

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE COMMITTEE FOR MASSACHUSETTS
VOTER IDENTIFICATION BALLOT
QUESTION,

Plaintiff,

v.

HON. WILLIAM FRANCIS GALVIN, in his
official capacity as Secretary of the Commonwealth,

Defendant.

CIVIL ACTION
NO. 1:24-cv-12029-NMG

**DEFENDANT SECRETARY OF THE COMMONWEALTH'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and District of Massachusetts Local Rule 56.1, Defendant Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth, hereby cross-moves for summary judgment. The Court should enter judgment in his favor on the single count of the Complaint, ECF No. 1, because the Commonwealth has not violated Section 8(i) of the National Voter Registration Act of 1993, 52 U.S.C. § 20507(i), because it makes the voter registration information at issue in this case available for public inspection, and with no restrictions on its use.

WHEREFORE, for these reasons and the reasons set forth in his supporting memorandum of law, the Secretary respectfully requests that the Court enter judgment on his favor.

January 7, 2025

Respectfully submitted,

HON. WILLIAM FRANCIS GALVIN, in his official
capacity as Secretary of the Commonwealth,

By his attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Phoebe Fischer-Groban

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 7, 2025.

/s/ Phoebe Fischer-Groban
Phoebe Fischer-Groban
Assistant Attorney General

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**DEFENDANT’S MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

Consistent with its obligations under the National Voter Registration Act of 1993 (NVRA) and the NVRA’s important policy goals, Massachusetts engages in a variety of activities to maintain and update its voter registration database, including making the information in that database publicly available through local election officials. Unsatisfied with that method of access, Plaintiff Committee for Massachusetts Voter Identification Ballot Question (the “Committee”) asks this Court to ignore the plain language of the NVRA and order that the NVRA requires that voter registration information be provided to it in consolidated form, from the Secretary of the Commonwealth’s office (the “Secretary”). Because the NVRA contains no requirement specifying that the Secretary execute the Commonwealth’s responsibilities to comply with the public disclosure provision of the NVRA—despite explicitly assigning other statutory responsibilities to the Secretary—and because it is undisputed that the Commonwealth provides comprehensive and

unrestricted access to its voter registration information through local election officials, judgment should enter in favor of the Secretary on the sole count of the Committee's Complaint.

THE NATIONAL VOTER REGISTRATION ACT OF 1993

Congress enacted the National Voter Registration Act (NVRA), 52 U.S.C. §§ 20501 *et seq.*, in 1993, finding that “it is the duty of the Federal, State, and local governments” to promote the “fundamental right” of United States citizens to vote and that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect” on voters’ exercise of that fundamental right. 52 U.S.C. § 20501(a)(1)-(3). In light of these findings, Congress declared the purposes of the NVRA, which include: “establish[ing] procedures that will increase the number of eligible citizens who register to vote,” enabling state governments to implement the NVRA “in a manner that enhances the participation of eligible citizens as voters,” and “protect[ing] the integrity of the electoral process.” 52 U.S.C. § 20501(b)(1)-(3).

In service of those purposes, the NVRA requires that states establish multiple opportunities for eligible citizens to register to vote, including requiring driver’s license applications to include voter registration and requiring uniform mail registration, and expanding the number and range of locations where residents may register to vote by allowing a wide variety of state and municipal agencies and offices to register eligible citizens to vote. 52 U.S.C. §§ 20504-20506. It also establishes rules for when states may remove names from their voter registration list, prohibiting, for example, purging voters’ names for not voting in a recent election or other selective purging. *Id.* § 20507. And, it requires that states maintain a program for confirming the accuracy and currency of their voter registration list in a uniform, non-discriminatory manner that complies with the Voting Rights Act. *Id.* This reflects “an underlying purpose of the Act; that once registered, a voter should remain on the list of voters so long as the individual remains eligible to vote in that jurisdiction.” S. Rep. No. 103-6, at 34 (1993).

Also consistent with the Congressional purposes of increasing the number of eligible citizens who register to vote, enhancing the participation of eligible citizens, and protecting the integrity of the electoral process, Congress established the public disclosure provision, *id.* § 20507(i), which requires that:

Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

Id. § 20507(i)(1). Section 20509 requires that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act.” In Massachusetts, the Secretary is the chief State election official responsible for coordinating Massachusetts’ responsibilities under NVRA. *See* 1993 Mass. Acts ch. 475, § 57.

FACTUAL AND PROCEDURAL BACKGROUND

The Secretary’s office hosts a database of registered voters in Massachusetts known as the Voter Registration Information System (VRIS). VRIS was first developed in 1995 after passage of the NVRA, to provide the necessary technology for local election officials to maintain and update voter registration records and information as required under the NVRA. Def. Statement of Undisputed Material Facts (“Def. SOF”), ¶ 1. Prior to the creation of VRIS, each city and town in Massachusetts maintained their own lists of registered voters and residents, with some having local databases while others maintained paper lists. Def. SOF, ¶ 2. At that time, local election officials would provide copies of their lists in response to public records requests, including mailing labels, and could charge fees for producing such records. *Id.* Under the provisions of the 2005 version of the Code of Massachusetts Regulations, 950 Code Mass. Regs. § 32.06(6), local election officials

could charge a fee of no more than one cent per name, but could charge between \$90.00 and \$750.00 for computer tapes and could charge a fee of no more than two cents (\$0.02) per mailing label, provided that a minimum fee of no more than fifty dollars (\$50.00) could be assessed. *Id.* For paper copies of the voter lists, they could charge no more than twenty cents (\$0.20) per page for photocopies, no more than twenty-five cents (\$0.25) per page for copies of public records maintained on microfilm or microfiche and no more than fifty cents (\$0.50) per page for printout copies of computer records. *Id.* Local election officials were also able to charge for search and segregation time in responding to requests for copies of the voter lists. *Id.*

Because the NVRA required local election officials to maintain additional data relative to voter registration, VRIS was created to assist local election officials in complying with these requirements and to ensure consistency among municipal records. Def. SOF, ¶ 3. However, local election officials wanted to retain control over their data as well as the right to collect any fees for production of such data. *Id.* As such, under the provisions of General Laws chapter 51, section 47C, the Secretary's office maintains the VRIS database itself, but local election officials remain responsible for receiving voter registration forms and entering and updating voter data. Def. SOF, ¶ 4.

Additionally, only certain entities are eligible to receive statewide data while all others must submit requests locally, enabling local election officials to collect and benefit from any fees for requests for records. Def. SOF, ¶ 4. Section 47C of chapter 51 specifically provides that the names and addresses in the VRIS database shall not be a matter of public record from the Secretary's office. Def. SOF, ¶ 5. However, that section contains limited exceptions that allow the Secretary's office to make the data available to "state party committees, statewide candidate committees, state ballot question committees, the jury commissioner, adjutant general and any other individual, agency or entity that the state Secretary shall designate by regulation consistent

with the purposes of this section, at a fair and reasonable cost not to exceed the cost of printing or preparing computer readable documents.” *Id.* When providing data to qualified entities, the Secretary’s office requires the entity to sign a licensing agreement that limits use and distribution of the data. *Id.* The licensing agreement requires the recipient of the data to certify that they meet the statutory qualifications to receive the statewide list because they represent a statewide candidate committee, state party committee or other political committee actively seeking nomination or election or a statewide ballot question committee for or against a question to appear at the next statewide election. *Id.*

The Help America Vote Act (HAVA) required each state to create a statewide database of registered voters no later than January 1, 2004. Massachusetts complies with this requirement through VRIS. Def. SOF, ¶ 6.

Under state law, local election officials are solely responsible for registering voters, updating voter information and deleting voters. Some examples of responsibilities of local election officials are as follows:

- Massachusetts General Laws chapter 51, section 36 provides that affidavits of voter registration must be sent to local election officials.
- Massachusetts General Laws chapter 51, section 42H requires local election officials to receive completed voter registration affidavits from agencies, from individuals and organizations conducting voter registration, via the mail and via an online portal and by hand-delivery. Upon receipt of each completed affidavit, the local election officials must certify receipt thereof and shall notify the registrant of the disposition of the affidavit and thereafter add the registrant’s name, address and effective date of registration to the annual register of voters.
- Massachusetts General Laws chapter 51, section 46 requires local election

officials, upon receipt of a completed voter registration affidavit, to add the registrant's name to the voter list and maintain the affidavit of voter registration.

- Massachusetts General Laws chapter 51, section 2 requires local election officials to update the names of voters.
- Massachusetts General Laws chapter 51, section 3 requires local election officials to update the addresses of voters.
- Massachusetts General Laws chapter 51, section 37 requires local election officials to prepare lists of qualified voters.
- Massachusetts General Laws chapter 51, section 37A requires local election officials to place certain voters on the inactive list.
- Massachusetts General Laws chapter 51, section 41 requires local election officials to preserve all documentation relative to voter registration for a specified period.

Def. SOF, ¶ 7.

Pursuant to Massachusetts General Laws chapter 51, section 55, the voter lists prepared by local election officials must be made available for public inspection and a printed copy must be made available at no cost to all duly organized political committees. Def. SOF, ¶ 8.

In accordance with the provisions of Massachusetts General Laws chapter 51, section 36, the Secretary's office prepares voter registration forms for agencies, local election officials and the public. Def. SOF, ¶ 9.

In December 2023, the Secretary's office received a public records request from Joanne Miksis seeking names, mailing addresses, dates of birth, voter identification numbers, registration date, party affiliation, ward and precinct number and voter status for all persons listed in the statewide database as well as "all Member Data files" sent from the Commonwealth of

Massachusetts to the Electronic Registration Information Center (ERIC). Def. SOF, ¶ 10. In her email, Ms. Miksis identified herself as representing the Committee for Massachusetts Voter Identification Ballot Question. *Id.*

In response to the records request, Debra O'Malley, the Elections Division Records Access Officer, informed Ms. Miksis that the voter data was exempt from disclosure by the Secretary by statute but that a ballot question committee was eligible to receive the data upon execution of a licensing agreement. Def. SOF, ¶ 11. She further responded that there were no records responsive to the request for "Member Data files" sent to ERIC. *Id.*

The Secretary's office later realized in early 2024 that the Committee would not qualify to receive the data from the Secretary's office as the ballot question they proposed had failed to qualify for the 2024 state election, so they were not a statewide ballot question committee for or against a question to appear at the next statewide election. Def. SOF, ¶ 12. Although they were ineligible to receive the data from the Secretary's office, they remained eligible and able to request the data from each of the cities and towns in Massachusetts. Def. SOF, ¶ 13. As noted above, voter data held by local election officials is public and there is no restriction on use or distribution of the data once obtained. *Id.*

In the past, the Secretary's office has assisted requestors seeking data from local election officials by providing the requestors with email addresses for local election officials as well as sending broadcast emails to local election officials clarifying the data being requested and providing technical instruction on how to provide the data. Def. SOF, ¶ 14. Through counsel, they offered to provide the same assistance to the Committee. *Id.*

The Secretary's office does not have member data files that were sent to ERIC as they have not agreed to a "Certification Date" with ERIC. Def. SOF, ¶ 15. Part of the membership agreement with ERIC requires that the Secretary's office provide certain voter data as well as driver license

data maintained by the Registry of Motor Vehicles, but only after an agreed upon “Certification Date.” *Id.* Once that data is sent to ERIC, reports will be returned that require further action, including identifying potential duplicate voters and voters who may have moved or otherwise be ineligible. VRIS, the Massachusetts statewide database, was first created in 1995 and the Secretary’s office is in the process of developing a new database. *Id.* Given the structure and technology of the current database, significant resources would be necessary to make the changes necessary to process any returned records. *Id.* As such, the Secretary’s office determined to defer agreeing to a “Certification Date” until the new database is available, which has the functionality being built into it. *Id.* While the Secretary’s office had expected the new database to be available sooner, the project has been delayed with an expected go live date of summer 2025. *Id.*

On August 6, 2024, unsatisfied with the Secretary’s response, and unwilling to proceed with requesting the data from local election officials even with the assistance of the Secretary’s office, the Committee filed its complaint in the instant matter.

ARGUMENT

I. Legal Standard.

Under Federal Rule of Civil Procedure 56(a), the Court shall grant summary judgment 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.” A party may assert that a fact “cannot be or is genuinely disputed” by citing to materials in the record, including documents, affidavits, admissions, or other materials, or showing that the cited materials “do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support that fact.” F.R. Civ. P. 56(c).

II. Massachusetts Complies with the NVRA's Public Disclosure Provision.

A. The Committee Can Receive All of the Voter Data in VRIS From Local Election Officials.

It is undisputed that the Committee can receive the entirety of the voter registration information from the VRIS database that they seek from local election officials in the Commonwealth, with no restrictions on the Committee's use, distribution, or publication of the records. *See* Def. SOF, ¶¶ 8, 13. Consequently, it is undisputed as a factual matter that the Commonwealth complies with 52 U.S.C. § 20507(i)(1) by "making available for public inspection" its voter registration information, and the Court should enter summary judgment for the Secretary on Count I of the Committee's Complaint.

B. The NVRA Does Not Require that the Secretary Provide Voter Registration Information from VRIS to the Committee.

Though the NVRA's public disclosure provision requires that Massachusetts voter registration information be made available for public inspection, it does not require that the Secretary execute that obligation himself, nor does it dictate the format in which voter registration information must be provided. Nothing in the plain text or the structure of the NVRA specifically imposes on the Secretary, Massachusetts's chief State election official, the legal obligation to directly provide voter registration information to the Committee, or entitles the Committee to receive the voter registration information in a single statewide list. In answering questions of statutory interpretation like this one, this Court's inquiry "begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004). "Courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993) (citation omitted). Further, it is a "fundamental canon of statutory construction that the words of a statute must be read in their

context and with a view to their place in the overall statutory scheme.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). Applying those principles here yields a clear answer: the NVRA does not specify who must execute the state’s obligation to make voter registration information available for public inspection.

Neither the plain text of § 20507(i)(1), nor the structure of the NVRA, assigns or delegates to the chief State election official the duty of making records available for public inspection under this section. The section itself does not mention the chief State election official. It provides only that “[e]ach State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1) (emphasis added). “State” is defined in the NVRA as “a State of the United States and the District of Columbia.” *Id.* § 20502. The plain text is therefore clear and unambiguous that so long as Massachusetts makes the requisite information available for public inspection, as it unquestionably does, the NVRA does not dictate how that obligation must be satisfied or by whom.

Throughout the NVRA, Congress was explicit when a particular duty or responsibility is specifically assigned to the chief State election official rather than something that the state as a political subdivision may implement in a manner it chooses. For example, § 20505, which requires that states accept voter registration application forms by mail, requires that “[e]ach State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission,” or may develop its own form that meets specific criteria. 52 U.S.C. § 20505(a). By contrast, § 20505(b) specifically tasks the chief State election official with distributing those forms, specifying that the “*chief State election official* of a State shall make [mail voter registration forms] available for distribution through governmental and private entities.” (emphasis added).

Section 20507(g), which governs how States should learn about their residents' federal felony convictions, likewise explicitly assigns the chief State election official specific duties related to the process, tasking other entities with other aspects of the process, or leaving implementation to each state. This section provides: "On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the *chief State election official* designated under section 20509 of this title of the State of the person's residence." 52 U.S.C. § 20507(g)(1) (emphasis added). And, it provides, "On request of the *chief State election official* of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information." *Id.* § 20507(g)(3) (emphasis added). And finally, "[t]he *chief State election official* shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection." *Id.* § 20507(g)(5) (emphasis added).

Section 20508, establishing federal coordination with the states, again specifically distinguishes between duties of the chief State election official and general responsibilities of each state. Section 20508(a) requires that the Election Assistance Commission consult with the "*chief election officers* of the States" to prescribe regulations and to develop a mail voter registration application form for federal elections, but "shall provide information to the *States* with respect to the responsibilities of the States" under the NVRA. 52 U.S.C. § 20508(a) (emphasis added). Even the civil enforcement and private right of action section specifically names the "chief election official of the State" as the required recipient of the written notice of violation. *Id.* § 20510(b)(1).

In drafting the NVRA, Congress was explicit where a specific state official or entity is assigned a responsibility, or where a state must implement a provision of the law but without any specific official statutorily assigned to the responsibility. Section 20504, for example, which

requires that state motor vehicle driver's license applications also register eligible residents to vote, requires that applications for a State motor vehicle driver's license that are "accepted at a *State motor vehicle authority*" must also serve as an application to register to vote, that "[e]ach *State* shall include a voter registration application form" as part of the application, and that these completed applications must also "be transmitted to the *appropriate State election official*".¹ Section 20506, which requires that states allow a broad range of state agencies and offices register eligible citizens to vote, similarly requires that "States shall designate agencies for the registration of voters in elections for Federal office," and that each "voter registration agency" must provide a variety of registration-related services. 52 U.S.C. § 20506(a).

The absence of any specific mention of the chief State election official in the plain text of the public disclosure provision, and the explicit assignment of duties to the chief State election official in other provisions, establishes that the NVRA simply requires that the voter registration information the Committee requests is maintained and available for public inspection, not that it be made available in the combined format that they wish or from the Secretary himself. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). Here, it is undisputed that the Committee can obtain all of the voter registration information from VRIS that they seek electronically from local election officials.

¹ The Senate Committee on Rules and Administration Report for the NVRA explains that the "the terms 'State election officials' and 'appropriate State election official' refer to whatever election official under State law has the appropriate responsibility for the administration of voter registrations and elections. In some cases, this may be a local election official." S. Rep. No. 103-6, at 24 (1993).

The Secretary is aware of no case in which a court has decided the question of whether the chief State election official, as the coordinator of a state's responsibilities under the NVRA, must directly provide the records required to be disclosed under the public disclosure provision. Nor is the Secretary aware of any case suggesting that the State election official is specifically responsible for providing this information, rather than "coordinating" the state's compliance with the NVRA's requirements. *See Harkless v. Brunner*, 545 F.3d 445, 451-53 (6th Cir. 2008) (concluding Ohio Secretary of State was proper party to lawsuit claiming widespread violations of NVRA voter registration requirements because chief State election official's role is to ensure that local officials carry out state's NVRA responsibilities). But apart from the plain text of the public disclosure provision, and the structure of the statute, the limited legislative history on the question also indicates that while the chief State election official is directly responsible for specific aspects of the NVRA, such as distributing mail registration forms, receiving notice of civil suits, and the like, their "coordination" encompasses implementing and ensuring compliance with the NVRA across the state rather than direct responsibility for execution of any other aspects of the statute. *See* S. Rep. No. 103-6, at 36 (1993) ("Various provisions of this Act assign to this official certain responsibilities regarding the promulgation of regulations, the design of the Federal mail registration form, the receipt of notice of civil suits, and the distribution of mail registration forms."); H.R. Rep. No. 103-9, 19-20 (1993) (same).

Further, in 1994, the Federal Election Commission, pursuant to its responsibility under the NVRA to "provide information to the States with respect to the responsibilities of the States" under the NVRA, 52 U.S.C. § 20508(a)(4), published *Implementing the National Voter Registration Act*

of 1993: Requirements, Issues, and Examples, on January 1, 1994,² which explains that local “voter registration officials” are required to maintain the records and to make them available for public inspection under § 20507(i)—not coincidentally, exactly how Massachusetts implements the NVRA. *Id.* at 5-15. This is consistent with the plain text of the public disclosure provision, which does not specifically task the chief State election official with making records available for public inspection. Here, the Secretary coordinates the local election officials’ efforts to make these records available to the public. Def. SOF, ¶ 14. It is plain that this arrangement satisfies Massachusetts’s obligations under the public disclosure provision of the NVRA.

C. The NVRA Does Not Dictate that Massachusetts Provide Voter Registration Information from VRIS in a Single Statewide List.

There is also no requirement under the NVRA that the Committee be provided with the voter registration information of every registered voter in the Commonwealth from VRIS in a single statewide list. The Secretary does not dispute that the voter registration information that the Committee seeks is available in VRIS and falls under the public disclosure provision. *See Pub. Interest Legal Found., Inc. v. Bellows*, 92 F.4th 36, 49 (1st Cir. 2024) (name and voter registration information for all registered voters in Maine encompassed by § 20507(i)(1)). But the fact that information is covered by the public disclosure provision “does not mean that requestors are entitled to receive them in any manner they choose.” *Greater Birmingham Ministries v. Sec’y of State for Alabama*, 105 F.4th 1324, 1332 (11th Cir. 2024). In *Greater Birmingham Ministries*, for example, the Eleventh Circuit concluded that Alabama complied with § 20507(i)(1) where voter registration records were available from the Alabama Secretary of State either (1) at no charge for

² Available at https://www.eac.gov/sites/default/files/eac_assets/1/1/Implementing%20the%20NVRA%20of%201993%20Requirements%20Issues%20Approaches%20and%20Examples%20Jan%201%201994.pdf

in person viewing at the Secretary’s office for four hours with limited notetaking permitted; (2) for purchase in electronic form at an inflated cost; or (3) for purchase in paper form at an inflated cost. *Greater Birmingham Ministries*, 105 F.4th at 1328 n.2. The Eleventh Circuit further held that the NVRA did not even require electronic production of records. *Id.* at 1326 (“Electronic production, however, is not required for these records—or any others—under the Act. Instead, the Act mandates ‘public inspection’ and ‘photocopying at a reasonable cost.’ Electronic production is neither.”).

Here, it is undisputed that the Committee can obtain an electronic copy of all of the voter registration information from VRIS from local election officials. Although the Committee complains about unspecified “modifications” municipalities make to the extracts, and complains that they cannot combine the extracts they receive into a single list, they have not identified with any specificity how those modifications impact the accessibility of the underlying voter registration information, what type of information local election officials have redacted or “encrypted,” or whether the Committee has made any efforts to obtain unredacted or unencrypted information. And, the Committee concedes that municipalities must respond to requests made pursuant to the Public Records Law within ten business days of the request. *See* Mass. Gen. Laws ch. 66, § 10(b)(vi).³ Even if it is true that not every municipality has complied with the Committee’s requests in a uniform or timely fashion, it is undisputed that local election officials are required by law to make all voter registration information from VRIS available to the public with no restrictions on their use or publication in compliance with the public disclosure provision

³ Additionally, the Public Records Law contains both administrative and judicial recourse for requestors whose requests are unanswered or who do not receive the records to which they are entitled. *See* Mass. Gen. Laws ch. 66, § 10A.

of the NVRA. Therefore, the Secretary is entitled to judgment on Count I of the Committee's Complaint.

D. There Are No ERIC Member Data Files.

As noted above, the Secretary has not provided any voter data to ERIC, and thus has no such records. *See* Def. SOF, ¶ 15. Accordingly, the Secretary is entitled to judgment on Count I of the Committee's Complaint to the extent it asserts a violation of § 2507(i)(1) based on any ERIC files.

III. The NVRA Does Not Preempt Massachusetts Law.

The Committee argues in its motion that the Massachusetts law is preempted by the NVRA, but the Committee's Complaint does not include a preemption claim, merely summarily seeking in its relief a declaration that 52 U.S.C. § 20507(1) preempts "any state statute, code, regulation, practice, and/or policy that prevents Plaintiff from inspecting and copying the requested list and Member Data files, or data contained in them." ECF No. 1. The Committee does not identify any basis for a preemption claim in its Complaint, nor does it allege any facts plausibly supporting a preemption claim. Accordingly, the Committee's Complaint fails to state a preemption claim.

Additionally, as explained in detail above, the Committee can obtain all of the voter registration information it seeks directly from local election officials, with no restrictions on their use, distribution, or publication of that data. Def. SOF, ¶¶ 8, 13. Because the Committee has full electronic access to the entirety of the state voter registration list, with no restrictions on their use of that information, any state laws limiting access to, or use of, voter registration information received from the Secretary do not "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *See Arizona v. United States*, 567 U.S. 387, 399 (2012) (citation omitted). Accordingly, to the extent the Complaint alleges a claim for preemption, which it does not, any preemption claim fails as a matter of law. *Contra Pub. Interest Legal Found.*

v. Bellows, 92 F.4th 36, 54-56 (1st Cir. 2024) (Maine state law limiting transfer, use, and publication of voter registration information preempted by the NVRA).

CONCLUSION

For these reasons, the Court should enter judgment for the Secretary on Count I of the Complaint and deny all the relief the Committee seeks in its Complaint.

January 7, 2025

Respectfully submitted,

HON. WILLIAM FRANCIS GALVIN, in his official
capacity as Secretary of the Commonwealth,

By his attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 7, 2025.

/s/ Phoebe Fischer-Groban
Phoebe Fischer-Groban
Assistant Attorney General

COMMONWEALTH OF MASSACHUSETTS
UNITED STATES DISTRICT COURT
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THE COMMITTEE FOR MASSACHUSETTS
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AFFIDAVIT OF MICHELLE K. TASSINARI

I, Michelle K. Tassinari, on oath depose and state on personal knowledge and based on my review of the records of the Elections Division of the Office of the Secretary of the Commonwealth of Massachusetts (hereinafter, “the Elections Division”) as follows:

1. My name is Michelle K. Tassinari, and I am the Director and Legal Counsel in the Elections Division of the Office of the Secretary of the Commonwealth (the “Secretary”). From my role in the Elections Division, I have personal knowledge of the facts stated herein.

2. The Secretary’s office hosts a database of registered voters in Massachusetts known as the Voter Registration Information System (VRIS). VRIS was first developed in 1995 after passage of the National Voter Registration Act, to provide the necessary technology for local election officials to maintain and update voter registration records and information as required under the NVRA.

3. Prior to the creation of VRIS, each city and town in Massachusetts maintained their own lists of registered voters and residents, with some having local databases while others

maintained paper lists. At that time, local election officials would provide copies of their lists in response to public records requests, including mailing labels, and could charge fees for producing such records. Under the provisions of the 2005 version of the Code of Massachusetts Regulations, 950 CMR 32.06(6), local election officials could charge a fee of no more than one cent per name, but could charge between \$90.00 and \$750.00 for computer tapes and could charge a fee of no more than two cents (\$0.02) per mailing label, provided that a minimum fee of no more than fifty dollars (\$50.00) could be assessed. For paper copies of the voter lists, they could charge no more than twenty cents (\$0.20) per page for photocopies, no more than twenty-five cents (\$0.25) per page for copies of public records maintained on microfilm or microfiche and no more than fifty cents (\$0.50) per page for printout copies of computer records. Local election officials were also able to charge for search and segregation time in responding to requests for copies of the voter lists.

4. Because the NVRA required local election officials to maintain additional data relative to voter registration, VRIS was created to assist local election officials in complying with these requirements and to ensure consistency among municipal records. However, local election officials wanted to retain control over their data as well as the right to collect any fees for production of such data.

5. As such, under the provisions of General Laws chapter 51, section 47C, this Office maintains the VRIS database itself, but local election officials remain responsible for receiving voter registration forms and entering and updating voter data. Additionally, only certain entities are eligible to receive statewide data and all others have to submit requests locally, enabling local election officials to collect and benefit from any fees for requests for records.

6. Section 47C of chapter 51 specifically provides that the names and addresses in the database shall not be a matter of public record from the Secretary's office. However, that section contains limited exceptions that allow the Secretary's office to make the data available to state party committees, statewide candidate committees, state ballot question committees, the jury commissioner, adjutant general and any other individual, agency or entity that the state Secretary shall designate by regulation consistent with the purposes of this section, at a fair and reasonable cost not to exceed the cost of printing or preparing computer readable documents. When providing data to qualified entities, the Secretary's office requires the entity to sign a licensing agreement that limits use and distribution of the data. The licensing agreement requires the recipient of the data to certify that they meet the statutory qualifications to receive the statewide list because they represent a statewide candidate committee, state party committee or other political committee actively seeking nomination or election or a statewide ballot question committee for or against a question to appear at the next statewide election.

7. The Help America Vote Act (HAVA) required each state to create a statewide database of registered voters no later than January 1, 2004. Massachusetts complies with this requirement through VRIS.

8. Under state law, local election officials are solely responsible for registering voters, updating voter information and deleting voters. Some examples of responsibilities of local election officials are as follows:

- Massachusetts General Laws chapter 51, section 36 provides that affidavits of voter registration must be sent to local election officials.
- Massachusetts General Laws chapter 51, section 42H requires local election officials to receive completed voter registration affidavits from agencies, from

individuals and organizations conducting voter registration, via the mail and via an online portal and by hand-delivery. Upon receipt of each completed affidavit, the local election officials must certify receipt thereof and shall notify the registrant of the disposition of the affidavit and thereafter add the registrant's name, address and effective date of registration to the annual register of voters.

- Massachusetts General Laws chapter 51, section 46 requires local election officials, upon receipt of a completed voter registration affidavit, to add the registrant's name to the voter list and maintain the affidavit of voter registration.
- Massachusetts General Laws chapter 51, section 2 requires local election officials to update the names of voters.
- Massachusetts General Laws chapter 51, section 3 requires local election officials to update the addresses of voters.
- Massachusetts General Laws chapter 51, section 37 requires local election officials to prepare lists of qualified voters.
- Massachusetts General Laws chapter 51, section 37A requires local election officials to place certain voters on the inactive list.
- Massachusetts General Laws chapter 51, section 41 requires local election officials to preserve all documentation relative to voter registration for a specified period.

9. Pursuant to Massachusetts General Laws chapter 51, section 55, the voter lists prepared by local election officials must be made available for public inspection and a printed copy must be made available at no cost to all duly organized political committees.

10. In accordance with the provisions of Massachusetts General Laws chapter 51,

section 36, the Secretary's office prepares voter registration forms for agencies, local election officials and the public.

11. In December 2023, the Secretary's office received a public records request from Joanne Miksis seeking names, mailing addresses, dates of birth, voter identification numbers, registration date, party affiliation, ward and precinct number and voter status for all persons listed in the statewide database as well as "all Member Data files" sent from the Commonwealth of Massachusetts to the Electronic Registration Information Center (ERIC). In her email, Ms. Miksis identified herself as representing the Committee for Massachusetts Voter Identification Ballot Question.

12. In response to the records request, Debra O'Malley, the Elections Division Records Access Officer, informed Ms. Miksis that the voter data was exempt from disclosure by the Secretary by statute but that a ballot question committee was eligible to receive the data upon execution of a licensing agreement. She further responded that there were no records responsive to the request for "Member Data files" sent to ERIC.

13. We later realized in early 2024 that the Committee would not qualify to receive the data from this Office as the ballot question they proposed failed to qualify for the 2024 State Election, so they were not a statewide ballot question committee for or against a question to appear at the next statewide election.

14. Although they were ineligible to receive the data from the Secretary's office, they remained eligible and able to request the data from each of the cities and towns in Massachusetts. As noted above, voter data held by local election officials is public and there is no restriction on use or distribution of the data once obtained.

15. In the past, we have assisted requestors seeking data from local election officials

by providing the requestors with email addresses for local election officials as well as sending broadcast emails to local election officials clarifying the data being requested and providing technical instruction on how to provide the data. Through counsel, we offered to provide the same assistance to the Committee.

16. We do not have member data files that were sent to ERIC as we have not agreed to a “Certification Date” with ERIC. Part of the membership agreement with ERIC requires that this Office provide certain voter data as well as driver license data maintained by the Registry of Motor Vehicles, but only after an agreed upon “Certification Date.” A true and accurate copy of the our membership agreement with ERIC is attached to the Tassinari Affidavit as Exhibit 1; the relevant provision is section 2a of the agreement, on pp. 13-14. Once that data is sent to ERIC, reports will be returned that require further action, including identifying potential duplicate voters and voters who may have moved or otherwise be ineligible. VRIS, the Massachusetts statewide database, was first created in 1995 and we are in the process of developing a new database. Given the structure and technology of the current database, significant resources would be necessary to make the changes necessary to process any returned records. As such, we determined to defer agreeing to a “Certification Date” until the new database is available, which has the functionality being built into it. While we had expected the new database to be available sooner, the project has been delayed with an expected go live date of summer 2025.

Signed under the pains and penalties of perjury this 7th day of January, 2025.

/s/ Michelle K. Tassinari

Exhibit 1

Last updated on March 28, 2014; May 21, 2015; October 28, 2015; December 16, 2016; November 30, 2018; February 3, 2020; June 3, 2022

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

BYLAWS

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ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

BYLAWS

ARTICLE I

Offices

Section 1. Location. The principal office of Electronic Registration Information Center, Inc. (the “Corporation”) shall be located within or without the State of Delaware, at such place as the Board of Directors shall from time to time designate. The Corporation may also maintain additional offices at such other places as the Board of Directors may from time to time designate. The Corporation shall have and maintain within the State of Delaware a registered office at such place as may be designated by the Board of Directors.

ARTICLE II

Members

Section 1. Members. The members of the Corporation shall consist solely of state, territorial governmental units, or the District of Columbia. Each member shall be represented by the chief election official or a chief election official’s designee to act on the member’s behalf for all purposes related to the Corporation, including service on the Board of Directors or as an Officer (the “Member Representative”). A chief election official may designate a new or replacement Member Representative at any time for any reason, at their discretion, upon written or electronic notice to the ERIC Executive Director who shall, in turn, notify the Membership.

Section 2. Admission of Members. Any jurisdiction seeking membership shall apply to the Executive Director of ERIC. The Executive Director shall provide written notice to the Membership of ERIC’s intent to admit a new jurisdiction, and members shall have five (5) business days to submit objections to the Executive Director in writing. If there are no objections, the new jurisdiction shall be automatically admitted to Membership effective upon execution of the Membership Agreement and payment of the Membership Fee as required by Article II, Section 4 of these Bylaws. If one or more members object to the admission of the new jurisdiction, then the jurisdiction shall be admitted to Membership upon a majority vote of the entire Board of Directors, effective upon execution of the Membership Agreement and payment of the Membership Fee.

Section 3. Membership Agreement. Each member shall sign a Membership Agreement that sets forth the terms and conditions of membership in the Corporation, which is attached as Exhibit A to these Bylaws.

Section 4. Membership Fee. Upon admission and execution of the Membership Agreement, each member shall pay a one-time Membership Fee of \$25,000 to the Corporation.

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With respect to individual members, the schedule for payment of the Membership Fee may be modified by the Board of Directors.

Section 5. Dues. Each member shall pay annual Membership Dues. Each year, the Membership shall approve the annual dues (the “Dues Schedule”), which shall form the basis of the Corporation’s budget to be set annually by the Board of Directors. The Dues Schedule may be amended, modified, or substituted by a vote of the Membership, however, the schedule for payment of dues by individual members may be modified by the Board of Directors. The Executive Director shall set the schedule for payment of Membership Dues in accordance with section 1 of the Membership Agreement. Any member of the Corporation who is delinquent in the payment of Membership Dues shall be notified of the delinquency and suspended from certain privileges of membership as provided for in the Membership Agreement. If dues are ninety (90) days delinquent, the delinquent member shall forfeit all rights and privileges of membership and be automatically removed from Membership. No dues will be refunded after payment, absent an overpayment or other payment error.

Section 6. Term of Membership; Good Standing. Members shall remain members provided they remain in good standing with the Corporation. Each member shall remain in good standing by complying with all of the terms and conditions of the Membership Agreement and paying annual dues on a timely basis, as described in Section 5 of this Article. A member that is out of compliance with the requirements for good standing may be subject to removal, including automatic removal, as set forth in Section 8 of this Article.

Section 7. Resignation. A member may resign by mailing or delivering written notice to the Secretary of the Corporation and ERIC’s Executive Director, who shall, in turn, notify the Membership. A member must provide a minimum of 91 days notice before their resignation is effective, provided however, that any notice of resignation that would otherwise become effective during the 91 days preceding a federal general election will not be effective until the first business day following the federal general election. Any paid Membership Dues will not be refunded, and a member shall be responsible and liable for any dues assessed prior to notice being received. However, if a member who has resigned reapplies for membership in the same fiscal year, dues previously paid will be credited to their Membership Dues for that fiscal year. If the sole reason for member’s resignation is a material breach by ERIC of the Membership Agreement, member may not issue a notice of resignation in accordance with this section unless a) it has provided written notice to ERIC of the alleged breach; and b) within thirty (30) days (or such other time specified in the Membership Agreement) of receiving such notice from member, ERIC is unable to cure the breach or determines the breach cannot be cured.

Section 8. Removal.

(a) Automatic Removal: A member shall be automatically removed from Membership for failure to comply with the “automatic removal” provisions as set forth herein or in the Membership Agreement. Such automatic removal shall be effective upon written notice by the Chair of the Board of Directors and/or ERIC’s Executive Director to the non-compliant member.

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(b) Other Grounds for Removal: Any member may be removed at any time, with or without cause, by a three-fourths vote of the entire Board of Directors. The Board of Directors may vote to remove a member solely for a breach of the provisions of the Membership Agreement (with the exception of those provisions that trigger automatic removal) only if the breach cannot be cured or, if curable, is not cured by the member within thirty (30) days (or such other time as may be specified in the Membership Agreement) of receiving notice of the breach from the Corporation.

(c) Dues Upon Removal: Any paid dues will not be refunded following removal.

(d) Readmission to Membership: After termination of membership pursuant to this Section, the member may reapply for membership at any time, without penalty, subject to remedying the cause for termination. Any dues assessed to the member upon reapplication shall be credited the amount of dues paid previously for the same fiscal year.

Section 9. Meetings of the Members. An annual meeting of the members shall be held each year at such time and place as shall be fixed by the Board of Directors for the appointment of directors, as necessary, and the transaction of other business as may properly come before the members.

Regular or special meetings of the members may be held at such times as may be fixed by the Board of Directors. The annual meeting of the members shall be open to the public, except as provided by law.

Meetings of the members may be held at such places within or without the State of Delaware as may be fixed by the Board of Directors for annual and regular meetings and in the notice of meeting for special meetings. The Board of Directors may authorize that meetings of the members may be held by means of remote communication in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware, and other applicable laws. Minutes of any meeting of the Membership shall be published following the meeting.

Section 10. Notice. Annual and special meetings of the members shall be held upon at least ten (10) days' notice by first-class mail, personal delivery, or by telephone, facsimile, electronic transmission or other similar means of communication to the members, and publication by appropriate means. The notice shall be given by or at the direction of the Chair or the Secretary, who shall call a meeting on the request of two or more directors, or a majority of the entire Membership. In the case of a meeting at which amendments to the Certificate of Incorporation, bylaws or Membership Agreement will be submitted to the members, the notice of such meeting shall set forth the proposed amendment or a summary of the changes to be effected thereby.

Section 11. Waivers of Notice. Whenever any notice is required to be given to a member, a waiver thereof in writing, signed by the person or persons entitled to such notice, or by electronic transmission, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Such waiver need not specify the purpose or purposes of the meeting.

Section 12. Quorum, Vote, Proxy. A majority of the members of the Corporation, as represented by their respective Member Representatives, shall constitute a quorum at a meeting of members, and the affirmative vote of a majority of such members present at the meeting and

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entitled to vote on the subject matter shall be the act of the members, except as otherwise provided herein. As permitted by Delaware law, a member entitled to vote on matters reserved to the Membership may do so by identifying a proxy for the Member Representative, who shall be a part of the Member Representative's staff or department. The Member Representative shall provide written notice to ERIC's Executive Director of the proxy within a reasonable period of time in advance of the meeting of the members.

Section 13. Written Consent of Members. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of the members consent in writing or by electronic transmission to the adoption of a resolution authorizing such action. Each resolution so adopted and the writings or electronic transmissions evidencing such consent by the members shall be filed with the minutes of the proceedings of the members.

ARTICLE III

Board of Directors

Section 1. Power of Board and Qualification of Directors. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors.

Section 2. Appointment of Directors. All members of the Corporation have a right to appoint their Member Representative to serve as a director on the Board of Directors. Upon admission to Membership under Article II, Section 2 or in the event of a vacancy, member shall inform ERIC's Executive Director in writing whether it wishes to have its Member Representative serve or continue to serve on the Board of Directors. Declining to have a Member Representative serve on the Board of Directors shall have no effect on the Member's other rights under these Bylaws, and such member shall have the right to appoint or reinstate their Member Representative to the Board of Directors at any time by providing written notice to ERIC's Executive Director who shall, in turn, notify the Board of Directors.

Section 3. Non-Voting Seats on Board of Directors. The Board of Directors may include up to two non-voting members of the Board for individuals who are experts in voting and elections but not governmental employees. Such non-voting directors shall serve two-year, renewable terms.

Section 4. Resignation. Any director may resign from office at any time by delivering a resignation in writing to the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified, acceptance of such resignation shall not be necessary to make it effective.

Section 5. Removal of Directors. Any director may be removed from office at any time, with or without cause, by a vote of three-fourths of the entire Board of Directors.

Section 6. Vacancies. If a Member Representative position on the Board of Directors becomes vacant for any reason including resignation or removal, the chief election official shall appoint a replacement in accordance with Article II, section 1 and shall notify the Executive

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Director in writing whether it wishes to have its replacement Member Representative serve as a director on the Board of Directors.

Section 7. Meetings of the Board. An annual meeting of the Board of Directors shall be held each year at such time and place as shall be fixed by the Board of Directors, for the election of officers and for the transaction of such other business as may properly come before the meeting.

Regular meetings of the Board of Directors shall be held at such times as may be fixed by the Board of Directors. Special meetings of the Board of Directors may be held at any time whenever called by the Chair of the Board, any two directors, or ERIC's Executive Director. Any Member Representative who is not a director may attend any meeting of the Board of Directors.

Meetings of the Board of Directors may be held at such places within or without the State of Delaware as may be fixed by the Board of Directors for annual and regular meetings and in the notice of meeting for special meetings. Minutes of any meeting of the Board of Directors shall be published following the meeting.

Section 8. Notice. Annual and special meetings of the Board of Directors shall be held upon at least five (5) days' written notice by first-class mail or twenty-four (24) hours' notice given personally or by telephone, facsimile, electronic transmission or other similar means of communication to all members.

Any such notice shall be addressed or delivered to each member at such member's address as it is upon the records of the Corporation or as may have been given to the Corporation by the member for purposes of notice.

Section 9. Quorum and Voting. Unless a greater proportion is required by law, the Certificate of Incorporation or these Bylaws, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business and, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the vote of a majority of the directors present at a meeting at the time of the vote, if a quorum is present at such time, shall be the act of the Board of Directors. Directors are not permitted to give a proxy to someone to act on his or her behalf with respect to actions of the Board of Directors.

Section 10. Written Consent of Directors; Meetings by Conference Telephone. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee consent in writing or by electronic transmission to the adoption of a resolution authorizing such action. Each resolution so adopted and the writings or electronic transmissions evidencing such consent by members of the Board of Directors or such committee shall be filed with the minutes of the proceedings of the Board of Directors or such committee.

Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

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Section 11. Compensation of Directors. Directors shall receive neither compensation nor reimbursement of expenses for their services as such.

ARTICLE IV

Committees

Section 1. Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other standing committees, each consisting of two or more directors, and each of which, to the extent provided in the resolution and to the fullest extent of the law, shall have and may exercise all the powers and authority of the Board. No committee may a) take any action expressly reserved under these Bylaws and Membership Agreement to the members for approval; b) amend the certificate of incorporation, these Bylaws, or the Membership Agreement; c) approve or remove members; d) elect or remove officers; e) remove directors; f) elect or remove non-voting members of the Board of Directors; g) elect members of committees; h) hire or discharge an executive director; i) adopt an agreement of merger or consolidation; j) recommend to the Membership the sale, lease or exchange of all or substantially all of the Corporation's property and assets; or k) recommend to the Membership a dissolution of the Corporation or a revocation of a dissolution of the Corporation. The Board of Directors shall have the power at any time to designate a member of such committee as its chair, fill vacancies, change the membership or discharge a committee.

Section 2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business, except with respect to quorum. In the absence of a contrary provision established by the Board of Directors, a majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and each committee shall otherwise conduct its business in the same manner as the Board of Directors conducts its business under Article III of these Bylaws.

Section 3. Service of Committees. Each committee of the Board of Directors shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his or her duty under law to the Corporation.

Section 4. Records. Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board of Directors.

Section 5. Advisory Board. The Board of Directors shall create a Privacy and Technology Advisory Board, and may create such other advisory boards and appoint to them such persons as it deems appropriate. Persons serving in such advisory capacity shall not exercise any of the powers granted to the Board of Directors in these Bylaws.

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Section 6. Executive Committee.

(a) *Ex Officio* Membership: The Executive Committee shall consist of the Chair, Vice Chair, Immediate Past Chair, Treasurer, and Secretary of the Board of Directors, and the Executive Director shall serve as a non-voting member of the Executive Committee (collectively the “*ex officio* members”). Vacancies in the *ex officio* membership of the Executive Committee shall be addressed in accordance with Article V.

(b) Elected Membership: In addition to the *ex officio* members, until the Membership reaches thirty-four, the Executive Committee shall include two voting members of the Board of Directors elected by the Board of Directors. When the Membership reaches thirty-five, the number of voting members of the Board of Directors serving on the Executive Committee shall increase to four, with the election of the additional members occurring within a reasonable time following the admission of the thirty-fifth member. Such committee members shall serve in this capacity for terms of one year, not to exceed two consecutive one-year terms. In the event of a vacancy among the elected membership of the Executive Committee, in accordance with subsection d below, the Executive Committee shall take reasonable steps to propose a replacement to fill the unexpired term of his or her predecessor.

(c) Chair of Executive Committee: The Chair of the Board of Directors shall be the Chair of the Executive Committee.

(d) Role and Powers of Executive Committee: Except as set forth in Article IV, Section 1 above, or as otherwise proscribed by the Board of Directors, the Executive Committee shall have the authority to exercise all powers of the Board of Directors between meetings of the Board. In addition, the Executive Committee’s responsibilities shall include preparing and proposing to the Board of Directors a slate of candidates for officer positions and elected members of the Executive and Finance Committees, including in the event of a vacancy, and the Executive Director; and, in consultation with the Finance Committee, reviewing the compensation and performance of the Executive Director. The Executive Committee shall hold regular meetings at such times as it shall determine and special meetings as requested by the Chair, the Executive Director, or any two of its members. Actions of the Executive Committee shall be reported to the Board of Directors.

Section 7. Finance Committee.

(a) *Ex Officio* Membership: The Finance Committee shall consist of the Treasurer and Secretary of the Board of Directors, and the Executive Director shall serve as a non-voting member of the Finance Committee (collectively, the “*ex officio* members”). Vacancies in the *ex officio* membership of the Finance Committee shall be addressed in accordance with Article V.

(b) Elected Membership: The Finance Committee shall include one voting member of the Board of Directors elected by the Board. This committee member shall serve in this capacity for terms of one year, not to exceed two consecutive one-year terms. In the event the voting member position on the Finance Committee becomes vacant, in accordance with subsection d below, the Executive Committee shall take reasonable steps to propose a replacement to fill the unexpired term of his or her predecessor.

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(c) Chair of Finance Committee: The Treasurer shall be the Chair of the Finance Committee.

(d) Role and Powers of Finance Committee: Except as set forth in Article IV, Section 1 above, or as otherwise proscribed by the Board, the Finance Committee shall have the authority to exercise all powers of the Board of Directors between meetings of the Board. The Finance Committee will assist the Board of Directors with its financial oversight responsibilities including reviewing and recommending approval of the annual operating budget; reviewing periodic financial reports; and overseeing the management of financial assets and audits. The Finance Committee shall hold regular meetings at such times as it shall determine and special meetings as requested by any of its members. Actions of the Finance Committee shall be reported to the Board of Directors.

ARTICLE V

Officers, Agents and Employees

Section 1. General Provisions. The officers of the Corporation shall be a Chair, a Vice Chair, the Immediate Past Chair, a Secretary, a Treasurer and may include such other officers as may be deemed necessary.

Section 2. Term of Office, Vacancies and Removal. The officers shall be elected by the Board of Directors from among its membership at the annual meeting of the Board. The Board of Directors may appoint other officers, who shall have such authority and perform such duties as may be prescribed by the Board. Each officer shall hold office for a term of one year, until the next annual meeting of the Board of Directors after his or her appointment and until his or her successor has been appointed and qualified. Any two or more offices may be held by the same person, except the offices of Chair and Secretary. If an office becomes vacant for any reason, the Board of Directors may fill such vacancy. Any officer so appointed or elected shall serve only until such time as the unexpired term of his or her predecessor shall have expired unless re-elected by the Board of Directors. Any officer may be removed by a vote of the majority of the entire Board of Directors with or without cause. Such removal without cause shall be without prejudice to such person's contract rights, if any, but the appointment of any person as an officer of the Corporation shall not of itself create contract rights.

Section 3. Powers and Duties of Officers.

(a) Chair. The Chair shall preside at all meetings of the Board of Directors. The Chair shall perform all duties customary to that office and shall supervise and control all of the affairs of the Corporation in accordance with the policies and directives approved by the Board of Directors.

(b) Vice Chair: The Vice Chair shall serve as advisor to the Chair and shall substitute for the Chair in his or her absence or inability to serve.

(c) Immediate Past Chair: The Immediate Past Chair shall serve as advisor to the Chair, the Executive Director and the Board of Directors.

Last updated on March 28, 2014; May 21, 2015; October 28, 2015; December 16, 2016; November 30, 2018; February 3, 2020; June 3, 2022

(d) Secretary. The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board of Directors, shall give or cause to be given all notices in accordance with these Bylaws or as required by law, and, in general, shall perform all duties customary to the office of Secretary. The Secretary shall oversee the custody of the corporate seal of the Corporation, if any; and shall have authority to affix or cause to be affixed the same to any instrument requiring it; and, when so affixed, it may be attested by his or her signature. The Board of Directors may give general authority to any officer to affix the seal of the Corporation, if any, and to attest the affixing by his or her signature.

(e) Treasurer. The Treasurer shall be chair of the Finance Committee. The treasurer shall oversee the custody of, and be responsible for, all funds and securities of the Corporation; shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation; and shall deposit or cause to be deposited all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, and at the annual membership meeting, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit or cause to be exhibited the books and accounts to any officer or director of the Corporation, and shall perform or cause to be performed all duties incident to the office of Treasurer, subject to the supervision of the Board of Directors, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board of Directors, give such bond or security for the faithful performance of his or her duties as the Board may require.

Section 4. Executive Director. The Board of Directors shall hire an Executive Director who shall serve as the chief executive officer of the Corporation. The Executive Director shall have day-to-day responsibility for the management of the staff and programs of the Corporation, including carrying out the Corporation's goals and Board-approved policies. The Executive Director shall serve as an ex-officio, non-voting member of the Board of Directors; report on the progress of the Corporation's activities, publish by appropriate means all data received from the Members pursuant to the Membership Agreement, provide notice to members regarding any changes in their standing with regard to the Corporation, answer questions of Board members and carry out the duties described in the job description. The Board of Directors may designate other duties as necessary. The Executive Director shall report to the Chair of the Corporation.

Section 5. Agents and Employees. The Board of Directors may hire or appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board. The Board of Directors may remove any agent or employee at any time with or without cause. The foregoing powers may be delegated to the Executive Director. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

Section 6. Compensation of Officers, Agents and Employees. Salaries or other compensation of officers, agents and employees may be fixed from time to time by the Board of Directors, or this power may be delegated to the Executive Director; provided, however that such salaries and compensation shall not be excessive in amount and shall be for services which are reasonable and necessary for performance of the Corporation's purposes.

ARTICLE VI

Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 2. Corporate Seal. The seal of the Corporation shall be circular in form and contain the name of the Corporation, the words “Corporate Seal” and “Delaware” and the year the Corporation was formed in the center. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

Section 3. Checks, Notes, Contracts. The Board of Directors shall determine who shall be authorized from time to time on the Corporation’s behalf to sign checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money; to enter into contracts; or to execute and deliver other documents and instruments.

Section 4. Books and Records. The Corporation shall keep at its principal office (1) correct and complete books and records of accounts, (2) minutes of the proceedings of its Board of Directors and any committee of the Corporation, and (3) a current list or record containing the names and addresses of all members, directors and officers of the Corporation. Any of the books, records and minutes of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 5. Amendments to Certificate, Bylaws and Membership Agreement. The Certificate of Incorporation may be amended in whole or in part by the members. These Bylaws may be amended or repealed, in whole or in part, by a two-thirds vote of the entire Membership. The Membership Agreement may be amended, in whole or in part, by a four-fifths vote of the entire Membership.

Section 6. Privacy. The protection of individual’s privacy being of significant importance to the Corporation, the Corporation shall take all reasonable and prudent actions to prevent and/or contest the disclosure of any personal or individual data held within the Corporation’s control to anyone other than the members.

Section 7. Indemnification and Insurance. The Corporation may, to the fullest extent permitted by law, indemnify any present or former director, officer, employee or agent or any person who may have served at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether for profit or not for profit, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative, or investigative, to which he or she may be or is made a party by reason of being or having been such director, officer, employee or agent if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. However, there shall be no indemnification in respect of any claim, issue or matter as to which he

Last updated on March 28, 2014; May 21, 2015; October 28, 2015; December 16, 2016; November 30, 2018; February 3, 2020; June 3, 2022

or she shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its directors and officers to the full extent such indemnification is permitted by law.

The Corporation may pay expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation under this Article. Such expenses (including attorneys' fees) incurred by other employees and agents may be paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

In no case, however, shall the Corporation indemnify, reimburse, or insure any person for any taxes imposed on such individual under chapter 42 of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended ("the Code"). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of § 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in § 4941(d) or § 4945(d), respectively, of the Code.

If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

OFFICER’S CERTIFICATE

I, _____, _____ of the Electronic Registration Information Center, formed and existing under the laws of the State of Delaware, do hereby certify that the foregoing is a true and complete copy of the Bylaws of this not-for-profit corporation as submitted and read to, and adopted by, the Board of Directors on _____, 20__.

IN WITNESS THEREOF, I have hereunder ascribed my name and affixed the Seal of the Corporation on this ____ day of _____, 20__.

Name: _____

Title: _____

[Corporate Seal]

EXHIBIT A

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

MEMBERSHIP AGREEMENT

This membership agreement (this “Agreement”) is made and entered into as of the ____ day of _____ 20__ (the “Effective Date”), by and between Electronic Registration Information Center, Inc., a Delaware nonstock corporation (“ERIC”) and MA SOC (the “Member”).

WHEREAS, ERIC was formed for charitable and educational purposes to engage in meaningful, evidence-based reform of the election system in the United States; and

WHEREAS, ERIC seeks to lessen the burdens of government by facilitating the collaboration of states and local government units to conduct research, develop technology, and perform other charitable and educational activities designed to reduce the costs and increase the accuracies and efficiencies associated with their use of voter registration systems; and

WHEREAS, ERIC seeks the direct involvement of states and local government units in furthering its charitable and educational purposes by such states and local government units becoming members of ERIC and furnishing voter registration and other data to help ERIC understand the needs of states and local government units with respect to their use of voter registration systems, and assist state and local government units in making their voter registration lists and processes more accurate, more complete, and fully compliant with federal, state and local laws; and

WHEREAS, in consideration for the Member’s performance as described below, ERIC will provide the service to the Members of sharing and processing data that relates to the maintenance of their voter registration lists and provide regular (at least on a monthly basis) reports to the Member.

NOW THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Annual Dues. The Member shall pay annual dues to ERIC as determined by the ERIC Membership, pursuant to Article II, Section 5 of ERIC’s Bylaws. The Executive Directors shall invoice Members for dues and set a reasonable payment deadline. If the Member fails to pay dues by the payment deadline, ERIC shall not deliver, nor shall the Member receive, any services or data from ERIC until such payment is received. Any Member that fails to pay dues within ninety (90) days of a payment deadline shall be *automatically removed* as a Member in accordance with ERIC’s Bylaws (the “Bylaws”).
2. Voter Files and Motor Vehicle Records. The Member shall transmit to ERIC the following data related to its voter files and motor vehicle records (collectively, the “Member Data”).
 - a. A reasonable time after admission, the Corporation and the Member will agree upon a ‘Certification Date’ that obligates the Member to the following two sections

EXHIBIT A

herein. The Member shall be notified in writing by the Corporation of the Certification Date.

- b. Within sixty (60) days of the Certification Date, and at least every sixty (60) days thereafter, the Member shall transmit: (1) all inactive and active voter files (excluding those records that are confidential or protected from disclosure by law), including those fields identified in Exhibit B, and (2) all licensing or identification records contained in the motor vehicles database (excluding those fields unrelated to voter eligibility, such as fields related to an individual's driving record), including those fields identified in Exhibit B. Under no circumstances shall the Member transmit an individual's record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States. Should Member believe it has an alternative source of data that is equivalent to or better than the motor vehicle database ("Alternative Data Source"), Member may apply in writing to the Executive Director of ERIC to substitute the Alternative Data Source for motor vehicle data. Such written application shall explain the basis for Member's assertion that the Alternative Data Source is equivalent or better and why using it will effectively serve the goals of ERIC. If, in the Executive Director's assessment, the request is reasonable, the Executive Director shall submit the Member's request to the ERIC Board of Directors ("ERIC Board" or "Board") for approval. If membership in ERIC is contingent upon a jurisdiction's ability to use an Alternative Data Source, the jurisdiction may seek approval of a data substitution request in advance of joining ERIC.
 - c. If the Member fails to transmit the required Member Data as described above, ERIC shall not deliver, nor shall the Member receive, any Data or services from ERIC until ERIC receives the required Member Data from the Member. Should Member fail to transmit Member Data in any sixty (60) day period as provided in sub-section b, Member shall, upon written notice from ERIC, have a thirty (30) day grace period in which to provide such Member Data. Should this grace period expire without a transmission to ERIC of Member Data from the Member, the Member shall be *automatically removed* from membership in accordance with the Bylaws. Member may submit a written appeal to the Executive Director of ERIC for a reasonable extension of the grace period deadline if Member is unable to meet that deadline because of a technical issue or a problem accessing or receiving the Member Data. Whether or not to grant the extension or to proceed to automatic removal shall be in the sole discretion of ERIC's Executive Director.
3. State Agency Records. The Member shall use its best efforts to transmit, on a regular basis, data relating to individuals that exists in the records of other agencies within its jurisdiction that perform any voter registration functions, including, but not limited to, those required to perform voter registration pursuant to the National Voter Registration Act, 43 U.S.C. 1973gg-5 ("Additional Member Data"). Notwithstanding this section, a state's failure to transmit Additional Member Data under this section shall not affect the Member's compliance with this Section or its standing as a member of ERIC.

EXHIBIT A4. Privacy; Use of Data.

- a. **Use and Protection of Data:** The Member and ERIC shall use their best efforts to prevent the unauthorized use or transmission of any private or protected Member Data; Additional Member Data; and data included in reports provided by ERIC (“ERIC Data”) (Member Data, Additional Member Data and ERIC Data shall be collectively referred to as “Data”) in its possession. The Member represents and warrants that all uses and transmissions of Data originating from the Member to ERIC and/or ERIC’s agents, contractors or subcontractors comply fully with applicable state, federal and local laws, rules and regulations. The Member shall not use or transmit any ERIC Data for any purpose other than the administration of elections under state or federal law. Should a Member receive a request to disclose ERIC Data and determines that it is legally obligated, in whole or in part, to comply with such request, it shall not make the disclosure without first obtaining a court order compelling it to do so, a copy of which shall be provided to ERIC.
- b. **Unauthorized Use or Disclosure of Data--Member:** Should there be an unauthorized or impermissible use, disclosure or transmission of Data, regardless of whether it is accidental or intentional (for example, Member intentionally sells, distributes, publishes or uses any ERIC Data for any purpose other than election administration, including any commercial purpose) or the responsibility of a third party (collectively, “Unauthorized Disclosure”), Member shall, within ninety (90) days of ERIC receiving notice of the Unauthorized Disclosure a) explain in writing to ERIC that such Unauthorized Disclosure has been cured and how it was cured or, if the breach is not curable, provides a written explanation to ERIC of what steps it has taken to mitigate the risks to ERIC and its Members resulting from such breach; and b) provide a written explanation of what processes it has implemented to prevent such Unauthorized Disclosure in the future. Upon written application, the Executive Director of ERIC, in consultation with the Board Chair, may extend the deadline for Member to comply with this section. At its first meeting following the Member’s compliance with sub-sections a and b above, the Board will consider the information submitted by the Member and vote on Member’s continued membership. Should Member fail to provide any information in response to sub-sections a and/or b above, Member shall be *automatically removed*. To the extent permitted under each Member’s state law, the Member agrees to indemnify, defend and hold harmless ERIC against any claims related to the Unauthorized Disclosure.
- c. **Notice to ERIC:** Each Member shall report to the Executive Director of ERIC as soon as is practicable if a Member is required by law to sell, distribute, publish, disclose or use any ERIC Data for any purpose other than election administration. Each Member shall report to the Executive Director of ERIC immediately upon learning of any Unauthorized Disclosure.
- d. **Unauthorized Disclosure of Data-ERIC:** Should there be an unauthorized disclosure of motor vehicle data by ERIC, whether accidental or intentional or the

EXHIBIT A

responsibility of a third party (“ERIC Unauthorized Disclosure”), ERIC shall immediately give notice to Members. Understanding that ERIC’s primary source of funds are fees and dues paid by Members, and subject to consultation and approval by the Board, ERIC agrees to indemnify, defend and hold harmless state motor vehicle agencies against any claims related to an ERIC Unauthorized Disclosure of Data.

This provision 4 shall not be construed to limit any Member’s sovereign immunity, rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement.

5. State Voter Registration Systems. To foster ERIC’s goal of improving the accuracy of state voter registration data, Members are strongly encouraged to establish a regular schedule for requesting ERIC Data with a minimum of one request every calendar year. When a Member Representative requests ERIC Data, upon receipt of such ERIC Data, the Member shall take the following actions in connection with the improvement of its state voter registration systems. (If Member rescinds in writing its request for ERIC Data within seven (7) business days of making its original request, the following requirements will not apply.) If a Member fails to make at least one request for ERIC Data for 425 days, ERIC will automatically provide ERIC Data within seven (7) business days of the 425th day, thereby triggering the following requirements.
 - a. When the Member receives ERIC Data regarding eligible or possibly eligible citizens who are not registered to vote, the Member shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote. Each Member shall have until October 1 or fifteen (15) days before the close of registration, whichever is earlier, of the next Federal General Election year to initiate contact with at least 95% of the eligible or potentially eligible citizens on whom data was provided and address validation was performed, as described above. Members shall not be required to initiate contact with eligible or possibly eligible voters more than once at the same address, nor shall Members be required to contact any individual who has affirmatively confirmed their desire not to be contacted for purposes of voter registration or is otherwise ineligible to vote in the Member’s jurisdiction. Should a Member need a brief extension in order to comply with the requirements of this section 5(a), Member may submit a written request to ERIC’s Executive Director setting forth the reasons for the extension request and providing a specific date when the required mailing will be sent. Members shall make every effort to submit extension requests at least two weeks before the deadline. Whether or not to grant an extension request or to proceed to automatic removal is in the sole discretion of ERIC’s Executive Director, and the timeliness of the request shall be a factor in the Executive Director’s determination. Members are entitled to request only one extension per Federal General Election cycle. No later than December 1 (or, if December 1 falls on a weekend, the next business day) following the Federal General Election, the Member Representative shall provide a written certification

EXHIBIT A

to the Executive Director of ERIC that Member has or has not complied with the provisions of this section. Members that have not complied with this section, or do not provide the written certification, shall be *automatically removed* from membership. If a Member adopts legislation or policies that have the potential to accomplish the objectives of this section by alternative means, Member may apply to ERIC for an exemption from the requirements of this section of the Membership Agreement by sending a written request to the Executive Director of ERIC and the Chair of the Board. Such written application shall explain the basis for Member's assertion that the alternative means will effectively achieve the objectives of this section. If the Executive Director of ERIC and the Chair of the Board believe the request is reasonable, it shall be presented to the Board for a vote and, if granted, a determination on the timing of implementation of the exemption.

- b. When the Member receives credible ERIC Data (meaning the state has validated the data) indicating that information in an existing voter's record is deemed to be inaccurate or out-of-date, the Member shall, at a minimum, initiate contact with that voter in order to correct the inaccuracy or obtain information sufficient to inactivate or update the voter's record. Each Member has ninety (90) days after the data was sent to initiate contact with at least 95% of the voters on whom data indicating a record was inaccurate or out-of-date, as described above, was provided.

Within ten (10) business days of the ninetieth day, the Member Representative shall provide a written certification to the Executive Director of ERIC that Member has complied or not complied with this section and, if out of compliance, the extent of such non-compliance. If Member is out of compliance, Member shall have a 30-day grace period, which begins on the 91st day, within which to complete the required contacts. Within ten (10) business days following the expiration of the grace period, the Member Representative shall provide a written certification to the Executive Director of ERIC that Member has complied or not complied with this section. If Member is still out of compliance, or fails to provide the certification, Member shall be *automatically removed*.

- c. The Member shall use its best efforts to provide for a mechanism by which any eligible voter whose registration appears to have been erroneously processed or unprocessed shall be offered the opportunity to cast a ballot that will be counted, unless the voter is otherwise ineligible.
- d. The Member shall use its best efforts to provide for a mechanism by which an eligible voter may register to vote over the internet without need to complete and/or deliver a paper voter registration form.
- e. The Member shall use its best efforts to provide for a mechanism by which voter registration transactions performed at state agencies is more fully automated and reduces or eliminates paper transactions.

EXHIBIT A

6. Voter Participation Data. ERIC recognizes that the appearance of improper voting, allegations of improper voting, and actual improper voting undermines public confidence in the electoral process and election outcomes. ERIC can be a tool to identify potentially improper votes, and refer them to Members for further investigation consistent with each state's laws. For the purposes of this Agreement, "improper votes" means votes cast by an individual who may have voted more than once in the Member jurisdiction at the same election, voted in more than one Member jurisdiction at the same election, or voted on behalf of a deceased voter within the Member jurisdiction.

Upon the written request of a Member Representative, ERIC shall provide the Member with data identifying voters who appear to have cast improper votes in a preceding election. Members shall not be required to request these data. Use or acceptance of these data shall not be a condition of membership.

To receive these data, Members shall submit a written request to the Executive Director at least 30 calendar days before the applicable election. In the written request, the Member must: (1) specify the election for which it requests data identifying voters who appear to have cast improper votes, (2) affirm that it will submit to ERIC voting history data for the applicable election in a manner consistent with how voter files and motor vehicle records are submitted to ERIC, (3) affirm that it will accept the requested data from ERIC, (4) affirm that it will complete a reasonable internal investigation of any possible improper votes before publicly releasing information about the data, and (5) affirm that it can protect the confidentiality of the individual-level data, either by state law or administrative rule, until the internal investigation is complete and the findings are turned over to law enforcement.

7. Single Point of Transfer. The Member shall designate and maintain a single point of transfer of data and a single data source/point of data per data feed.
8. Performance Data. Within 30 days of the date of execution of this agreement, and every one hundred eighty (180) days thereafter, the Member shall report to ERIC data relating to performance under this Agreement, as described in Exhibit C.
9. State Specific Requirements. From time to time, legislation or implementing regulations enabling states to become members of ERIC will contain state-specific membership requirements not applicable to all Members. Such state-specific requirements are set forth in Exhibit D.
10. Publicity. The Member shall not make or permit any person connected with it to make any announcement or statement purporting to be on behalf of ERIC, or use any logo, trademark, service mark, or business or trading name of ERIC or any other Member of ERIC without the prior written approval of ERIC or the affected Member, as applicable. Furthermore ERIC shall not make or permit any person connected with it to make any announcement or statement purporting to be on behalf of any Member, or use any logo, trademark, service

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mark, or business or trading name of any Member of ERIC without the prior written approval of the affected Member.

11. Waiver. No waiver by any party for any breach by the other of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.
12. Severability. The provisions of this Agreement are separate and severable, and the invalidity of any of them shall not affect or impair the validity or enforcement of the remaining provisions.
13. Assignment. ERIC may not sell, assign, or otherwise transfer any of its rights or interests or delegate any of its duties or obligations in this Agreement, without a majority vote of the entire Membership. The Member may not sell, assign, or otherwise transfer any of its rights or interests or delegate any of its duties or obligations in this Agreement, without the prior written consent of ERIC. Any sale, assignment, or transfer in violation of this Section is void and without effect.
14. No Partner or Agency. This Agreement does not constitute or create a partnership or joint venture with any Member or among the Members; appoint any Member as an agent for ERIC or any other Member, or appoint ERIC as an agent for any Member; or create any fiduciary obligations among the Members, except as may be expressly set forth in this Agreement.
15. Amendments. Amendments or modifications of this Agreement shall be effective immediately upon approval of such changes by the entire Membership in accordance with Article VI, Section 5 of the Bylaws.
16. Communications; Notices. All communications and notices that are required to be given by ERIC or a Member pursuant to this Agreement must be in writing and sent to the recipient either by electronic mail, personal delivery, overnight commercial courier service, or facsimile. Members may request a preferred method of delivery and the Corporation will make all reasonable efforts to oblige such requests. Communications and notices must be sent using the Notice Details set forth on the signature page of this Agreement, unless these details are changed by delivery of a written notice to ERIC, if the change related to a Member, or the Member, if the change relates to ERIC. The Executive Director of ERIC shall maintain or cause to be maintained a roster of Members that contains a compilation of Notice Details for each Member, and which shall be distributed periodically to the Members.
17. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which when fully executed shall be an original, and all of said counterparts taken together shall be deemed to constitute one and the same agreement.

EXHIBIT A

18. Complete Agreement. This Agreement is the parties' final and binding expression of their agreement and the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.
19. Headings and Subsections. Section headings are provided for reference and do not constitute part of this Agreement.
20. Definitions. As used herein, the term "state" includes the fifty (50) states, the District of Columbia, and the territories of the United States.

EXHIBIT A

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

By: _____
Name: _____
Title: _____
Date: _____

Notice Details:

With a copy to:

Name: _____ Name: _____
Title: _____ Title: _____
Address: _____ Address: _____
Phone: _____ Phone: _____
Fax: _____ Fax: _____

[MEMBER]



By: _____
Name: William Francis Galvin
Title: Secretary of the Commonwealth of MA
Date: June 15, 2022

Notice Details:

With a copy to:

Name: Michelle K. Tassinari Name: _____
Title: Director and Legal Counsel, Elections Division Title: _____
Address: One Asburton Place, Rm 1705, Boston, MA 02108 Address: _____
Phone: 617-727-2828 Phone: _____
Fax: 617-742-3238 Fax: _____

EXHIBIT B

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

Voter Registration and motor vehicles data fields to be submitted to ERIC by each participating jurisdiction, if collected by the Member State

1. All name fields
2. All address fields
3. Driver's license or state ID number
4. Last four digits of Social Security number
5. Date of birth
6. Activity dates as defined by the Board of Directors
7. Current record status
8. Affirmative documentation of citizenship
9. The title/type of affirmative documentation of citizenship presented
10. Phone number
11. E-mail address or other electronic contact method

EXHIBIT C

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

Performance data to be submitted to ERIC by each participating jurisdiction

Each jurisdiction will have two types of performance data submission:

- A. Prior to receiving the first ERIC reports, the jurisdiction will submit a set of baseline data for a representative period of time to use for comparisons.
- B. After receiving the first ERIC reports, the jurisdiction will begin submitting data for the activity within the specified time period.

Performance Data Points

1. Number of voter registration applications new to the Member's jurisdiction submitted by the voter on a paper form
2. Number of new voter registration applications new to the Member's jurisdiction submitted by the voter electronically
3. Number of updates to a voter's existing voter registration submitted by the voter on a paper form
4. Number of updates to a voter's existing voter registration submitted by the voter electronically
5. Number of records reported from ERIC on In-state Movers report who updated through the jurisdiction's online voter registration system (if available)
6. Election statistics, totals for any federal elections within the period of:
 - a. Number of new voters to the Member's jurisdiction who registered and voted on the same day, where applicable
 - b. Number of updates to a voter's existing registration submitted on the same day on which they voted, where applicable
 - c. Total number of provisional ballots cast
 - d. Total number of provisional ballots counted
 - e. Total number of provisional ballots uncounted, by reason (if available)

Note: for context, ERIC will use voter turnout data from the United States Elections Project (www.electproject.org)
7. Number of individuals for whom contact was initiated and invited to register as a result of reports received from ERIC within the period
8. Number of individuals for whom contact was initiated and invited to correct their registration as a result of reports received from ERIC within the period

Exhibit D

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.

State-Specific Requirements

Illinois:

In addition to the voter files and motor vehicle records Members must provide to ERIC under section 2 of the Membership Agreement, Illinois, in accordance with state law, is required to transmit to ERIC identification records contained in the Department of Human Services, the Department of Healthcare and Family Services, the Department of Aging, and the Department of Employment Security databases (excluding those fields unrelated to voter eligibility, such as income or health information).

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 7, 2025.

/s/ Phoebe Fischer-Groban
Phoebe Fischer-Groban
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE COMMITTEE FOR MASSACHUSETTS
VOTER IDENTIFICATION BALLOT
QUESTION,

Plaintiff,

v.

HON. WILLIAM FRANCIS GALVIN, in his
official capacity as Secretary of the Commonwealth,

Defendant.

CIVIL ACTION
NO. 1:24-cv-12029-NMG

**DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF UNDISPUTED
MATERIAL FACTS AND STATEMENT OF UNDISPUTED MATERIAL FACTS IN
OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Defendant Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth, responds to Plaintiff’s Statement of Undisputed Facts, and sets forth the undisputed facts material to his cross-motion for summary judgment.

DEFENDANT’S RESPONSES TO PLAINTIFF’S UNDISPUTED FACTS

Defendant objects to the Plaintiff’s statement of undisputed material facts pursuant to Fed. R. Civ. P. 56(c)(2) as none are supported by citations to admissible evidence. Many cite to documents or information that are not admissible evidence, and some contain no citation at all, in contravention of Fed. R. Civ. P. 56(c)(1)(a). Plaintiff’s unsupported facts should be stricken and the motion denied on the basis of that noncompliance.

Subject to and without waiver of the foregoing objections, Defendant responds to the Plaintiff’s statement of facts as follows:

1. Plaintiff requested the Voter Records from Defendant on December 3, 2023. Compl., Ex. D at 3, ECF No. 1-4.

RESPONSE: Undisputed.

2. Defendant conditioned the production of Voter Records upon the prior execution of a licensing agreement. *Id.* at 4. Defendant did not provide the licensing agreement notwithstanding Plaintiff's multiple requests for that document. *Id.* at 5.

RESPONSE: Disputed. The Secretary's office initially responded to Plaintiff's request by informing the Plaintiff that while a statewide list of registered voters was generally exempt from disclosure by statute, as a ballot question committee, they could receive it upon execution of a licensing agreement. However, the Secretary's office subsequently realized that the Plaintiff was not a statewide ballot question committee for or against a question to appear at the next statewide election, and therefore was ineligible to receive the statewide list, so there was no need to provide the licensing agreement. *Affidavit of Michelle K. Tassinari* (hereinafter "Tassinari Aff."), ¶¶ 13-14.

3. Plaintiff sent Defendant a Notice Letter dated April 2, 2024 pursuant to 52 U.S.C. § 20510 alleging violation of the NVRA. *Id.* at 1-18.

RESPONSE: Undisputed.

4. Defendant received Plaintiff's Notice Letter on April 3, 2024. Compl., Ex. E, ECF No. 1-5.
5. Defendant did not respond to the Notice Letter or, pursuant to 52 U.S.C. § 20510(b)(2), cure its violation of the NVRA within ninety days.

RESPONSE: The factual allegations that Defendant received Plaintiff's Notice Letter and did not respond are undisputed. The legal conclusion that Defendant is or was violating the NVRA and failed to cure that violation is disputed. 52 U.S.C. § 20510(b)(2).

5. Pursuant to the Help America Vote Act (“HAVA”), 52 U.S.C. §§ 20901-21145, Defendant “shall 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 ...” 52 U.S.C. § 21083.

RESPONSE: Defendant objects insofar as this is a recitation of the law and not a statement of fact. Subject to and notwithstanding that objection, Defendant does not dispute the accuracy of the quoted statutory language.

6. Pursuant to the requirements of the HAVA, Defendant maintains a single, uniform, official, centralized, interactive computerized statewide voter registration list in the VRIS. G.L. ch. 51, § 47C; 950 CMR § 58.

RESPONSE: Undisputed that the Defendant maintains a single, uniform, official, centralized computerized statewide voter registration database in VRIS, and that VRIS satisfies the requirements of HAVA. However, VRIS was created prior to the passage of HAVA and serves purposes other than those set forth in the HAVA requirements. *Tassinari Aff.*, ¶¶ 2-5, 6.

7. Defendant provides secure access to the VRIS to authorized users in each city and town in the Commonwealth to create, modify, and delete resident, family and voter data in the VRIS statewide database only as to their own community. VRIS Resident/Voter Module, 6 (true copy attached hereto as Exhibit 2); Tassinari Memo, 1.

RESPONSE: Undisputed.

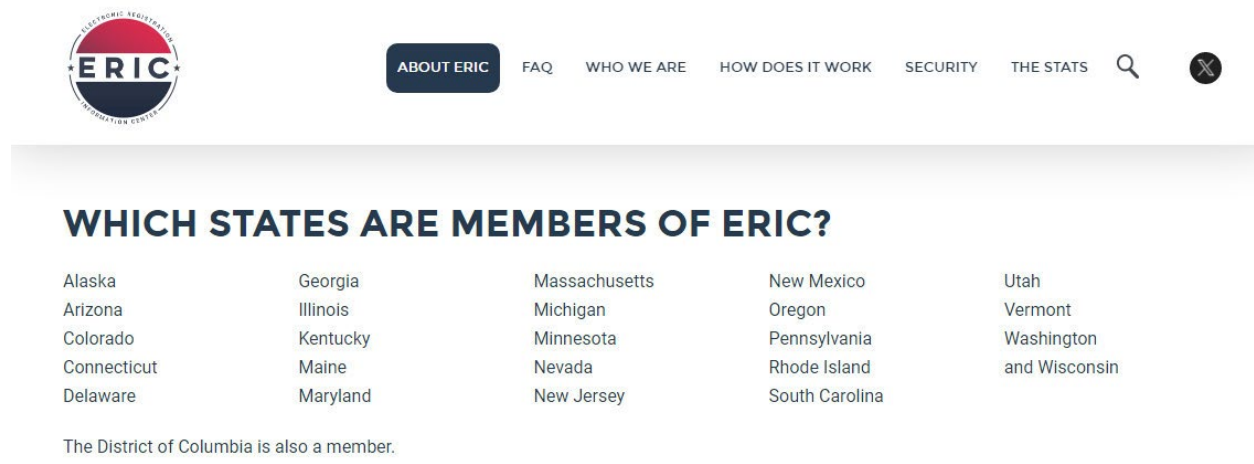
8. To maintain the statewide voter registration list, Defendant is required to share voter registration data with ERIC as set forth in an agreement (contract) between Defendant

and ERIC. G.L. ch. 51, § 47C. Defendant signed the contract with ERIC on June 15, 2022, which had an effective date of June 16, 2022. Compl., Ex. D at 7-18, ECF No. 1-4.

RESPONSE: Disputed. Pursuant to Section 2a of the membership agreement with ERIC, the member and ERIC must agree to a “Certification Date” that obligates the member to both supply data to ERIC and then receive data back from ERIC. The SOC and ERIC have not agreed on a Certification Date at this time, so the data-sharing requirements have not been triggered.

Tassinari Aff., ¶ 16. Defendant further disputes that there is any state or federal law that requires the Defendant to use ERIC to maintain the statewide voter registration list.

9. The Commonwealth is a member of ERIC:



<https://ericstates.org/about/> (last visited Nov. 25, 2024) (emphasis added).

RESPONSE: Undisputed.

10. Pursuant to Defendant’s contract with ERIC, the Commonwealth must send data to ERIC at least every sixty days. The data comprise information related to the Commonwealth’s voter files and motor vehicle records. That information includes all inactive and active voter files (excluding those records that are confidential or protected from disclosure by law) and all licensing or identification records

contained in the Commonwealth's motor vehicles database (excluding those fields unrelated to voter eligibility). Compl., Ex. D at 7-8, ECF No. 1-4.

RESPONSE: Disputed. Pursuant to Section 2a of the membership agreement with ERIC, the member and ERIC must agree to a "Certification Date" that obligates the member to both supply data to ERIC and then receive data back from ERIC. The SOC and ERIC have not agreed on a Certification Date at this time, so the data-sharing requirements have not been triggered.

Tassinari Aff., ¶ 16.

11. Data sent to ERIC include at least the following: all name fields; all address fields; driver's license or state identification number; last four digits of Social Security number; date of birth; activity dates as defined by the ERIC Board of Directors; current record status; affirmative documentation of citizenship; the title/type of affirmative documentation of citizenship presented; phone number; e-mail address or other electronic contact method. Id. at 16.

RESPONSE: Undisputed that the ERIC membership agreement requires this after the member and ERIC agree to a certification date. However, Massachusetts is not currently required to submit these data because it has not agreed to a certification date with ERIC. *Tassinari Aff.*, ¶ 16.

DEFENDANT’S STATEMENT OF UNDISPUTED FACTS MATERIAL TO HIS CROSS-MOTION FOR SUMMARY JUDGMENT

1. The Secretary’s office hosts a database of registered voters in Massachusetts known as the Voter Registration Information System (VRIS). VRIS was first developed in 1995 after passage of the National Voter Registration Act, to provide the necessary technology for local election officials to maintain and update voter registration records and information as required under the NVRA. *Tassinari Aff.*, ¶ 2.

2. Prior to the creation of VRIS, each city and town in Massachusetts maintained their own lists of registered voters and residents, with some having local databases while others maintained paper lists. At that time, local election officials would provide copies of their lists in response to public records requests, including mailing labels, and could charge fees for producing such records. Under the provisions of the 2005 version of the Code of Massachusetts Regulations, 950 CMR 32.06(6), local election officials could charge a fee of no more than one cent per name, but could charge between \$90.00 and \$750.00 for computer tapes and could charge a fee of no more than two cents (\$0.02) per mailing label, provided that a minimum fee of no more than fifty dollars (\$50.00) could be assessed. For paper copies of the voter lists, they could charge no more than twenty cents (\$0.20) per page for photocopies, no more than twenty-five cents (\$0.25) per page for copies of public records maintained on microfilm or microfiche and no more than fifty cents (\$0.50) per page for printout copies of computer records. Local election officials were also able to charge for search and segregation time in responding to requests for copies of the voter lists. *Tassinari Aff.*, ¶ 3.

3. Because the NVRA required local election officials to maintain additional data relative to voter registration, VRIS was created to assist local election officials in complying with these requirements and to ensure consistency among municipal records. However, local

election officials wanted to retain control over their data as well as the right to collect any fees for production of such data. *Tassinari Aff.*, ¶ 4.

4. As such, under the provisions of General Laws chapter 51, section 47C, this Office maintains the VRIS database itself, but local election officials remain responsible for receiving voter registration forms and entering and updating voter data. Additionally, only certain entities are eligible to receive statewide data and all others have to submit requests locally, enabling local election officials to collect and benefit from any fees for requests for records. *Tassinari Aff.*, ¶ 5.

5. Section 47C of chapter 51 specifically provides that the names and addresses in the database shall not be a matter of public record from the Secretary's office. However, that section contains limited exceptions that allow the Secretary's office to make the data available to state party committees, statewide candidate committees, state ballot question committees, the jury commissioner, adjutant general and any other individual, agency or entity that the state Secretary shall designate by regulation consistent with the purposes of this section, at a fair and reasonable cost not to exceed the cost of printing or preparing computer readable documents. When providing data to qualified entities, the Secretary's office requires the entity to sign a licensing agreement that limits use and distribution of the data. The licensing agreement requires the recipient of the data to certify that they meet the statutory qualifications to receive the statewide list because they represent a statewide candidate committee, state party committee or other political committee actively seeking nomination or election or a statewide ballot question committee for or against a question to appear at the next statewide election. *Tassinari Aff.*, ¶ 6.

6. The Help America Vote Act (HAVA) required each state to create a statewide database of registered voters no later than January 1, 2004. Massachusetts complies with this

requirement through VRIS.

7. Under state law, local election officials are solely responsible for registering voters, updating voter information and deleting voters. Some examples of responsibilities of local election officials are as follows:

- Massachusetts General Laws chapter 51, section 36 provides that affidavits of voter registration must be sent to local election officials.
- Massachusetts General Laws chapter 51, section 42H requires local election officials to receive completed voter registration affidavits from agencies, from individuals and organizations conducting voter registration, via the mail and via an online portal and by hand-delivery. Upon receipt of each completed affidavit, the local election officials must certify receipt thereof and shall notify the registrant of the disposition of the affidavit and thereafter add the registrant's name, address and effective date of registration to the annual register of voters.
- Massachusetts General Laws chapter 51, section 46 requires local election officials, upon receipt of a completed voter registration affidavit, to add the registrant's name to the voter list and maintain the affidavit of voter registration.
- Massachusetts General Laws chapter 51, section 2 requires local election officials to update the names of voters.
- Massachusetts General Laws chapter 51, section 3 requires local election officials to update the addresses of voters.
- Massachusetts General Laws chapter 51, section 37 requires local election officials to prepare lists of qualified voters.
- Massachusetts General Laws chapter 51, section 37A requires local election

officials to place certain voters on the inactive list.

- Massachusetts General Laws chapter 51, section 41 requires local election officials to preserve all documentation relative to voter registration for a specified period.

Tassinari Aff., ¶ 8.

8. Pursuant to Massachusetts General Laws chapter 51, section 55, the voter lists prepared by local election officials must be made available for public inspection and a printed copy must be made available at no cost to all duly organized political committees. *Tassinari Aff.*, ¶ 9.

9. In accordance with the provisions of Massachusetts General Laws chapter 51, section 36, the Secretary's office prepares voter registration forms for agencies, local election officials and the public. *Tassinari Aff.*, ¶ 10.

10. In December 2023, the Secretary's office received a public records request from Joanne Miksis seeking names, mailing addresses, dates of birth, voter identification numbers, registration date, party affiliation, ward and precinct number and voter status for all persons listed in the statewide database as well as "all Member Data files" sent from the Commonwealth of Massachusetts to the Electronic Registration Information Center (ERIC). In her email, Ms. Miksis identified herself as representing the Committee for Massachusetts Voter Identification Ballot Question. *Tassinari Aff.*, ¶ 11.

11. In response to the records request, Debra O'Malley, the Elections Division Records Access Officer, informed Ms. Miksis that the voter data was exempt from disclosure by the Secretary by statute but that a ballot question committee was eligible to receive the data upon execution of a licensing agreement. She further responded that there were no records responsive

to the request for “Member Data files” sent to ERIC. *Tassinari Aff.*, ¶ 12.

12. The Secretary’s office later realized in early 2024 that the Committee would not qualify to receive the data from this Office as the ballot question they proposed failed to qualify for the 2024 State Election, so they were not a statewide ballot question committee for or against a question to appear at the next statewide election. *Tassinari Aff.*, ¶ 13.

13. Although they were ineligible to receive the data from the Secretary’s office, they remained eligible and able to request the data from each of the cities and towns in Massachusetts. As noted above, voter data held by local election officials is public and there is no restriction on use or distribution of the data once obtained. *Tassinari Aff.*, ¶ 14.

14. In the past, the Secretary’s office has assisted requestors seeking data from local election officials by providing the requestors with email addresses for local election officials as well as sending broadcast emails to local election officials clarifying the data being requested and providing technical instruction on how to provide the data. Through counsel, they offered to provide the same assistance to the Committee. *Tassinari Aff.*, ¶ 15.

15. The Secretary’s office does not have member data files that were sent to ERIC as they have not agreed to a “Certification Date” with ERIC. Part of the membership agreement with ERIC requires that this Office provide certain voter data as well as driver license data maintained by the Registry of Motor Vehicles, but only after an agreed upon “Certification Date.” A true and accurate copy of the Secretary’s membership agreement with ERIC is attached to the Tassinari Affidavit as Exhibit 1; the relevant provision is section 2a of the agreement, on pp. 13-14. Once that data is sent to ERIC, reports will be returned that require further action, including identifying potential duplicate voters and voters who may have moved or otherwise be ineligible. VRIS, the Massachusetts statewide database, was first created in 1995 and the

Secretary's office is in the process of developing a new database. Given the structure and technology of the current database, significant resources would be necessary to make the changes necessary to process any returned records. As such, the Secretary's office determined to defer agreeing to a "Certification Date" until the new database is available, which has the functionality being built into it. While the Secretary's office had expected the new database to be available sooner, the project has been delayed with an expected go live date of summer 2025. *Tassinari Aff.*, ¶ 16.

Respectfully submitted,

HON. WILLIAM FRANCIS GALVIN, in his
official capacity as Secretary of the
Commonwealth,

By his attorney,

ANDREA JOY CAMPBELL
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Dated: January 7, 2025

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on January 7, 2025.

/s/ Phoebe Fischer-Groban
Phoebe Fischer-Groban
Assistant Attorney General