

No. 19-2265

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*In the*  
**United States Court Of Appeals**  
*for the*  
**Fourth Circuit**

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PUBLIC INTEREST LEGAL FOUNDATION,  
Plaintiff-Appellant,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS and KAREN BRINSON  
BELL, in her official capacity as Executive Director of the North Carolina State  
Board of Elections,  
Defendants-Appellees.

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**On Appeal from the United States District Court for the  
Eastern District of North Carolina**

**Case No. 5:19-cv-00248-BO**

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**BRIEF OF *AMICI CURIAE* ASSOCIATION OF MEXICANS IN NORTH  
CAROLINA, INC., EL PUEBLO, INC., AND NORTH CAROLINA ASIAN  
AMERICANS TOGETHER IN SUPPORT OF DEFENDANTS-APPELLEES**

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**FRAP 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, the Association of Mexicans in North Carolina, Inc., El Pueblo, Inc., and North Carolina Asian Americans Together state that they are tax-exempt nonprofit organizations. None of the *amici* has a corporate parent. No publicly owned company owns 10% or more stock in any of the *amici*.

Dated: February 19, 2020

/s/ Donald Salzman

Donald Salzman  
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### INTEREST OF AMICI CURIAE<sup>1</sup>

Three North Carolina nonprofit organizations join this brief. *Amici* have direct experience engaging with and advocating on behalf of minority populations in North Carolina. Specifically, all three *amici* work to increase civic engagement among minority populations by, among other ways, encouraging voter registration and participation in the political process.

The Association of Mexicans in North Carolina (AMEXCAN) is an organization that provides support, information, advice, and training to the Latinx population in North Carolina. AMEXCAN aims to provide the Latinx community with the knowledge necessary to exercise their human rights and achieve well-being. AMEXCAN's mission is to encourage the active participation and leadership of Latinx individuals in the community through cultural, educational, health, and advocacy methods.

El Pueblo is a nonprofit organization based in Raleigh, North Carolina, specializing in leadership development for both youth and adults among Wake County's growing Latinx community. El Pueblo's mission is to build collective power through leadership development, organizing, and direct action so that the

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Latin American community and other marginalized communities control their own stories and destinies. El Pueblo works to register eligible Latinx voters and encourages the Latinx community to adopt the practice of voting in every election cycle.

North Carolina Asian Americans Together (NCAAT) is a nonpartisan, nonprofit organization committed to supporting equity and justice for all by fostering community among Asian Americans and Pacific Islanders (AAPI) and allies in North Carolina through civic engagement, leadership development, grassroots mobilization, and political participation. NCAAT's vision is for a more inclusive democracy built by drawing on the strength of diverse traditions, common values, and community togetherness. NCAAT is working toward a more informed society that integrates greater participation and representation by AAPIs. NCAAT seeks to actively build up and motivate the AAPI electorate throughout the state by, among other things, conducting voter registration drives and get-out-the-vote efforts and providing free naturalization workshops for lawful permanent residents who are eligible for citizenship.

*Amici* represent minority populations who often face hurdles to voting, are more frequently targeted by effective voter suppression efforts—including those related to their citizenship status—and subsequently turn out to vote at low rates.<sup>2</sup>

### **ARGUMENT**

Under the auspices of the National Voter Registration Act (NVRA), plaintiff-appellant Public Interest Legal Foundation (PILF) requested from five North Carolina counties<sup>3</sup> all records regarding registered voters “who were identified as

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<sup>2</sup> See Vann R. Newkirk II, *Voter Suppression is Warping Democracy*, The Atlantic (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-pri-voter-suppression/565355/> (“Under the specter of alleged voter fraud by noncitizens—which was based more on anti-immigrant sentiment than any data or other evidence—and amid increasingly incendiary rhetoric about Latinos, Hispanic voters found 2016 especially difficult.”); Sunny Frothingham, *Emerging Electorate: Latinx Voters in North Carolina*, We Are Democracy (N.C.) (Sept. 2019), <https://democracync.org/research/emerging-electorate-latinx-voters-in-north-carolina/> (identifying barriers to Latinx voting); see also David Byler, *Politicians often overlook Asian American voters. They shouldn’t, especially in 2020*, Wash. Post (July 10, 2019, 3:08 PM), <https://www.washingtonpost.com/opinions/2019/07/10/politicians-often-overlook-asian-american-voters-they-shouldnt-especially/> (“Asian American voters have historically turned out to vote at low rates, though they also report having less contact with politicians, a dynamic that might turn into a self-fulfilling cycle.”); Aastha Uprety, *5 Ways to Increase Asian American Voter Turnout*, Ctr. for Am. Progress (May 7, 2018, 9:01 AM) <https://www.americanprogress.org/issues/race/news/2018/05/07/450310/5-ways-increase-asian-american-voter-turnout/> (“However, Asian Americans continue to face barriers to the ballot box. Language barriers, voter suppression tactics, and lack of quality engagement from political parties have produced a large, persistent racial disparity in voter turnout.”).

<sup>3</sup> PILF’s initial requests were directed to Durham, Forsyth and Guilford counties. A month later, PILF expanded its requests to include Mecklenburg and Buncombe counties. (J.A. at 11, 13.) The majority of these counties represent North Carolina’s

*potentially* not satisfying the citizenship requirements for registration.” (See Joint Appendix (“J.A.”) at 59 (emphasis added).) Under PILF’s expansive reading of the NVRA’s Public Disclosure Provision, the requests entitled PILF to any and all records concerning the state’s efforts to identify and remove registrants from the registration rolls who do not satisfy the citizenship qualification to register and vote (see J.A. at 60), including, but not limited to, the following highly sensitive and personal information:

- “the completed voter application form,” which can contain birth date, address, driver’s license number, the last four digits of Social Security numbers (SSNs) phone numbers, email addresses;
- “communications from the voter in questions to [the County Board of Elections]—including those communications from legal counsel or claimed relatives on their behalf”;
- “all documents [the County Board of Elections] may receive from federal entities [including] U.S. Department of Homeland Security/USCIS detailing inquiries regarding registered voters”;
- “all documents and communications . . . with respect to pending immigration matters”; and
- responses by voters to state forms requiring an affirmation of citizenship, which can include copies of birth certificates, passports, and other documents verifying citizenship.

(J.A. at 60–61; Defs.’ Mot. Dismiss at 6.)

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most urban, most non-white, and most-democratic-affiliated populations according to voter registration statistics. *Voter Registration Statistics*, N.C. State Bd. Of Elections, <https://vt.ncsbe.gov/RegStat/> (last visited Feb. 14, 2020).

In response to these requests, Defendant-Appellee the North Carolina State Board of Elections (State Board) provided PILF with responsive documents and further explained why it did not believe it could fully accommodate PILF's request under the law. (Appellees' Br. 15-17.) Of note, the State Board expressed concern about exposing voters who had been investigated to public exposure and media attention, especially when a high proportion of those individuals were actual citizens, eligible voters, and had done nothing to warrant investigation. (J.A. at 187–189, 204–206, 209–210). Unsatisfied with the response, PILF brought suit.

The District Court sided with the State Board and dismissed PILF's NVRA action. The District Court premised its decision on the fact that records that were "uniquely sensitive and vulnerable to abuse" need not be disclosed under the NVRA. (J.A. at 299–300.)

*Amici* have a strong interest in the issues of law before the Court. Based on their extensive experience working with and advocating on behalf of minority populations in North Carolina—populations that often face barriers to voting and are vulnerable to voter suppression efforts—*amici* seek to ensure that the Court will be able to consider the real-world implications of allowing unfettered public disclosure of highly personal voter information, as PILF's interpretation of the NVRA would require.

*Amici* begin by providing an overview of actions taken by PILF in Virginia after obtaining voter information about *potential* noncitizens in Virginia similar to the records at issue in this case. Then, by way of that example, *amici* explain how uniquely sensitive voter information can be used to harass and intimidate voters. Specifically, *amici* identify the ways in which such information has been used in the past to intimidate minority voters and how modern communication methods amplify the effect of these historical voter intimidation tactics.

*Amici* continue by explaining that the purpose of the NVRA is to promote voter registration and participation, especially among racial minorities. But PILF's distorted reading of the NVRA would do the opposite. The disclosure of uniquely sensitive voter information would place significant burdens on the right to vote and have a damaging effect on voter participation.

Finally, *amici* demonstrate how the disclosure of certain voter information can be weaponized for partisan gain or other policy objectives unrelated to the goals of the NVRA by providing additional detail about PILF's prior conduct. Specifically, in Virginia, PILF requested information about *potential* noncitizens, was warned multiple times by government officials and their own associates that the voter lists they obtained included U.S. citizens, and nevertheless published the identities of eligible voters and accused them of voting illegally.

For these reasons, *amici* urge this Court to affirm the District Court.

**I. THE DISTRICT COURT WAS CORRECT TO EXEMPT FROM PRODUCTION RECORDS OF POTENTIAL NONCITIZENS ON GROUNDS THAT THOSE RECORDS ARE UNIQUELY SENSITIVE AND VULNERABLE TO ABUSE.**

To understand how North Carolinians' highly sensitive voter information might be abused, this Court need look no further than recent actions of PILF in Virginia as documented in *League of United Latin American Citizens – Richmond Region Council 4614 v. Public Interest Legal Foundation* (“LULAC”), No. 1:18-cv-00423 (E.D. Va. Apr. 12, 2018). In 2016 and 2017, PILF requested large quantities of detailed information pertaining to “potential noncitizens” from county registrars across Virginia. Pl.’s Mem. Supp. Summ. J., ECF No. 180, at 6, *League of United Latin Am. Citizens – Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 1:18-cv-00423 (E.D.V.A. filed June 14, 2019) (“Mot. Summ. J., LULAC, ECF No. 180”). The scope of those requests was substantially similar to those at issue in this case, with some of the language in the North Carolina requests tracking nearly verbatim. (*Compare* J.A. at 59–61 *with* Letter to Prince William County, LULAC, ECF No. 186-2.)<sup>4</sup>

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<sup>4</sup> Request 1 in PILF’s request to Durham County Board of Elections in North Carolina reads in relevant part:

Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security, North Carolina Department of Motor Vehicles, and from the North Carolina State Board of

After ultimately obtaining the requested information, PILF published and promoted the private and personal information of thousands of Virginia residents in a series of reports entitled *Alien Invasion in Virginia: The discovery and coverup of noncitizen registration and voting (Alien Invasion I)* and *Alien Invasion II: The sequel to the discovery and cover-up of non-citizen registration and voting in Virginia (Alien Invasion II)* (together, the “*Alien Invasion* reports”). The reports disclosed information including, among other details, names, home addresses, phone numbers, and SSNs. (See J.A. at 133–186.) The *Alien Invasion* reports accused the individuals named therein of being noncitizens and of committing multiple, separate felonies, including illegally registering to vote and casting an ineligible ballot. (See

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Elections since January 1, 2006. 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.

J.A. at 59. Request 1 in PILF’s request to the Registrar in Prince William County, Virginia reads in relevant part:

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.

Letter to Prince William County, *LULAC*, ECF No. 186-2, at 5.

*generally id.*) The reports also demanded a “swift, sure, and unwavering” response from law enforcement and prosecutors. (*See, e.g.*, J.A. at 135.)

PILF aggressively publicized the *Alien Invasion* reports. It promoted them through press releases, Twitter, Facebook, TV interviews, radio interviews, and online media outlets like Breitbart.com. *See* Mot. Summ. J., *LULAC*, ECF No. 180, at 6. For example, PILF publicized *Alien Invasion I* to national media via press releases and postings on social media. Media outlets further disseminated the report’s assertions to a broad audience.<sup>5</sup> Similarly, upon publication of *Alien Invasion II*, PILF issued a press release demanding the removal of 5,556 noncitizens from Virginia voter rolls, of whom supposedly “[o]ne [t]hird . . . voted illegally,” and who, collectively, supposedly cast “7,474 illegal ballots.” Mot. Summ. J., *LULAC*, ECF No. 180, at 6. PILF continued to publicize the reports. *Id.* Its publicity efforts resulted in inflammatory headlines in the Drudge Report and other media outlets.<sup>6</sup> PILF not only publicized the *Alien Invasion* reports, but explicitly asserted

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<sup>5</sup> *See, e.g.*, J. Christian Adams, *Yes, Virginia, Aliens Are Registered or Voting. . . and in Pennsylvania, by the Thousands*, PJ Media (Oct. 3, 2016, 4:22:48 PM), <https://pjmedia.com/jchristianadams/2016/10/03/yes-virginia-aliens-are-registered-and-voting-and-in-pennsylvania-by-the-thousands/> (discussing *Alien Invasion I* and providing a link to same).

<sup>6</sup> *See, e.g.*, Brandon Darby, *Watchdog Claims 5K Noncitizens Registered to Vote in Virginia*, Breitbart News (May 30, 2017), <http://www.breitbart.com/texas/2017/05/30/5k-noncitizens-registered-vote-virginia-report-finds/>; *Report: More Than 5,000 Non-Citizen Voters Purged From Rolls in VA*, FoxNews insider (June 2, 2017,

the individuals named in the reports had committed felonies. For example, in a radio interview on June 1, 2017, PILF President and General Counsel J. Christian Adams proclaimed that “we document criminal felony behavior in not hundreds, but in thousands in this report.”<sup>7</sup> PILF’s efforts also included explicit calls for the prosecution of the individuals identified in the reports.<sup>8</sup>

The publication and promotion of the inflammatory accusations of felony voter fraud led voters wrongly accused by the report to suffer from public

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9:20 AM), <https://insider.foxnews.com/2017/06/02/report-more-5000-non-citizen-voters-purged-rolls-va>.

<sup>7</sup> John Fredericks Show, *J. Christian Adams – Alien Invasion: Thousands of Foreigners Registered To Vote (& Voting) In Va*, YouTube (June 1, 2017), <https://www.youtube.com/watch?v=Mo62mr4iJcg> (quoted material can be found at 1:25-1:40, 9:21-9:36, 13:20-13:35); *see also* Reaganbabe Radio, *My Interview w/ J. Christian Adams of the @ElectionLawCtr on #VoterFraud and non-citizens voting*, audioboom.com (Dec. 19, 2017), <https://audioboom.com/posts/6561515-my-interview-w-j-christian-adams-of-the-electionlawctr-on-voterfraud-and-non-citizens-voting> (“The Public Interest Legal Foundation did a study in Virginia where we found over five thousand aliens who were removed from the rolls – it doesn’t even count all the ones who were on in the first place.” (quoted material can be found at 5:30-6:10)).

<sup>8</sup> *See* Press Release, Public Interest Legal Foundation, Report: 5500+ Noncitizens Discovered on Voter Rolls in Virginia (May 29, 2017), <https://publicinterestlegal.org/blog/report-5500-noncitizens-discovered-voter-rolls-virginia/> (“In this election year, aliens must not cast illegal ballots, and if they do they must be prosecuted.”); *Mornings on the Mall: Interview - J. CHRISTIAN ADAMS*, Omny.fm (Dec. 27, 2017), <https://omny.fm/shows/mornings-on-the-mall/wmal-interview-j-christian-adams-12-27-17> (“My organization—Public Interest Legal Foundation—and others, have sent them the names of people—alien voters. We’ve sent them prosecutions bow-tied, turnkey prosecutions.” (quoted material can be found at 5:54)).

embarrassment, reputational harm, and fear of adverse consequences from exercising their constitutional right to vote. Complaint, *LULAC*, ECF No. 1 ¶¶ 2, 8, 9, 48, 49, 50. For example, articles and public commentary on the reports sparked vitriolic and threatening statements about the voters referenced in the report, with people calling for them to be “shot,” “executed,” “deported,” or “imprisoned.” Neil W. McCabe, *Illegal Foreign Voting in Virginia Covered Up By Soros-Backed Democratic Officials, Says Report*, Breitbart News (Oct. 2, 2016), <http://www.breitbart.com/big-government/2016/10/02/virginia-illegal-voting-fraud-coverup/>.

The case ultimately settled. As part of the settlement, PILF was required to remove all exhibits to the *Alien Invasion* reports that reference individual registrants and commit to never again publish or disseminate those exhibits, to provide a written apology to Plaintiffs, to add a written statement to the front of each publication of the *Alien Invasion* reports acknowledging the mischaracterizations in their reporting,<sup>9</sup> and to commit to robust redactions of personal identifying information if

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<sup>9</sup> The full statement reads as follows:

PILF has removed Exhibits 1 and 7 to this Report, reproducing records provided by Virginia election officials that named Virginia registrants and voters and provided personal contact information for those registrants and voters. The records in Exhibit 1 show voters whose registrations had been cancelled based on a declaration of non-citizenship on a Department of Motor Vehicles form and who failed to affirm citizenship within two weeks of being sent a notice from election officials. PILF recognizes that individuals in

PILF ever published again on the subject of Virginia and purported non-citizen registrants or voters.<sup>10</sup>

PILF's work in Virginia lends credence to the primary concerns identified by the District Court in dismissing the NVRA complaint in this case, namely: (1) concerns that "disclosing the identity of targets of law-enforcement investigations can subject those identified to embarrassment and potentially more serious reputational harm" (internal quotations omitted), (2) concerns about "identity theft," and (3) concerns about "completely overrid[ing] individual privacy in areas which may result in either stigma or harassment." (J.A. at 300–301.)

To begin, the overly-aggressive targeting of alleged non-citizens for law-enforcement investigations (J.A. at 300) is already a vexing issue in the communities served by *Amici* given recent investigative action by the U.S.

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Exhibits 1 and 7 were in fact citizens and that these citizens did not commit felonies. PILF profoundly regrets any characterization of those registrants as felons or instances of registration or voting as felonies. We believe voter registration laws should be enforced so that non-citizens are not permitted to vote and that citizens remain on the voter rolls.

PILF & Va. Voters Alliance, *Alien Invasion In America: The discovery and coverup of noncitizen registration and voting* (Cover statement) (Sept. 2016), [https://publicinterestlegal.org/files/Report\\_Alien-Invasion-in-Virginia.pdf](https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf).

<sup>10</sup> Press Release, Southern Coalition for Social Justice, *Voters Strike Back and Win Settlement and Apology in Challenge to Voter Intimidation in Virginia* (July 21, 2019), <https://www.southerncoalition.org/voters-strike-back-and-win-settlement-in-virginia/>.

Attorney’s Office for the Eastern District of North Carolina, acting on behalf of Immigration and Customs Enforcement (ICE).<sup>11</sup> In August 2018, the U.S. Attorney’s Office issued subpoenas to the State Board and the 44 county boards of election within its jurisdiction, requesting broad categories of voter information. (J.A. at 234–235.) The subpoenas covered almost a decade and asked for millions of documents including application forms, federal write-in-absentee ballots, and communications with voters regarding registration cancellation. (*Id.*)

The news of the subpoenas stoked fear across the communities served by *amici* and widespread concern that the subpoenas would result in significant reputational harm and disenfranchisement of eligible voters.<sup>12</sup> Ultimately, the State

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<sup>11</sup> Brian Murphy, *ICE demands ‘exhaustive’ voting records from North Carolina*, The News & Observer (Sept. 5, 2018, 12:05 PM), <https://www.newsobserver.com/news/politics-government/article217846725.html>.

<sup>12</sup> *Amici* engaged in advocacy efforts after the subpoenas were issued. For example, NCAAT educated their members using advocacy materials and encouraged them to write letters to the State Board Chair (*Elections Board: Fight ICE’s Excessive Voter Information Grab, Democracy North Carolina*, [https://org2.salsalabs.com/o/6601/p/dia/action4/common/public/?action\\_KEY=26476](https://org2.salsalabs.com/o/6601/p/dia/action4/common/public/?action_KEY=26476) (last visited Feb. 17, 2020)). See also Alek Kemeny, *ICE’s voter registration subpoena could stifle turnout, cause racial profiling, professor says*, The Chronicle (Oct. 3, 2018, 12:00 AM), <https://www.dukechronicle.com/article/2018/10/ices-voter-registration-subpoena-could-stifle-turnout-cause-racial-profiling-professor-says> (explaining that “[t]here is a genuine fear that by linking voting to ICE, legal citizens might be anxious about voting because ICE has detained and rounded up people that are citizens”); Press Release, Office of David E. Price (Rep. 4th Dist., N.C.), Reps. Price and Butterfield Issue Joint Statement on DOJ/ICE Subpoenas (Sept. 6, 2018), <https://price.house.gov/newsroom/press-releases/price-and-butterfield-issue-joint-statement-dojice-subpoenas> (“This massive request of voter

Board authorized the State Attorney General's Office to move to quash the subpoenas (J.A. at 236), given that they were "overly broad, unreasonable, vague, and clearly impact[ing] significant interests of [North Carolina] voters." Joshua Malcom, *Transcript of Motion*, North Carolina State Board of Elections and Ethics Enforcement (Sept. 7, 2018), [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2018-09-07/Malcolm\\_Motions\\_Transcript\\_09072018.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2018-09-07/Malcolm_Motions_Transcript_09072018.pdf).

Permitting a private actor to access this same information without restriction would significantly exacerbate these problems by allowing an end-run around the constitutional and statutory safeguards relied upon by the State Board to prevent the misuse of voter information by ICE and the DOJ. PILF's solicitation of prosecutions in Virginia based on incomplete information bolsters the legitimacy of this concern.<sup>13</sup> And the risk is exacerbated by the fact that North Carolina law allows

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data seems clearly designed to disenfranchise and intimidate voters and to disrupt the administration of an impending election with major state and national implications."); Editorial Board, *The GOP finds yet another way to suppress the vote*, Wash. Post (Sept. 10, 2018), [https://www.washingtonpost.com/opinions/the-gop-finds-yet-another-way-to-suppress-the-vote/2018/09/10/7cd2617e-b536-11e8-a7b5-adaaa5b2a57f\\_story.html?utm\\_term=.9e69b305a86f](https://www.washingtonpost.com/opinions/the-gop-finds-yet-another-way-to-suppress-the-vote/2018/09/10/7cd2617e-b536-11e8-a7b5-adaaa5b2a57f_story.html?utm_term=.9e69b305a86f) (describing the subpoenas as a "fishing expedition by the Trump administration to support the president's repeatedly discredited assertions that voting fraud is widespread, especially by noncitizens casting illegal ballots").

<sup>13</sup> PILF does not disavow the possibility that its requests overlap substantially with that of federal prosecutors seeking to investigate potential crimes, and disputes that that alone would be a valid basis for the State Board to withhold disclosure of PILF's requested records. (*See* Appellant Br. 49.)

private individuals to petition the superior court to appoint a special prosecutor to prosecute those believed to have violated certain election laws. N.C. Gen. Stat. § 163-278.28.

As the District Court also explained, public disclosure of sensitive voter information heightens the risk of identity theft and the documents sought by PILF including, among other things, “copies of birth certificates or passports” can be used to perpetrate that crime. (J.A. at 300.) PILF has published this type of sensitive voter information before, opening individuals up to the significant personal damages associated with identify theft. *See* Complaint, *LULAC*, ECF No. 1 ¶ 41.

The Court’s concerns about “stigma and harassment” are also justified. The Court recognized that the types of data sought by the Plaintiffs could be misused to subject voters to “stigma and harassment,” and the NVRA was not intended to allow public disclosure of voter registration records that would so injure personal privacy rights. And, indeed, PILF has misused substantially similar data in Virginia to intimidate and harass voters, thus validating the Court’s concerns. *See League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 1:18-CV-00423, 2018 WL 3848404, at \*4 (E.D. Va. Aug. 13, 2018) (rejecting defendants’ motion to dismiss voter intimidation claims under the Voting Rights Act and the Klux Klan Act) (“Defendants have linked Plaintiffs’ names and

personal information to a report condemning felonious voter registration in a clear effort to subject the named individuals to public opprobrium.”).

Modern communication technology exacerbates the effect of any abuse of sensitive voter information. For example, doxing, which is the act of “broadcasting personally identifiable information about an individual on the Internet,”<sup>14</sup> can embarrass, intimidate, or otherwise harm individuals. As detailed in the *LULAC* case, doxing in the context of political participation has profound and negative effects on its targets. (*See* J.A. at 103–04, 119–122.) The negative impact on individual victims and their families can be severe and long-lasting.<sup>15</sup>

This type of “Internet harassment inflicts emotional, reputational, and pecuniary harm on its victims.” Winhkong Hua, *Cybermobs, Civil Conspiracy, and Tort Liability*, 44 *Fordham Urb. L.J.* 1217, 1223–24 (2017). In addition to the “emotional and psychological upset, up to and including suicide,” *id.*, doxing can hurt a person’s education or employment prospects—and, as a result, their

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<sup>14</sup> Joey L. Blanch & Wesley L. Hsu, *An Introduction to Violent Crime on the Internet*, *The U.S. Att’ys’ Bull.*, Vol. 64, No. 3, May 2016, at 5.

<sup>15</sup> *See* Winhkong Hua, *Cybermobs, Civil Conspiracy, and Tort Liability*, 44 *Fordham Urb. L.J.* 1217, 1227 (2017) (“Search engine indexing associates victims’ names with the malicious online materials that harassers post; search engines make these materials both easily available and virtually persistent. Victims are often unable to do anything about these results because search engine indexing is the result of complex algorithms that focus on relevance and popularity, rather than veracity.” (footnotes omitted)).

livelihood.<sup>16</sup> However, the threats are not limited to the Internet. Publicly disseminating personal information—such as names and addresses—opens victims up to the threat of physical harassment or violence by others. Blanch & Hsu, *supra*, at 5. (“[Doxing] can expose the victim to an anonymous mob of countless harassers, calling their phones, sending them email, and even appearing at the victim’s home.”).<sup>17</sup> Doxing also contributes to the disenfranchisement of eligible voters because doxing victims often “stop or limit their public activity, both online and offline, out of fear of continued or worsened harassment.”<sup>18</sup>

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<sup>16</sup> See Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans S 230 Immunity*, 86 Fordham L. Rev. 401, 411–12 (2017) (“Online abuse is often the first thing that employers, clients, and potential dates see in a search of a victim’s name. The potential for destruction is exponentially greater today than it was twenty years ago.”).

<sup>17</sup> See also Press Release, U.S. Dep’t of Justice, New York Man Sentenced To 24 Months in Prison For Internet Offenses, Including “Doxing,” “Swatting,” Making a False Bomb Threat, and Cyber-Stalking (July 11, 2016), <https://www.justice.gov/usao-dc/pr/new-york-man-sentenced-24-months-prison-internet-offenses-including-doxing-swatting> (“The publication of the victims’ personal identifying information also reveal[s] to any other would-be harassers or assailants how and where to contact the victims.”).

<sup>18</sup> Nellie Veronica Binder, *From the Message Board to the Front Door: Addressing the Offline Consequences of Race- and Gender-Based Doxing and Swatting*, 51 Suffolk U. L. Rev. 55, 59–60 (2018); see also Ira S. Rubinstein, *Voter Privacy in the Age of Big Data*, 2014 Wis. L. Rev. 861, 895–96 (2014) (Doxing “may also have chilling effects that force individuals to withdraw from certain activities because they believe that refusing to give out data is the only way to prevent unwanted sharing.”).

Finally, the pursuit of this information and the potential for its abuse cannot be considered outside the context of North Carolina’s “long history of race discrimination generally and race-based vote suppression in particular.” *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016). For example, in 1990, a mass mailing to predominantly black voters throughout North Carolina was used to “to develop lists of voters” and spread false information about voting requirements. Action Memorandum from Lee H. Rubin, Attorney, Voting Rights Section, Civil Rights Division, to John R. Dunne, Assistant Attorney General, Civil Rights Division, 3 n.1, 5–8 (June 19, 1991), <http://apps.washingtonpost.com/g/documents/politics/the-department-of-justice-makes-caseagainst-1990-helms-campaign-and-north-carolina-gop/3323>. Following an investigation, the Department of Justice concluded that “this type of mailing, which makes a reference to criminal penalties in connection with voting, may create fear in the most vulnerable of black voters, and without active intervention to dispel those fears, may ultimately dissuade some of these voters from participating in the electoral process.” *Id.* at 28.

This 1990 scheme followed decades in which the publication of names and personal information were used to intimidate and frighten members of minority

groups away from civic participation.<sup>19</sup> For example, in Tennessee and Mississippi, groups of private citizens in several states led efforts to publish the names of African American voters, enabling severe economic reprisal against those on the lists. Taylor Branch, *Parting the Waters: America in the King Years, 1954–1963*, at 333 (Touchstone Books 1988) (first quotation); *Cold War in Fayette County*, EBONY, Sept. 1960, at 27–34 (second and third quotations on 27; photograph of list of names on 32). The Mississippi state legislature also once required “that the names of applicants for registration be published in a local newspaper once a week for two weeks as an invitation to voters to challenge the qualification of applicants.” Voting in Mississippi, *supra* note 19, at 9–10. This public identification of would-be voters often achieved its intended deterrent effect. *See id.* at 27 (“When [a retired teacher’s] name was published in the newspaper pursuant to State law, she returned home to find a life-sized effigy of a woman hung above her mail box. . . . [A] fear of violence made her unwilling to go to her polling place to vote in the elections which followed.”).

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<sup>19</sup> *See, e.g.*, United States Commission on Civil Rights (“USCCR”), *1961 Report: Book I, Voting* 91–92 (1961) [hereinafter 1961 Report] (describing efforts to have activists evicted from their properties and denied credit in order to deter African Americans from voting); USCCR, *Voting in Mississippi: A Report of the United States Commission on Civil Rights* 11, 21 (1965) [hereinafter *Voting in Mississippi*] (describing instances of physical intimidation and economic reprisals aimed at curbing registration and voting by African American citizens).

The practice of publicly naming voters alleged to have committed a crime to deter political participation belongs in the past. The District Court’s recognition that disclosure of the at-issue records, “uniquely sensitive and vulnerable to abuse,” could result in harassment, is entirely justified in light of PILF’s recent practices and North Carolina’s history. (J.A. at 299.)

## **II. UNFETTERED ACCESS TO UNIQUELY SENSITIVE VOTER INFORMATION CONCERNING POTENTIAL NONCITIZENS WOULD UNDERMINE THE PURPOSES OF THE NVRA.**

The NVRA was enacted to encourage voter registration and enhance voter participation. In fact, in enacting the NVRA, Congress noted that the right to vote is a “fundamental right” that the government has a duty to promote, and “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . including [for] racial minorities.” 52 U.S.C. § 20501(a).

Although courts have interpreted the NVRA’s public disclosure provision to require disclosure of some voter information, they have also excluded records that are uniquely sensitive or the disclosure of which would undermine the spirit of the NVRA. For example, in *Project Vote/Voting for America v. Long*, the court limited what could be disclosed and required redaction of SSNs. 752 F. Supp. 2d 697, 712 (E.D. Va. 2010). Other courts have similarly required redaction of highly sensitive personal information that is subject to abuse, such as birth date, phone number, and

SSN. *See Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1345 (N.D. Ga. 2016) (noting “[t]hat Congress intended to limit certain confidential information from disclosure has been recognized by every court that has considered” the NVRA).

Here, the information PILF is seeking includes extensive personal information about individuals who may be *potential* noncitizens. That is, unlike in other NVRA cases where voter registration data has been ordered to be produced with redactions, here, the information requested is targeted at a subset of voters, the vast majority of which the State Board believes has done nothing wrong (*see* Appellees’ Br. 6–11, 64), by a group who has ignored similar warnings and misused similar data. As described above, the disclosure of such highly-sensitive personal information could have a chilling effect on the willingness of many Americans to exercise their fundamental right to vote. Voters, and especially voters among the communities served by *amici*, would understandably be hesitant to register at all if their personal information was then available for public disclosure. *See True the Vote v. Hosemann*, 43 F. Supp. 3d 693 (S.D. Miss. 2014); *Long*, 752 F. Supp. 2d at 712; *Tex. Democratic Party v. Bettencourt*, No. H-08-332, 2009 U.S. Dist. LEXIS 133441 (S.D. Tex. July 16, 2009). That outcome would be antithetical to the NVRA’s purpose of encouraging voter registration and enhancing voter participation, especially among racial minorities.

### III. PILF'S PAST CONDUCT HIGHLIGHTS THE RISKS TO NORTH CAROLINA VOTERS IF SENSITIVE VOTER INFORMATION IS DISCLOSED

PILF's prior misuse of sensitive voter information concerning "potential noncitizens" is a cautionary tale for the ways in which this "uniquely sensitive" information could be abused to the detriment of lawful, eligible voters.

Record evidence from the *LULAC* case demonstrates that PILF knew or should have known that the accusations in the *Alien Invasion* reports regarding unlawful noncitizen registration and voting were baseless. At the outset, PILF knew the records it was requesting, the ones that ultimately formed the basis for the *Alien Invasion* reports, were not proof that the individuals listed therein were noncitizens. Mot. Summ. J., *LULAC*, ECF No. 180, at 20–21. This is made clear by the fact that the letters PILF sent to Virginia registrars did not request lists of confirmed noncitizens; rather, as in the case here, PILF requested records of registrants "who were identified as *potentially* not satisfying the citizenship requirements for registration." *Id.*

PILF was well aware that the information it was seeking did not conclusively show noncitizens voting. Registrars from various Virginia counties made PILF aware that the list it was requesting contained citizens who had merely made an error on a government form. *Id.* at 21. Some registrars explained to PILF that individuals on these lists had subsequently affirmed their citizenship and re-registered to vote.

*Id.* For example, the James City County registrar told PILF that “many of these [individuals] simply were [listed as noncitizens] because they failed to check the ‘Are you a US citizen’ box on the voter registration application, not because they are actually a non-citizen, and have since reregistered with an acceptable completed application.” (J.A. at 270.) Similarly, the Rappahannock County registrar provided PILF with the requested report and added that “this report is not all inclusive and there are false positives.” The registrar continued: “Each voter on this report was a different circumstance . . . [i]n many instances, voters miss checking the tiny box indicating they are citizens. In this instance, we are required to deny their registrations or cancel them if they are registered . . . [w]e send a letter notifying them of the cancellation and the reason and in the majority of instances, they provide valid photo id/proof of citizenship and their registration is activated.” (J.A. at 273.) Other registrars even went as far as to identify for PILF the specific individuals who had affirmed their citizenship. Mot. Summ. J., *LULAC*, ECF No. 180, at 21. And yet, PILF ignored these express clarifications by state officials and nevertheless published the names and associated personal information. *Id.* at 22.

Further, PILF’s associates admitted to having actual knowledge that the people whose names they were publishing as noncitizens were, in fact, U.S. citizens eligible to vote. *Id.* For example, one PILF volunteer explained to the organization that he looked into the names on the list and the list likely included eligible voters

who were “incorrectly dropped” from the voter rolls. *Id.* at 21–22. At his deposition, another volunteer stated that J. Christian Adams told him that 10-15% of the names PILF published in the *Alien Invasion* reports were those of citizens. *Id.*

Notably, despite warnings from government officials and acknowledgment by PILF associates that these lists contained eligible citizen voters, PILF included their names in the *Alien Invasion* reports without conducting any investigation or due diligence. *Id.* at 23. Rather than heed the warnings of Virginia government officials or take the time to confirm which individuals on the requested lists had subsequently affirmed their citizenship and re-registered to vote, PILF pushed ahead and knowingly published false information. *Id.* at 23–24. PILF attempted to justify these actions by blaming Virginia state procedures for any “false positives” and suggesting that, by accusing U.S. citizens of voting illegally, they would expose “glitches” in Virginia’s voter registration system. *Id.* Notably, a high-level PILF employee appeared to relish the possibility of falsely labeling U.S. citizens as fraudulent voters, suggesting that PILF could “convert pushback into official confusion” and arguing that “[t]he fog of war favors the aggressor . . . .” *Id.* In sum, the evidence from the *LULAC* case demonstrates that PILF’s reports were not published to “promote the integrity of elections nationwide” and “advance the public education aspect of its organizational mission” (J.A. at 4–5), but instead to advance personal

and partisan agendas with callous disregard for any innocent voters caught in the fray.

This history illustrates the folly of any ruling or construction of the NVRA that would require the disclosure of this “uniquely sensitive” voter information. Such disclosure runs the risk that partisan players on either side of the aisle will target specific voters for the purposes of suppressing their vote. The District Court was correct to foreclose this possibility.

### **CONCLUSION**

For the reasons stated above, the District Court was correct to exempt from production records of potential noncitizens on grounds that those records are uniquely sensitive and vulnerable to abuse. Therefore, *amici* respectfully request that this Court affirm the District Court’s decision below.

DATED: February 19, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2020, I filed the foregoing *Amici Curiae* Brief of the Association of Mexicans in North Carolina, Inc., El Pueblo, Inc., and North Carolina Asian Americans Together in Support of Defendants-Appellees with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

/s/ Donald Salzman

Donald Salzman

*Counsel for Amici Curiae*

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**  
**Effective 12/01/2016**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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- Retained Court-appointed(CJA) CJA associate Court-assigned(non-CJA) Federal Defender
Pro Bono Government

COUNSEL FOR: Association of Mexicans in North Carolina, Inc., El Pueblo, Inc., and North Carolina Asian Americans Together as the

- appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

s/ Donald Salzman (signature)

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Handwritten signature of Allison Riggs

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