether individuals were properly included in voting lists. *Id.* Rather than supporting Plaintiff's contention, *Project Vote* demonstrates that the information sought by Plaintiff can be received through voter registration applications and other information normally sought under the NVRA.

Lastly, improper disclosure of personal information protected by the DMV has led to incidents of danger and harassment to the victim. In *Margan v. Niles*, the plaintiff, who had been hired to administer the defendant's workers' compensation case, hired a team of private investigators to gather information regarding the defendant's alleged compensable work-related

injury. 250 F.Supp.2d 63, 66 (E.D.N.Y. 2003). In response, the defendant accessed personal information from the DMV through his friend, a police officer, and went to the plaintiffs' homes, "engaged in acts of vandalism" and harassment towards the plaintiffs. *Id.* at 66-67. Specifically, the defendants went to the plaintiff's home, "videotaped her family, including her children; delivered the videotape together with a threatening note to her home; sent her flowers with a threatening greeting card attached; and otherwise harassed or threatened her." *Id.* at 66. *Margan* is a striking example of why the personal information at issue is prohibited from disclosure and the utility Section 2721 serves in protecting private citizens from unnecessary disclosure. Allowing the Plaintiff access to the protected information within the non-citizenship cancellation reports would needlessly place many Virginia residents at risk of similar harassment and threatening conduct.

As such, Plaintiff's request is prohibited from disclosure under Section 2721 and accessible through voter registration applications. Accordingly, this Court should grant Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and dismiss the Complaint with prejudice.

WHEREFORE, Susan Reed, in her official capacity as General Registrar for the City of Manassas, respectfully requests that the Court: (i) dismiss the Complaint filed by the Public Interest Legal Foundation, Inc. with prejudice for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6); and (ii) grant Defendant such other and further relief as may be just and proper.

Respectfully submitted,

SUSAN REED, in her official capacity  
General Registrar for the City of Manassas

By:  /s/ William W. Tunner  
Counsel

William W. Tunner, Esquire (VSB #38358)  
David N. Gustin, Esquire (VSB #86350)  
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Email: dgustin@t-mlaw.com

*Counsel for Susan Reed*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of December, 2016, a true and accurate copy of the foregoing Motion was served via the Electronic Case Filing (ECF) system, as appropriate and as indicated, on the following parties:

J. Christian Adams (VSB#42543)  
Noel H. Johnson  
Public Interest Legal Foundation  
209 W. Main Street  
Plainfield, IN 46168  
Phone: (317) 203-5599  
Fax: (888) 815-5641  
E-mail: adams@publicinterestlegal.org  
E-mail: njohnson@publicinterestlegal.org

/s/ William W. Tunner  
William W. Tunner

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

THE PUBLIC INTEREST LEGAL	)	
FOUNDATION, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:16-cv-01375
	)	
	)	
SUSAN REED, in her official	)	
capacity as General Registrar	)	
for the City of Manassas,	)	
	)	
Defendant.	)	

**ORDER**

THIS MATTER comes before the Court on Defendant Susan Reed's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 8.) Plaintiff, The Public Interest Legal Foundation, Inc., brought this suit under Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507, seeking declaratory and injunctive relief to order Defendant, in her official capacity as General Registrar for the City of Manassas, to allow Plaintiff to inspect voter records.

Defendant has moved to dismiss the Complaint on the grounds that the privacy provision of the Driver Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. §§ 2721-2725, overrides the public disclosure provision of the NVRA under the circumstances of this

case. The Court finds that the DPPA does not apply to the disclosure of the voter information requested by Plaintiff. Because Plaintiff has stated a plausible claim for declaratory and injunctive relief, it is hereby

ORDERED that Defendant Susan Reed's Motion to Dismiss is DENIED.

  
CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia  
January 27, 2017

---

**From:** Christy McCormick [CMcCormick@eac.gov]  
**Sent:** 4/13/2017 8:14:47 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** Re: HAVA Grant Report  
**Attachments:** Implementing the NVRAFEC94.webarchive

You're welcome. The FEC Guidance on Implementing the NVRA is SUPER OLD - one doc is from 1994, and the other is from 1998. I'm attaching the 94 doc here and will send you the 98 doc in a separate email (this email work-around doesn't have enough bandwidth for attaching both.)

I'll be working from home in the morning tomorrow and then heading up to DC for an early evening event. Feel free to call whenever.

Christy

---

**From:** Riordan, Maureen (CRT) <Maureen.Riordan@usdoj.gov>  
**Sent:** Thursday, April 13, 2017 9:22 AM  
**To:** Christy McCormick  
**Subject:** RE: HAVA Grant Report

Major thanks Christy!

(b)(6) yesterday, hence, I never called. Lets talk on Friday. Are you at home then?

**From:** Christy McCormick [mailto:CMcCormick@eac.gov]  
**Sent:** Wednesday, April 12, 2017 6:16 PM  
**To:** Riordan, Maureen (CRT) <Maureen.Riordan@crt.usdoj.gov>  
**Subject:** HAVA Grant Report

Hi Maureen,

Here is the HAVA Grant Report that shows the HAVA monies provided to each state and the balances. This report is the latest we have - in fact, another one was due a couple of weeks ago, but our grants people have

not provided it to me yet. As soon as I get a copy, I will forward it to you. I think they were waiting on some of the reports that are due from the states.

Please let me know if you have any questions.

I still need to provide you with a link to whatever NVRA list maintenance guidance we have - as soon as I get that, I will send it to you.

Thanks!

Christy

Christy A. McCormick | Commissioner

U.S. Election Assistance Commission

1335 East West Highway | Suite 4300

Silver Spring | MD | 20910

(301) 563-3965 office | (202) 243-9476 cell

[cmccormick@eac.gov](mailto:cmccormick@eac.gov) | [www.eac.gov](http://www.eac.gov)

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Christy McCormick

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1

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Deleted Items

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Move to  
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Filter

**Next:**

Loading your upcoming events...

**Next:**

No events for the next two days.

**Agenda**

(b)(6)

Map update

3:14 PM

Commissioners, There was an error on the previous map update, so please use the image and link below for the All Commissioner Travel map: <http://j.mp/2orSS1m>  
Commissioner Hicks, The updated image for your travel map is also attached and her

(b)(6)

Updated San Antonio draft

2:42 PM

Hello, again! I've received some additional feedback to the second draft. Attached is the most recent piece with changes highlighted in yellow. Please let me know if you have additional edits or if you're good to go. Thanks! (b)(6) \_\_\_\_\_

(b)(6)



NVRA

1:45 PM

Christy, I believe these are the files you were looking for (actually, the larger one, but I found two) related to NVRA.

(b)(6)

All Commissioner Travel Map

11:49 AM

Commissioners, Attached is the updated "All Commissioner Travel" map through the end of May 2017. You can use the attached image or the link for the map is: <http://j.mp/>

(b)(6)

[Draft] Riordan, Maureen (CRT)

HAVA Grant Report

9:22 AM

Major thanks Christy! (b)(6) hence, I never called. Lets talk on Friday. Are you at home then? From: Christy McCormick [mailto:CMcCormick@eac.gov] Sent: Wednesday, April 12, 2017 6:16 PM To: Riordan, Maureen (CRT) <Maure

The National Law Journal Daily Headlines

Big Law Bench Runs Deep in \$655M Terror Case at High Court

7:01 AM

Today's Top Stories Big Law Bench Runs Deep in \$655M Terror Case at High Court  
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## Public Policy Law360

Big Biz Presses Trump To Continue ACA Subsidies

4:23 AM

Top business groups, including the U.S. Chamber of Commerce, on Wednesday urged  
President Donald Trump and Congress to quickly ensure that billions of dollars in  
Affordable Care Act subsidies aren't curtailed. PUBLIC POLICY

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**Yesterday**

(b)(6)

Test

Wed 5:30 PM

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From: Christy McCormick Sent: Wednesday,  
April 12, 2017 4:42 PM To: Mark Abbott Subject: Test

## NLJ Legal Times Afternoon Update

J&J, Backed by Battalion of Lawyers, Opens 5th Talcum Powder Trial

Wed 4:05 PM

Today's Top Stories • J&J, Backed by Battalion of Lawyers, Opens 5th Talcum Powder Trial • In Light of United's Overbooking Fiasco, Who's Leading the Legal Department? • So Awkward! What to Do When a Justice Butchers a Pronunciation From th

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Wed 1:47 PM

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(b)(6)

Comments: This is a system-generated email. Please do not reply.

do-not-reply@concursolutions.com

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Wed 1:47 PM

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NLJ Compliance Review Alert

Wed 12:09 PM

PUBLISHEDBYALM Fog of War: No presidential transition comes without some uncertainty for regulated industries and the lawyers who work in them. But the pace of the Trump administration's deregulatory push has proved dizzying for corporate leg

## Christy McCormick

Intern applicant

Wed 11:25 AM

(No message text)

## AC Latin America

INVITATION: Economic Reforms & the Future of Brazil's Middle Class w/ Minister Henrique Meirelles, 4/20 @ 12 pm EDT

Wed 10:19 AM

Economic Reforms & the Future of Brazil's Middle Class A conversation with Brazilian Finance Minister Henrique Meirelles With bold economic and structural reforms, Brazil is trying to turn the page on the largest recession of its history and p

(b)(6)

Deschutes County, Oregon Chooses ClearVote

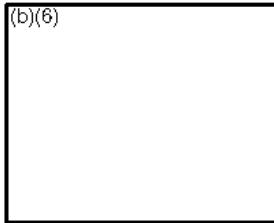
Wed 9:58 AM

View this email in your browser Deschutes County, Oregon Chooses ClearVote For New Voting System Solution Registered voters using ClearVote technology in Oregon increases to 62 percent BOSTON, MA – Clear Ballot announced toda

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NVRA

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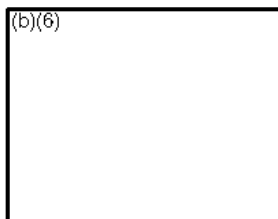
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Riordan, Maureen (CRT) added to the To line

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**NVRA**

2



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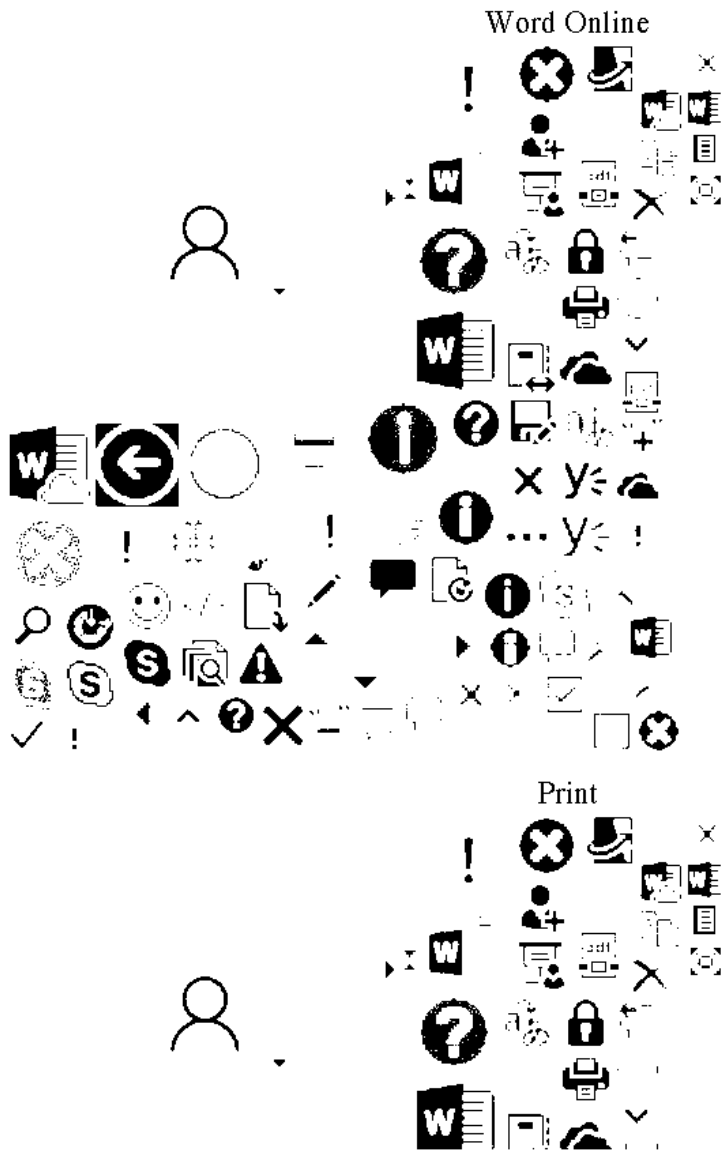
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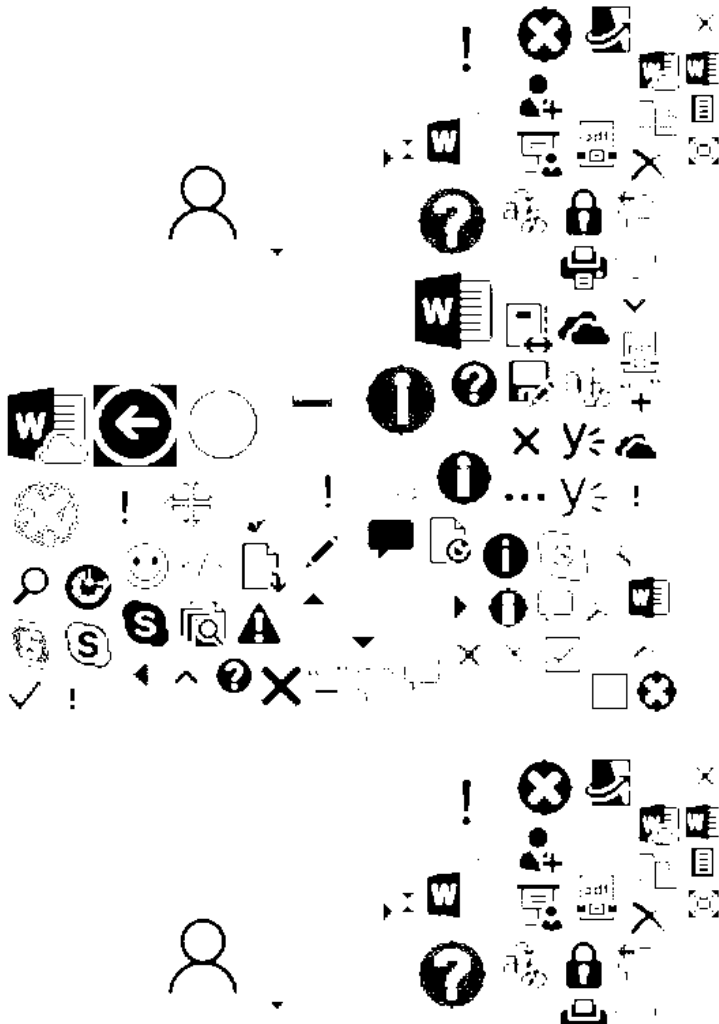
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**From:** Christy McCormick [CMcCormick@eac.gov]  
**Sent:** 4/13/2017 8:16:37 PM  
**To:** Riordan, Maureen (CRT) [Maureen.Riordan@crt.usdoj.gov]  
**Subject:** FED Guide for Implementing the NVRA  
**Attachments:** Implementing the NVRAFEC98.webarchive

Maureen,

This is the doc the FEC produced in 98.

Talk to you soon,

Christy





---

# **Implementing the National Voter Registration Act: A Report to State and Local Election Officials on Problems and Solutions Discovered 1995 – 1996**

---

**Prepared by:  
The Office of Election Administration  
Federal Election Commission  
Washington, D.C. 20463  
March 1998**

**What is the Office of Election Administration?**

The Office of Election Administration (formerly known as the National Clearinghouse on Election Administration) is a division of the United States Federal Election Commission. Our purpose is to help State and local election officials ensure the integrity and efficiency of the election process. We pursue this mission through research, publications, conferences, speaking engagements, and by providing information on a broad spectrum of election related matters free of charge to State, local, and international election officials, legislators, academics, the media, and the general public.

If you have questions about federal election related legislation or about the election process in general, please feel free to contact us at the numbers and addresses provided on the inside of the back cover.

**What is Their Role in the National Voter Registration Act?**

The National Voter Registration Act of 1993 specifically requires the Federal Election Commission (1) to provide information to the States regarding their responsibilities under the Act, (2) to design the national mail registration form, and (3) to report to the Congress each two years on the impact of the NVRA on the administration of elections.

Accordingly, in 1993, the FEC's Office of Election Administration provided the States with a guide to *Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples*. In 1994, we provided the States camera-ready copy and a modest supply of the national mail registration form and accompanying booklet. And, of course, we submitted the required report to the Congress in both 1995 and 1997.

We remain available to answer any questions you may have about the NVRA or to discuss any problems you may be having with it -- although the enforcement authority of the Act is the Department of Justice. But if you have questions or problems, please do not hesitate to contact us at the numbers or addresses provided on the inside back cover.

**Implementing the National Voter Registration Act :  
A Report to State and Local Election Officials on  
Problems and Solutions Discovered 1995-1996**

**Prepared by:**

**The Office of Election Administration  
Federal Election Commission  
Washington, D.C. 20463  
March 1998**