

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

_____	)	
KATHERINE SULLIVAN, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	Case No. 1:24-cv-00172-MJM
	)	
v.	)	
	)	
MICHAEL G. SUMMERS, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**JUDICIAL WATCH’S UNOPPOSED MOTION FOR LEAVE  
TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS**

Judicial Watch, Inc., by and through undersigned counsel, respectfully move for leave to file the attached *amicus curiae* brief in support of Plaintiffs Katherine Sullivan and David Morsberger (collectively, “Plaintiffs”) under Local Rule 12.<sup>1</sup>

Judicial Watch, Inc. (“Judicial Watch”) is a non-partisan, public interest organization headquartered in Washington, DC. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. In furtherance of these goals, Judicial Watch regularly files *amicus curiae* briefs and prosecutes lawsuits on matters it believes are of public importance. Judicial Watch has appeared as *amicus curiae* in multiple federal courts on numerous occasions. With respect to Section 8 of the National Voter Registration Act of 1993 (“NVRA”), Judicial Watch has filed several *amicus* briefs related

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<sup>1</sup> Judicial Watch states that no counsel for a party to this case authored this brief in whole or in part; and no party, person, or entity, other than *amicus* and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. Prior to the filing of this motion, Judicial Watch contacted counsel for both Plaintiffs and Defendants. Plaintiffs consented to the instant motion, while the Defendants did not oppose to the filing of this *amicus* brief.

to its enforcement. *See Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018); *Public Interest Legal Found. v. Bellows*, 92 F.4th 36 (1st Cir. 2024).

A district court’s decision to permit *amicus curiae* to participate in a pending case is within the “broad discretion” of the district court. *Tafas v. Dudas*, 511 F. Supp. 2d 652 (E.D. Va. 2007) (citing *Waste Mgmt., Inc. v. City of York*, 162 F.R.D.34, 36 (M.D. Pa. 1995)); *see also, Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). Factors relevant to the determination of whether *amicus* briefing should be allowed include whether the proffered information is “timely and useful,” relevant to the issues presented in the case, or otherwise necessary to the administration of justice. *United States ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (citation omitted), *aff’d*, 2008 U.S. App. LEXIS 17038 (5th Cir. Aug. 7, 2008); *see also Bryant v. Better Business Bureau*, 923 F. Supp. 720, 727 (D. Md. 1996) (motion for leave to file *amicus curiae* brief may be granted where the court “deems the proffered information timely and useful” (citing *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985)); Local Rule 12(b)(2) (motion for leave must state “why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case”).

The factors favor granting Judicial Watch’s motion for leave here.

**THE PROPOSED AMICUS BRIEF  
WOULD BE TIMELY, USEFUL, AND RELEVANT**

Judicial Watch respectfully submits that the attached amicus brief would be useful and relevant in considering the issues raised in this appeal. The constitutional and statutory issues raised here involve the voter registration list maintenance and document production provisions of Section 8 of the NVRA, 52 U.S.C. §20507. No other organization, public or private, has obtained more statewide settlement agreements under this provision of the NVRA than Judicial Watch. *See Judicial Watch v. Grimes*, No. 17-94 (E.D. Ky. 2017) (ECF No. 39) (Consent Decree entered

against the Commonwealth of Kentucky to enforce the NVRA); *Judicial Watch v. Logan*, No. 17-8948 (C.D. Cal. 2017) (settlement with Los Angeles County and the State of California to settle alleged NVRA violations); *Judicial Watch v. Griswold*, No. 20-2992 (Colorado NVRA settlement); *Judicial Watch v. Pennsylvania Sec. of State*, No. 20-708 (M.D. Pa. 2020) (Pennsylvania NVRA settlement).

One of the many necessary documents in order to determine whether a jurisdiction is in compliance with the NVRA's list maintenance provisions are the voter registration list with voter history for prior general federal elections. These records were at issue in 2017, when Judicial Watch sued in this Court alleging that the state law requirement to be a Maryland registered voter was unlawful and preempted by the NVRA's public disclosure provision. *See Judicial Watch v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019). This Court agreed, finding that both the records requested in the voter registration list were subject to disclosure under the NVRA and the state's requirement to be a registered voter frustrated the purposes of the federal law and was preempted by it. *Id.* at 446. "Organizations such as Judicial Watch ... have the resources and expertise that few individuals can marshal" and excluding these organizations from the voter registration data "undermines Section 8(i)'s efficacy." *Id.* at 445. The brief will be useful and relevant to the issues in the case by focusing on the unique nature of voter history data as a record requested and used by Judicial Watch in determining jurisdiction's compliance with the NVRA.

Finally, the brief is timely as it is submitted within the time allowed by the Local Rules of this Court.

**CONCLUSION**

For the foregoing reasons, Judicial Watch respectfully requests this Court grant leave to allow its appearance and to accept its *amicus curiae* brief.

Dated: April 5, 2024

Respectfully submitted,

<p>T. Russell Nobile <b>JUDICIAL WATCH, INC.</b> P.O. Box 6592 Gulfport, Mississippi 39506 Rnobile@judicialwatch.org</p>	<p><u>s/ Eric W. Lee</u> Eric W. Lee (No. 20073) Robert D. Popper <b>JUDICIAL WATCH, INC.</b> 425 Third Street, SW Washington, DC 20024 (202) 646-5172 elee@judicialwatch.org rpopper@judicialwatch.org  <i>Attorneys for Amicus Curiae</i></p>
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**CORPORATE AFFILIATION AND FINANCIAL INTEREST  
DISCLOSURE STATEMENT**

Pursuant to Fed. R. Civ. P. 7.1 and Local Rule 103.3(a), Judicial Watch hereby certifies it is not a subsidiary or affiliate of a publicly owned corporation. Judicial Watch is a corporation organized under Section 501(c)(3) of the Internal Revenue Code, and no publicly held company has a 10% or greater ownership interest in Judicial Watch.

*s/ Eric W. Lee*  
Eric W. Lee

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of April, 2024, I electronically filed the foregoing document with the Clerk of the Court for the United States Court for the District of Maryland by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the Court's CM/ECF system.

*s/ Eric W. Lee*  
Eric W. Lee

# **EXHIBIT 1**

**(Proposed *Amicus Curiae* Brief of Judicial Watch, Inc.)**

**IN THE UNITED STATES DISTRICT COURT  
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<i>Plaintiffs,</i>	)	Case No. 1:24-cv-00172-MJM
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<i>Defendants.</i>	)	

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**[PROPOSED] BRIEF OF *AMICUS CURIAE* JUDICIAL WATCH, INC.  
IN SUPPORT OF PLAINTIFFS**



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**IDENTITY AND INTERESTS OF THE *AMICUS CURIAE*<sup>1</sup>**

Judicial Watch, Inc. is a non-partisan, public interest organization headquartered in Washington, DC. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government and fidelity to the rule of law. In furtherance of these goals, Judicial Watch monitors and investigates government and other agencies nationwide through public records laws, such as the Freedom of Information Act, 5 U.S.C. § 552, and the public inspection provisions of the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20507(i).

In 2012, Judicial Watch began its election integrity work, primarily enforcing the integrity provisions of the NVRA through the NVRA’s private right of action. Since that time, Judicial Watch has obtained numerous state and county settlement agreements or consent decrees that brought jurisdictions from California to Kentucky to New York further into compliance with Section 8 of the NVRA. *See, e.g., Judicial Watch v. Grimes*, No. 17-94 (E.D. Ky. 2017) (ECF No. 39) (Consent Decree entered against the Commonwealth of Kentucky to enforce the NVRA); *Judicial Watch v. Logan*, No. 17-8948 (C.D. Cal. 2017) (settlement with Los Angeles County and the State of California to settle alleged NVRA violations); *Judicial Watch v. Griswold*, No. 20-2992 (Colorado NVRA settlement); *Judicial Watch v. Pennsylvania Sec. of State*, No. 20-708 (M.D. Pa. 2020) (Pennsylvania NVRA settlement).

In the last ten years, no public or private organization has obtained more statewide settlement agreements or consent decrees against chief state election officials for violations of the NVRA. As part of its list maintenance enforcement efforts, Judicial Watch also routinely requests

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<sup>1</sup> Judicial Watch states that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than *amicus curiae* and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties either consented to or did not oppose the filing of this brief.

public records of voter registration activities in various states under Section 8(i) of the NVRA, and has sued on its own behalf and on behalf of others to enforce it. *Judicial Watch v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019); *Illinois Conservative Union v. Illinois*, 2021 U.S. Dist. LEXIS 102543 (N.D. Ill. June 1, 2021).

In Judicial Watch's NVRA requests, the statewide voter registration list is almost always the first record requested, with fields including the voter's name, address, date of birth, voter status, and the last five years of voting history. Judicial Watch uses the records obtained through the public inspection provision of the NVRA, along with data from the Election Assistance Commission and the U.S. Census Bureau, to determine whether state governmental officials are in compliance with the NVRA. This information is critical to our pre-suit evaluation of whether a jurisdiction is potentially violating the NVRA's list maintenance requirements and whether there is a meritorious claim. "Organizations such as Judicial Watch ... have the resources and expertise that few individuals can marshal. By excluding these organizations from access to the voter registration lists, the State law undermines Section 8(i)'s efficacy." *Judicial Watch*, 399 F. Supp. 3d at 445. Adopting Defendants' position that voter history is not a "record" subject to disclosure under the NVRA (*see* ECF 19-1 at 17-21) would substantially frustrate Judicial Watch's efforts to determine the accuracy of the registration list and ensure that jurisdictions in Maryland are complying with the list maintenance provisions of the NVRA, thereby undermining the purpose of the public disclosure provision.

For the foregoing reasons, Judicial Watch respectfully requests that this Court deny Defendants' motion to dismiss.

## SUMMARY OF ARGUMENT

The public disclosure provision of the NVRA embodies Congress' intent that Americans' right to vote "must not be sacrificed to administrative chicanery, oversights, or inefficiencies." *Project Vote v. Long*, 682 F.3d 331, 335 (4th Cir. 2012). The NVRA's public disclosure provisions mandates that "State officials labor under a duty of accountability to the public in ensuring that voter lists include eligible voters and exclude ineligible ones in the most accurate manner possible." *Id.* at 339. "Without such transparency, public confidence in the essential workings of democracy will suffer." *Id.* "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourage[s] citizen participation in the democratic process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008).

The NVRA provides an avenue for citizens to verify and ensure that only eligible registrants remain on the voter rolls by mandating public disclosure of *all* records concerning the accuracy of the official list of eligible voters. 52 U.S.C. § 20507(i)(1) (emphasis added). Congress' use of the word "all" as a modifier "suggests an expansive meaning because 'all' is a term of great breadth." *Project Vote*, 682 F.3d at 336 (quoting *Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 290 (4th Cir. 1998)).

Voting history is clearly a "record" that "concerns" the accuracy and currency of the official lists of eligible voters. Judicial Watch routinely requests voting history as part of its program to monitor the lists and ensure that jurisdictions are complying with the NVRA's removal process to identify and remove registrants who have either moved or passed away. The NVRA requires jurisdictions to remove a registrant that has failed to respond to a confirmation mailing and failed to vote for two consecutive federal elections. It also requires the registrant's information to be updated should a registrant appear to vote after receipt of the confirmation mailing. That is

why voting history for at least the last two general federal elections is critical to determining whether the voter registration list is accurate and current. It is also why Judicial Watch requests these records as part of any NVRA public records request.

Restricting use of voting history and the voter registration list for any “investigation,” including any related investigations into the accuracy of the official list of eligible voters in Maryland, undermines the efficacy and undermines the purposes of the NVRA. Defendants’ argument that these regulations are consistent with the NVRA has been squarely rejected by the First Circuit, in a challenge to Maine’s law that was less restrictive than the one at issue here. *Pub. Interest Legal Found. v. Bellows*, 92 F.4th 36, 50-51 (1st Cir. 2024). By creating a procedural barrier for individuals and organizations seeking to ensure the accuracy of the list, Maryland’s regulations create “administrative chicanery, oversights, or inefficiencies” that the NVRA’s public disclosure provision was designed to prevent. *Project Vote*, 682 F.3d at 335. As such, the restriction on disclosure of the voter list and voting history related to investigations of the accuracy of the list frustrate the purposes of the NVRA and are preempted by it.

Prohibiting individuals such as Plaintiffs from receiving the full voter registration list is an obstacle to NVRA enforcement and violates the plain text of the NVRA. Moreover, it would frustrate Congress’ intent behind the integrity provision of the NVRA. To Judicial Watch’s knowledge, every single court presented with this issue has found the records are covered by the NVRA and the restrictions on the investigatory conduct are preempted by it.

Accordingly, this Court should deny Defendants’ motion to dismiss.

## ARGUMENT

### I. Voter History is Vital to Determining an Accurate and Current Voter List.

“It has been estimated that 24 million voter registrations in the United States – about one in eight – are either invalid or significantly inaccurate.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 760 (2018) (citing Pew Center on the States, Election Initiatives Issue Brief (Feb. 2012)). According to this same study, approximately “2.75 million people are said to be registered to vote in more than one State.” *Id.* More recently in 2020, Judicial Watch compared the total registration statistics in a subset of states to the most recent U.S. Census Bureau’s American Community Survey and found that 353 counties had more registered voters than voting-age citizens.<sup>2</sup> Inflated registration lists without any public accountability undermines confidence in the integrity of the electoral process.

The public inspection provision of the NVRA is designed to increase transparency and improve confidence in electoral administration, providing the public oversight of the procedures state and local officials use for identifying and removing ineligible voters without compromising the registrations of eligible ones. Records contained within the voter registration list, such as a voter’s registration status (active or inactive), and the basis for that status, are critical in determining compliance with list maintenance laws. As part of any NVRA-mandated program or activity to remove ineligible voters for change of residence, for example, the NVRA requires jurisdictions to send a forwardable postage pre-paid confirmation card to the registrant’s last known address. *Id.*, § 20507(d)(1)-(2). If the registrant fails to respond to the notice, or the notice is returned as undeliverable, then the registrant is marked “inactive.” Inactive registrants are still

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<sup>2</sup> See *New Judicial Watch Study Finds 353 U.S. Counties in 29 States with Voter Registration Rates Exceeding 100%*, Judicial Watch, October 16, 2020, available at <https://www.judicialwatch.org/new-jw-study-voter-registration/>.



registered voters and may still vote on election day without the need to re-register. But if the inactive registrant fails to vote or otherwise update their voter registration for two federal elections, the inactive registration must be removed from the voter registration list. *Id.*, § 20507(d)(1)(B); *see also Husted*, 584 U.S. at 767 (finding that federal law under the notice and waiting period makes removal mandatory).

Judicial Watch often relies on voter history in order to form a basis for allegations of non-compliance with Section 8's list maintenance requirements. *See e.g., Judicial Watch v. North Carolina*, No. 20-cv-211 (W.D.N.C. 2020) ECF No. 1, ¶ 44 (“having inactive registrations that have not shown any voting activity for extended periods of time also indicates that a state or jurisdiction is not removing ineligible registrants as required by the NVRA.”); *id.* at ¶ 55 (data in North Carolina “indicates that many of the inactive registrations in Mecklenburg and Guilford Counties have shown no voting activity for longer than the prescribed statutory waiting period of two general federal elections.”). Courts have relied on these types of allegations as plausible evidence of a Section 8 violation of the NVRA. *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091 (D. Colo. 2021) (finding that reliance on public records based for failure to respond to a confirmation mailing and failure to vote plausibly alleged an NVRA violation).

In its Section 8(i) lawsuit in *Lamone*, Judicial Watch requested voter activity for the Montgomery County, Maryland official registration list for this reason. Montgomery County, Maryland at the time had high registration rates, where total registration according to the Election Assistance Commission exceeded age eligible citizenry under the Census. 399 F. Supp. 3d at 430. If there were a significant number of registrations on the list that were continuously inactive for more than two federal elections, then that would be plausible evidence of an NVRA list maintenance violation. The Court ultimately found that the records requested by Judicial Watch,

including voting history, were covered under Section 8(i) and Maryland's restriction to registered voters frustrated the purposes of the NVRA and was preempted by it. *Id.* at 446.

The restrictions at issue here would effectively prohibit individuals and organizations from using voter history for purposes of investigating compliance with list maintenance laws in Maryland, which would frustrate the purposes of the public disclosure provision of the NVRA. In *Bellows*, the First Circuit confronted a less restrictive regulation as the one at issue here. There, Maine passed a law that prohibited use of the voter registration list for any purposes that is not directly related to evaluating the State's compliance with list maintenance laws. 92 F.4th at 50. The First Circuit held Maine's law preempted by the NVRA since the plain language would prohibit organizations "from using the Voter File to evaluate another state's compliance with its voter list maintenance obligations or from using the Voter file to enforce the NVRA when the basis for such action was the evaluation (via Maine's Voter File) of another state's voter list maintenance obligations." *Id.* at 54 (internal quotations omitted). The restrictions imposed an "impenetrable barrier for those seeking to use the Voter File to evaluate and enforce compliance with the NVRA nationwide." *Id.*

## **II. Voting History is a "Record" Concerning the Accuracy of the Official List of Voters and Subject to Disclosure Under the NVRA.**

Courts have uniformly held that the public disclosure provision of the NVRA is "broad." Congress' "use of the word 'all' [as a modifier] suggests an expansive meaning because 'all' is a term of great breadth." *Project Vote*, 682 F.3d at 336 (citation and internal quotations omitted). The expansive statutory language mandating disclosure is subject only to voter records containing "uniquely sensitive information." *Public Interest Legal Found. v. N.C. State Bd. of Elections*, 996 F.3d 257, 265 (4th Cir. 2021) (finding Social Security Numbers of voter registration applicants may be the type of uniquely sensitive information that may be withheld (citing *Project Vote*, 682

F.3d at 339)). In determining whether a record is the type of uniquely sensitive information that is proper for withholding, courts will look to explicit privacy protections afforded in federal and state law. *See Lamone*, 455 F. Supp. 3d at 223-24 (citing *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1344 (N.D. Ga. 2016)). In Georgia, for instance, state public records law mandated the withholding of certain information related to the voter's date of birth, which the court found persuasive in withholding birthdate information from a Section 8(i) request. *See Kemp*, 208 F. Supp. 3d at 1345 (citing O.C.G.A. § 50-18-72(a)(20)(A)). Maryland, by contrast, had no such requirement, and the court there ordered the release of the records under Section 8(i). *Lamone*, 455 F. Supp. 3d at 224.

Defendants do not argue that voter history is “uniquely sensitive” voting record that may be withheld. Rather, Defendants argue that voting history somehow falls outside the scope of Section 8(i)'s broad reach. This is wrong for several reasons. First, this Court in *Lamone* squarely rejected this reasoning. *Id.* at 442. Second, the plain language of the statutory terms clearly compel disclosure of voting history. Similar to “all,” Congress' use of “concerning” is a similarly broad term. *See Merriam Webster's Collegiate Dictionary* (11th ed. 2008) (“Concern” includes “relate to,” “be about,” “bear on,” “have an influence on,” “INVOLVE”); *Bloomberg L.P. v. United States FDA*, 500 F. Supp. 2d 371, 377 n.3 (S.D.N.Y. 2007) (Local Rules define “concerning” as “relating to, referring to, describing, evidencing, or constituting”). In ordinary speech, records within the voter registration list (*e.g.*, name, address, date of birth, voting status, and voting history), “concern” – that is, they “relate to,” “bear on,” “influence,” “involve,” and “evidence” – all of the programs and activities that keep them up to date. Surely, a statute calling for disclosure of “all records concerning” programs and activities to keep the lists current includes the records normally contained within the voter registration list. The primary records bearing on NVRA-mandated

removal programs and activities to ensure the accuracy and currency of voter lists must be the voter data itself.

Voting history clearly “concerns” the accuracy and currency of the official list of eligible voters. As stated *supra*, Part I., it is necessary to determine whether inactive registrations are being timely removed from the voter registration list after the second general federal election of no voting activity. But voting history is also vital to determining the accuracy and currency of the official list of voters for *active* registrations. Many states and jurisdictions use lack of voting activity for *active* registrations as a precondition to determining whether those registrants have moved or died. Ohio, for example, has a “supplemental process” where the state sends confirmation mailings to voters who lack voting activity for a certain period of time. *See Husted*, 584 U.S. at 765. Other states have similar processes. *See id.* at 763 (collecting state statutes). Presumably, the states initiate this supplemental process because reliance on the NVRA’s safe-harbor of using the National Change of Address Database to start the confirmation removal process was insufficient as “many as 40 percent of people who move do not inform the Postal Service.” *Id.* at 765 (citing U.S. Postal Service, Office of Inspector Gen., MS-MA-15-006, Strategies for Reducing Undeliverable as Addressed Mail 15 (2015)).<sup>3</sup> Lack of voting activity may also be strong circumstantial evidence that exceedingly old active registered voters may have passed away.

### **III. Defendants’ Investigatory Restrictions on the Use of Voter is Superseded and Preempted by the NVRA’s Public Disclosure Provision.**

Congress passed the NVRA pursuant to its inherent congressional powers under the Elections Clause. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). “The

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<sup>3</sup> Voting activity could also guard against the improper removal of active registrants. The Help America Vote Act explicitly mandates that states shall not remove a registrant *solely* by reason of the registrant’s failure to vote. *See* 52 U.S.C. § 21083(a)(4)(A).

dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules, not to restrict the way States enact legislation.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n.*, 576 U.S. 787, 814-15 (2015). The grant of complete Congressional power over the timing of federal elections “was the Framers’ insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress.” *Arizona*, 570 U.S. at 8; *see also* THE FEDERALIST No. 59, at 362-63 (C. Rossiter ed. 1961) (A. Hamilton) (providing exclusive authority in state legislatures “would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs”). The solution was the Elections Clause, which “enables Congress to alter such regulations as the states shall have made with respect to elections.” DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 68 (Jonathan Elliot ed., 1836).

The “power of Congress over the ‘Times, Places and Manner’ of congressional elections ‘is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.” *Arizona*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)). The power is unique from other congressional powers since “*all* action under the Elections Clause displaces some element of a pre-existing state regulatory regime.” *Id.* at 14 n.6. Accordingly, the Elections Clause gives Congress “plenary authority over federal elections,” “explicitly ensur[ing] that all conflicts with similar state laws would be resolved wholly in favor of the national government.” *Harkless v. Brunner*, 545 F.3d 445, 454 (6th Cir. 2008); *see Foster v. Love*, 522 U.S. 67, 69 (1997) (Elections Clause “invests the States with responsibility for the mechanics of congressional elections . . . but only so far as Congress declines to pre-empt state

legislative choices”) (citations omitted); *ACORN v. Edgar*, 56 F.3d 791, 794 (7th Cir. 1995) (unlike most constitutional provisions that tell states “what they can or cannot do,” the Elections Clause provides “that Congress can if it wants step in and either make its own regulations or alter those adopted by the state . . . Congress was given the whip hand”).

Defendants’ Use Restriction at issue here interferes with this expansive congressional power when Congress enacted a broad public disclosure provision under the NVRA. Moreover, the claimed state authority for such Use Restriction was “necessarily displaced” after the enactment of NVRA. *See Arizona*, 570 U.S. at 14. The broad prohibition on the use of voter data, including voter history, for any “investigations” into “an illegal or suspected illegal infraction or violation involving the voter’s behavior in a specific election” under COMAR 33.03.02.01B(1)(c) restricts any individual or organization ability to monitor the accuracy and currency of the official list of eligible voters in Maryland. Any “restrictions imposed by” a state law that “erect[s] an impenetrable barrier for those seeking to use the Voter File to evaluate and enforce compliance with the NVRA” is preempted by the NVRA. *See Bellows*, 92 F.4th at 54.

**CONCLUSION**

For all these reasons, the Court should deny Defendants' motion to dismiss.

Dated: April 5, 2024

Respectfully submitted,

<p>T. Russell Nobile <b>JUDICIAL WATCH, INC.</b> P.O. Box 6592 Gulfport, Mississippi 39506 Rnobile@judicialwatch.org</p>	<p><i>s/ Eric W. Lee</i> Eric W. Lee (No. 20073) Robert D. Popper <b>JUDICIAL WATCH, INC.</b> 425 Third Street, SW Washington, DC 20024 (202) 646-5172 elee@judicialwatch.org rpopper@judicialwatch.org  <i>Attorneys for Amicus Curiae</i></p>
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# **EXHIBIT 2**

**(Text of Proposed Order)**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

_____	)	
KATHERINE SULLIVAN, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	Case No. 1:24-cv-00172-MJM
	)	
v.	)	
	)	
MICHAEL G. SUMMERS, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**ORDER [PROPOSED]**

On April 5, 2024, Judicial Watch, Inc. submitted an unopposed Motion for Leave to file a proposed *amicus curiae* brief in support of Plaintiffs.

Having reviewed the motion, and the grounds therefor, it is hereby **ORDERED** that the Motion for Leave is **GRANTED**.

**SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Matthew J. Maddox, District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**KATHERINE STRAUCH SULLIVAN,**  
*et al.,*

**Plaintiffs,**

**v.**

**MICHAEL G. SUMMERS, et al.,**

**Defendants.**

**Civ. No. MJM-24-172**

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**MEMORANDUM OPINION**

Plaintiffs Katherine Strauch Sullivan and David Morsberger (collectively, “Plaintiffs”) commenced this civil action against members of the Maryland State Board of Elections in their official capacities (“Defendants”), alleging that a regulation adopted by SBE violates, and is preempted by, Section 8(i) of the National Voter Registration Act (“NVRA”) (Count I); violates the First and Fourteenth Amendments to the United States Constitution (Count II); and is an invalid exercise of the SBE’s statutory authority (Count III). ECF No. 1 (Complaint). Currently pending are Defendants’ Motion to Dismiss or, in the Alternative, for Summary Judgment, ECF No. 19, and Plaintiffs’ Motion for Partial Summary Judgment, ECF No. 32. The motions are fully briefed. No hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2023). As explained below, Defendants’ motion will be denied in part and Plaintiffs’ motion will be granted in part because a provision of the challenged regulation restricting the use of the voter registration list, including voting history, is preempted by the NVRA.

## I. FACTUAL BACKGROUND

Plaintiffs are registered voters in Maryland who share concerns about the integrity of past elections that have been certified in the State of Maryland. ECF No. 31, ¶¶ 1–3 (Joint Stipulation of Facts). Each Plaintiff has, at previous times, requested and received registered voter lists from the Maryland State Board of Elections (“SBE”). *Id.* ¶¶ 1–2, 4. They have acted on their concerns about election integrity by examining the voter lists, collecting information through canvassing, presenting their findings to state and local officials, and pursuing litigation. *Id.* ¶ 3.

MDVOTERS is a registered voter database maintained by SBE. *Id.* ¶ 6. A registered voter list details whether a voter is active or inactive at the time the list is exported from MDVOTERS. *Id.* ¶ 9. A voting history compiles information on when and the means by which a registered voter participated in elections in Maryland, going back to 2006. *Id.* ¶¶ 7, 8.

A voter requesting access to the voter registration list, including voting history, must provide a signed and sworn statement that the list is not intended for commercial solicitation or any other purpose “not related to the electoral process.” Md. Code, Elec. Law § 3-506(a)(1)(ii). A person who knowingly allows a voter list under her control “to be used for any purpose not related to the electoral process is guilty of a misdemeanor.” Md. Code, Elec. Law § 3-506(c).

As they have done in the past, Plaintiffs anticipate using the registered voter list from the SBE and voting histories for registered voters to conduct statewide investigative canvasses to identify and analyze what they believe are potential errors, irregularities, or anomalies within MDVOTERS. *Id.* ¶ 11. In the past, their canvassing activities have resulted in findings they believe to constitute evidence or indications of infractions or violations of election-related laws and regulations, “whether by the voter, a government official, or a third party.” *Id.* ¶ 12; *see also* ECF No. 31-1 at 2–3 (Restoring Faith in Maryland Elections). Plaintiffs last conducted an investigative

canvass between September and November 2023 using the registered voter list to contact individual voters, establish their willingness to answer questions, and then asking each voter to confirm their voting history record. ECF No. 31, ¶¶ 27, 28, 32.

On or around June 2023, the SBE adopted a regulation restricting the use of voter registration lists by Maryland voters who request them. Md. Code Regs. (“COMAR”) 33.03.02.01.B(1). Specifically, the regulation purports to exclude “investigations” from the definition of “electoral process” as that term is used in Md. Code, Elec. Law § 3-506(a)(1)(ii), such that Maryland voters are not permitted to obtain the voter registration list for the purpose of “investigations.” *Id.* at 33.03.02.01.B(1)(c). Specifically, “[t]he use of a voter registration list to contact an individual voter as part of an investigation into an illegal or suspected illegal infraction or violation involving the voter’s behavior in a specific election” is not a permissible “purpose . . . related to the electoral process” under § 3-506(a)(1)(ii)(2). *Id.* In accordance with this restriction on the use of requested voter registration lists (hereinafter, “Use Restriction”), SBE now requires persons who request registered voter lists to execute a sworn affidavit agreeing not to use the information to conduct such investigations. ECF No. 31, ¶ 13.

In September 2023, Mr. Morsberger attempted to request a registered voter list, including a voter history file, by submitting a completed request form. *Id.* ¶¶ 18, 19; ECF No. 19-2 (Application for Voter Registration Data). He struck language on the form that required his agreement not to use the requested information “for investigations into an illegal or suspected illegal infractions or violations of voters’ behaviors in a specific election.” *Id.*; *see also* ECF No. 31, ¶ 20. His request was denied. *Id.* ¶ 21.

Ms. Sullivan made an inquiry to staff of the Baltimore County Board of Elections as to whether she could obtain a registered voter list using the form affidavit that was in use before the

Use Restriction. *Id.* ¶ 22. She was told that she would be required to sign the affidavit created after imposition of the Use Restriction in order to obtain a copy of the voter list. *Id.* She took no further steps to obtain a list. *Id.*

## **II. PROCEDURAL HISTORY**

On January 18, 2024, Plaintiffs filed a Complaint asserting claims against Michael G. Summers, William G. Voelp, Janet Millenson, Yaakov Weissmann, and Jared DeMarinis (collectively, “Defendants”) in their official capacities as members of the Maryland State Board of Elections in three counts: (I) Violation of Section 8(i) of the NVRA; (II) Violation of the First and Fourteenth Amendments (42 U.S.C. § 1983); and (III) Ultra Vires under Maryland law. ECF No. 1. On March 8, 2024, Defendants filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. ECF No. 19. Plaintiffs filed a response in opposition to the motion, ECF No. 22, and Defendants filed a reply, ECF No. 29. Amicus Judicial Watch, Inc. filed a brief in support of Plaintiffs with a motion seeking leave to file, ECF Nos. 25, 27, which was granted, ECF No. 26. On August 30, 2024, the parties filed a Joint Stipulation of Facts, ECF No. 31, and Plaintiffs filed a Motion for Partial Summary Judgment as to Counts I and II, ECF No. 32. Defendants filed a response in opposition to Plaintiffs’ motion, ECF No. 33, and Plaintiffs filed a reply, ECF No. 34. Each party filed a brief supplement in support of their respective positions in October 2024, ECF Nos. 35, 36.

## **III. STANDARD OF REVIEW**

The parties agree that the facts to the issues raised in their motions are not in dispute, and each party requests summary judgment in their favor. *See* ECF No. 32-1 at 1; ECF No. 33 at 6. A court may grant a party’s summary judgment motion under Rule 56 of the Federal Rules of Civil Procedure if “the movant shows that there is no genuine dispute as to any material fact and the

movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Cybernet, LLC v. David*, 954 F.3d 162, 168 (4th Cir. 2020). The Court will therefore treat Defendants’ motion as one for summary judgment.

#### **IV. DISCUSSION**

In Count I of the Complaint, Plaintiffs claim that the Use Restriction in COMAR 33.03.02.01.B(3) is preempted by Section 8(i) of the NVRA. The parties dispute whether the Use Restriction stands as an obstacle to accomplishment and execution of the NVRA’s objectives and purposes such that it is preempted by the NVRA. As further explained below, the Court finds that the Use Restriction is preempted for presenting such an obstacle and, therefore, will grant summary judgment in Plaintiffs’ favor as to Count I.

##### **A. Applicable Federal and State Law**

The National Voter Registration Act of 1993 (“NVRA”) was enacted to “enhance[] the participation of eligible citizens as voters in elections for Federal office;” “to protect the integrity of the electoral process;” and “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b). In furtherance of these purposes, Section 8(i) of the NVRA generally requires states to make available for public disclosure “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.* § 20507(i)(1).

The Help America Vote Act of 2002 requires states to “implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State . . . .” *Id.* § 21083(a)(1)(A). A state election system is required to “include provisions to ensure that voter

registration records in the State are accurate and are updated regularly . . . .” *Id.* § 21083(a)(4).

These provisions must include

A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the [NVRA], registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

*Id.* § 21083(a)(4)(A). The election system must also have “[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” *Id.* § 21083(a)(4)(B).

Appropriate state and local election officials are required to “perform list maintenance with respect to the computerized list on a regular basis . . . .” *Id.* § 21083(a)(2)(A).

Consistent with federal law, Maryland law requires maintenance of “a statewide voter registration list.” Md. Code, Elec. Law § 3-101(a). The voter registration list is required to include, among other information, “voting history information on a current basis for a period covering at least the 5 preceding years.” *Id.* § 3-101(b)(6). MDVOTERS is Maryland’s statewide database of registered voters. ECF No. 31, ¶ 5 (Joint Stip.).

A voter is placed on inactive status if she or he fails to respond to a confirmation notice that is sent when it appears that she or he has moved out of state. Md. Code, Elec. Law §§ 3-502(c), 3-503(a). “An inactive voter who fails to vote in an election in the period ending with the second general election shall be removed from the statewide voter registration list. *Id.* § 3-503(c).

Maryland law requires “[a] copy of a list of registered voters [to] be provided” upon submission of “a written application[]” and “a statement, signed under oath, that the list is not intended to be used for: [1] A commercial solicitation; or [2] any other purpose not related to the electoral process.” *Id.* § 3-506(a)(1). The SBE is authorized to adopt regulations specifying, among

other things, “the authorization to be required for providing a list; . . . the information to be included on a list; [and] the format of the information[.]” *Id.* § 3-506(a)(2).

In June 2023, the SBE adopted a regulation purporting to define “electoral process” as follows:

(a) “Electoral process” means the system established by the Maryland Constitution, Election Law Article, Annotated Code of Maryland, and regulations of the State Board, by which a person is elected to a public office or by which voters express a preference on a ballot question.

(b) “Electoral process” includes, but is not limited to registering voters, forming political parties, qualifying as a candidate for public office, petitioning candidates or questions to the ballot, drafting and publishing ballot questions, conducting elections, casting ballots, canvassing ballots, recounting an election, and financing a campaign.

(c) “Electoral process” does not include investigations. The use of a voter registration list to contact an individual voter as part of an investigation into an illegal or suspected illegal infraction or violation involving the voter’s behavior in a specific election is not a “purpose... related to the electoral process” as those terms are used in Election Law Article, § 3-506(a)(1)(ii)(2), Annotated Code of Maryland.

COMAR 33.03.02.01.B(3).

## **B. Preemption**

The Court finds the Use Restriction in COMAR 33.03.02.01.B(3) to be preempted by federal law because it conflicts with federal law by presenting an obstacle to accomplishing and executing the NVRA’s purposes and objectives.

The Supremacy Clause in Article VI of the U.S. Constitution provides that federal law “shall be the supreme Law of the Land” notwithstanding any contrary law of any state. U.S. Const., Art. VI, cl. 2. Congress may preempt—that is to say, invalidate—a state law through federal legislation. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). It may do so through express



language in a statute or by implication, either through “field” preemption or “conflict” preemption. *Id.* Conflict preemption may occur where “compliance with both state and federal law is impossible,” or where “the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015) (quoting *California v. ARC America Corp.*, 490 U.S. 93, 100, 101 (1989)). The latter form of conflict preemption—“obstacle” preemption—“occurs where state law ‘interferes with the methods by which the federal statute was designed to reach [its] goal.’” *Columbia Venture, LLC v. Dewberry & Davis, LLC*, 604 F.3d 824, 830 (4th Cir. 2010) (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 103 (1992)). In determining whether a challenged state law is preempted as an obstacle to the purposes and objectives of federal legislation, the court must “independently . . . consider national interests and their putative conflict with state interests.” *Abbot v. Am. Cyanamid Co.*, 844 F.2d 1108, 1113 (4th Cir. 1988). In general, a court must presume that Congress did not intend to preempt state law without expressly stating its intent. *Abbot*, 844 F.2d at 1112. But that assumption “does not hold” when Congress acts pursuant to its authority under the Elections Clause, which specifically “empowers Congress to ‘make or alter’ state election regulations.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14, (2013) (quoting U.S. Const., Art. I, § 4, cl. 1). “The purpose of Congress is the ultimate touchstone” of preemption analysis. *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)).

In *Judicial Watch, Inc. v. Lamone*, Judge Hollander concluded that a provision in § 3-506(a) of Maryland’s Election Law Article limiting disclosure of voter registration lists to Maryland registered voters was preempted by the NVRA. 399 F. Supp. 3d 425, 445 (D. Md. 2019). First, the court considered whether the voter registrations at issue were records covered by the

disclosure requirement in Section 8(i) of the NVRA. *Id.* at 439. The court found that, for purposes of Section 8(i), “[t]he process of creating, updating, and auditing registrations ‘is a “program” . . . because it is carried out in the service of a specified end—maintenance of voter rolls—and it is an “activity” because it is a particular task . . . of [Maryland] election employees.’” *Id.* (quoting *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012)).

In Maryland, State and local officials rely on voter registrations to register new voters and to remove ineligible voters, thereby “‘ensuring the accuracy and currency of official lists of eligible voters.’” *Long*, 682 F.3d at 335 (internal citation omitted). And, the voter registrations are clearly records that concern the implementation of the program and activity of maintaining accurate and current eligible voter lists. After all, they contain the information on which Maryland election officials rely to monitor, track, and determine voter eligibility. *See id.* at 336.

*Lamone*, 399 F. Supp. 3d at 439. Upon examination of the NVRA’s statutory purposes set forth in 52 U.S.C. § 20501(b) and the Fourth Circuit’s decision in *Long*, the court recognized that “Section 8(i) of the NVRA provides for the disclosure of voter registrations in order to ‘assist the identification of both error and fraud in the preparation and maintenance of voter rolls.’” *Id.* at 445 (quoting *Long*, 682 F.3d at 339). The Court finally determined that the restriction in Elec. Law § 3-506(a) “does not advance a valid state interest” because any Maryland voter could obtain a voter list and share it with others, like the plaintiff organizations, who were not Maryland registered voters. *Id.* at 445. By excluding the plaintiff organizations from access to voter registration lists through direct requests to state and local election officials, Elec. Law § 3-506(a) was an obstacle to the accomplishment of the NVRA’s purposes and was therefore “preempted in so far as it allows only Maryland registered voters to access voter registration lists.” *Id.* (footnote omitted).

More recently, in *Public Interest Legal Foundation, Inc. v. Bellows*, the U.S. Court of Appeals for the First Circuit held that the NVRA preempted provisions in a Maine statute that prohibited certain uses and publication of a “Voter File” obtained to “evaluat[e] the State’s

compliance with its voter list maintenance obligations.” 92 F.4th 36, 43 (1st Cir. 2024) (quoting Me. Rev. Stat. Ann. tit. 21-A, § 196-A(1)(J)). The challenged “Use Ban” prohibited “[s]ell[ing], transfer[ring] to another person or us[ing]” the Voter File “for any purpose that is not directly related to evaluating [Maine’s] compliance with its voter list maintenance obligations.” *Id.* at 43–44 (quoting Me. Rev. Stat. Ann. tit. 21-A, § 196-A(1)(J)(1)-(2)).

The *Bellows* court first identified “creat[ing] and updat[ing] voter registration records” as “activities” that “fall within” the disclosure requirement in Section 8(i) of the NVRA. *Id.* at 46. These activities include “removing ineligible voters from [Maine’s Central Voter Registration system,]” noting that this activity is “conducted to ensure that Maine is keeping an accurate and current account of its official lists of eligible voters as those voters move, die, or otherwise change their personal information.” *Id.* Because the Voter File “contains the voter registration information necessary to examine whether Maine and other states are properly evaluating applicants and registering voters,” the court concluded that it was a record concerning implementation of Maine’s voter list registration and maintenance activities and therefore subject to Section 8(i)’s disclosure requirement. *Id.* at 49.

The court in *Bellows* continued, “the plain language of the Use Ban would prohibit [plaintiff] ‘from using the Voter File to evaluate *another* state’s compliance with its voter list maintenance obligations’ or from ‘using the Voter file to enforce the NVRA when the basis for such action was the evaluation (via Maine’s Voter File) of *another* state’s voter list maintenance obligations.’” *Id.* at 54. These restrictions were preempted by the NVRA because Congress intended for the NVRA’s purposes “to be fulfilled throughout every state[,]” to include protecting the integrity of the electoral process and ensuring accuracy and currency in voter registration rolls.

*Id.* The Use Ban, thus, “‘stands as an obstacle to the accomplishment and execution’ of these purposes.” *Id.* (citation omitted).

This Court finds *Lamone* and *Bellows* to be persuasive and that the Use Restriction in challenged in the instant case is preempted by the NVRA’s Section 8(i).

First, Maryland’s voter registration list, including voting history files, are records that fall within the scope of Section 8(i). As recognized in *Lamone* and *Bellows*, the process of “creat[ing] and updat[ing] voter registration records” is a program and activity, *Bellows*, 399 F. Supp. 3d at 46, “because it is carried out in the service of a specified end—maintenance of voter rolls—and . . . it is a particular task . . . of [Maryland] election employees[.]” *Lamone*, 399 F. Supp. 3d at 439 (quoting *Long*, 682 F.3d at 335) (internal quotation marks omitted). This program and activity includes “list maintenance” functions that state and local election officials are required to perform by both federal and state law. 52 U.S.C. § 21083(a)(2)(A); *see also* Md. Code, Elec. Law §§ 3-502(c), 3-503(a),(c). In Maryland, list maintenance involves removal of voters in “inactive status” “who fail[] to vote in an election in the period ending with the second general election.” *Id.* This activity and the more general updating of voter registration lists are both “plainly ‘conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]’” because they are geared toward “keep[ing] official voter lists both ‘accurate’—free from error—and ‘current’—most recent.” *Long*, 682 F.3d at 335 (quoting Section 8(i), now codified in 52 U.S.C. § 20507(i)).

Maryland’s voter registration list, including voting history files, are “records concerning the implementation of” this program and activity. 52 U.S.C. § 20507(i)(1). Defendants emphasize a distinction between voting histories and other information reflected in Maryland voter registration lists, arguing that voting histories are not subject to the NVRA’s disclosure

requirement. *See* ECF No. 19-1 at 17–20; ECF No. 33 at 8–12. But a voting history contains information regarding a registered voter’s participation in past elections, ECF No. 31, ¶¶ 7, 8, and therefore speaks to whether particular voters are subject to removal from the voter registration list pursuant to Md. Code, Elec. Law § 3-503(c). Voting history files, thus, “concern[] the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1); *see also Bellows*, 92 F.4th at 47 (“[T]he term ‘concerning’ used ‘in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters *relating to* that subject.”) (quoting *Patel v. Garland*, 596 U.S. 328, 339 (2022)). Section 8(i)’s provision that “all” such records are subject to disclosure naturally brings voting history files within its scope. 52 U.S.C. § 20507(i)(1); *see also Long*, 682 F.3d at 336 (“[T]he use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.”) (quoting *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 290 (4th Cir.1998) (internal quotation marks omitted)).<sup>1</sup>

Second, the Use Restriction in COMAR 33.03.02.01.B(3) “stands as an obstacle to the accomplishment and execution of the full purposes and objectives” of the NVRA. *Oneok*, 575 U.S. at 377. Plaintiffs intend to use registered voter lists, including voter histories, for “a statewide investigative canvass to identify and analyze what they believe may be potential errors, irregularities, or anomalies within MDVOTERS” that have “impacted or could impact” future elections in Maryland. ECF No. 31, ¶ 11. Their canvassing work in the past has resulted in findings

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<sup>1</sup> This Court is not the first to find voting history records to fall within the ambit of Section 8(i). *See Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 940–41 (C.D. Ill. 2022); *Pub. Int. Legal Found. v. Chapman*, 595 F. Supp. 3d 296, 301, 306 (M.D. Pa. 2022); *Voter Reference Found., LLC v. Torrez*, 727 F. Supp. 3d 1014, 1217–18, 1222 (D.N.M. 2024).

of both potential inaccuracies in the lists of registered voters, including registration errors and errors with respect to active/inactive statuses assigned to particular voters, ECF No. 31-1 at 2–3, although SBE disputes these findings, ECF No. 31, ¶ 25. Plaintiffs’ anticipated use of the information they seek may include “investigation into an illegal or suspected illegal infraction or violation involving the voter’s behavior in a specific election[,]” which the Use Restriction forbids. COMAR 33.03.02.01.B(3)(c). But it also likely includes investigation into the accuracy and currency of voter registration rolls and “the integrity of the electoral process” in Maryland, which are core purposes of the NVRA. 52 U.S.C. § 20501(b).

The Court finds it to be impracticable to disaggregate these two objectives in a way that adequately protects the purposes and objectives of the NVRA. Under the Use Restriction, if a person uses voter histories to assist in checking the registered voter list’s accuracy and currency while at the same time identifying specific infractions and violations in past elections, that person may be subjecting themselves to criminal liability. *See* Md. Code, Elec. Law § 3-506(c). The Use Restriction, thus, presents a clear and substantial risk of chilling or deterring individuals from seeking to access information subject to disclosure under the NVRA when the individual expects to identify past infractions as part of a broader effort to identify “error and fraud in the preparation and maintenance of voter rolls.” *Lamone*, 399 F. Supp. 3d at 445 (quoting *Long*, 682 F.3d at 339). What legitimate interests the State of Maryland has in the Use Restriction—*i.e.*, preventing voter harassment—may be satisfied by state laws against harassment and trespass.<sup>2</sup>

In sum, the Court concludes as a matter of law that the Use Restriction in COMAR 33.03.02.01.B(3) presents an obstacle to accomplishing and executing the purposes and objectives

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<sup>2</sup> The Court notes that Plaintiffs’ canvassing efforts involve establishing the willingness of each voter to answer questions before the voter confirms their voting history. ECF No. 31 at 28.

of the NVRA and is, therefore, preempted. Accordingly, summary judgment shall be entered in favor of Plaintiffs on Count I of the Complaint.<sup>3</sup>

## V. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment will be denied, and Plaintiffs' Motion for Partial Summary Judgment will be granted in part. A separate Order follows.

3/4/25

Date



Matthew J. Maddox  
United States District Judge

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<sup>3</sup> There are two remaining counts in Plaintiffs' Complaint. In Count II of the Complaint, Plaintiffs challenge the Use Restriction as a violation of the First and Fourteenth Amendments. ECF No. 1, ¶¶ 65–74. In Count III, Plaintiffs assert that COMAR 33.03.02.01.B(3) is invalid because the SBE exceeded its statutory authority in the enactment of this regulation. *Id.* ¶¶ 75–85. Defendants seek summary judgment on all three counts. ECF No. 19. In their motion, Plaintiffs seek summary judgment on Count II, ECF No. 32-1 at 12, but state that “[s]ummary judgment in Plaintiffs’ favor on either [Count I or II] likely moots the remaining claim[.]” ECF No. 32-1 at 1 n.1. The same may be true of Count III. Therefore, the Court declines to reach the merits of Counts II and III.