

TESTIMONY
IN SUPPORT OF

Legislation – HB1140

**Election Law – Voter Registration List –Right
To Nondisclosure of Personal Information**

Sponsored by Delegate Arentz

Presented by Charlene Conners

March 9, 2021

INTRODUCTION:

My name is Charlene Conners and I have been a voting resident in the State of Maryland for several decades. I am in favor of the proposed HB1140 which will provide the means for all Maryland voters to “opt-out” from having their personal and private information disclosed to the general public by the Maryland Board of Elections. Maryland has the unique opportunity to lead the way in protecting its voters by allowing its voters to have the legal right of self-determination of their personal information that will provide protection from unwarranted and unwanted disclosure, possible fraud, and identify theft.

As a society, we must change laws to provide our citizens with the necessary protection according to the current threats of modern times. One of today’s most prevalent threats in the business world comes from disclosure of personal information which is used for scams and fraud. If an organization’s computer system is hacked allowing the transfer of millions of individuals’ names, addresses, ID numbers, dates of birth, etc., it would be considered a cyberattack requiring credit monitoring, blocking accounts, and changing passwords to protect further identity threats. Yet, the Maryland Board of Elections may legally sell vast amounts of the same personal information on the Voter Registration List, and it is called an authorized legal purchase.

My Testimony is presented as both a Synopsis and an Addendum version in which I provide additional information along with personal experiences.

TESTIMONY SYNOPSIS:

There are over four million registered voters in Maryland. Accordingly, approximately 68% of the Maryland citizens are registered voters. Since few Maryland voters are aware that their private personal information is sold by the Maryland Board of Elections, it appears that the Maryland Board of Elections lacks sufficient transparency in its current practices.

The Maryland Board of Elections allows the purchase of the Voter Registration List which contains the voter's name, address, gender, voter ID number, party affiliation, and voting history which includes the voter's date of registration. The voter's date of birth has previously been disclosed and will again be disclosed following the lasted litigation actions. Collectively, the disclosed information precisely identifies the individual voter, and therefore, must collectively be considered a "personal identifier" requiring privacy protection of personal information, as would the voter's social security number. Under Maryland Law, "Personal information" means information that identifies an individual.

The disclosure of the voter's personal information places the voter at risk for identity theft, fraud, and provides an avenue for voter fraud. As expounded in my Addendum, the Voter Registration List has already been transferred out of the State of Maryland. Further, the risk for viewpoint discrimination and harassment is greatly enhanced by the public disclosure of a voter's party affiliation. Therefore, the viable privacy interest right of the voter outweighs the public interest right of disclosure.

The Freedom of Information Act and the Maryland Information Act were designed with the intent to allow the citizenry to have access to government records to provide transparency in government and to protect against corruption by holding the government accountable by shedding light on an agency's performance of its statutory duties. Therefore, unless the request for the Voter Registration List is made for the purpose of scrutinizing the performance of the agency, it may be inappropriate for the Maryland Board of Elections to allow for the purchase of the Voter Registration List since it is only a collection of personal information on each voter, and therefore, the information contained on this government record cannot shed light on functioning of the agency. Consequently, public disclosure of the voter's personal information through the Voter Registration List without the consent of the voter may be viewed as an invasion of personal privacy.

The State of Maryland and the Maryland Board of Elections have deemed the personal information contained on the Voter Registration List as sensitive material as some groups of individuals may use the State of Maryland Confidentiality Request Form as a means to "opt-out" from the disclosure of their personal information associated with the Voter Registration List. Further, allowing some individuals the ability to deny the disclosure also acknowledges the potential risks associated with the disclosure. Accordingly, some groups have a legal right to protect their private personal information from the public eye while other individuals do not. Therefore, the current practice is expressly discriminatory. All voters in Maryland should enjoy the same level of protection of their private personal information by allowing all voters equal options to "opt-out" from disclosure of their personal information on the Voter Registration List.

By providing all voters the ability to “opt-out” from this disclosure practice, the Maryland Board of Elections would be adhering to the principles of the Fair Information Practice Act, as established by the U.S. Dept. of Health, Education, and Welfare, in which core principles afforded maximum protection of an individual’s private personal information that has been obtained and maintained by an organization. Furthermore, as recognized by courts, “privacy encompass[es] the individual’s control of information concerning his or her person” *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989).

The electoral process is designed to provide the voter with privacy and a level of secrecy to protect the voter from intimidation, harassment and discrimination. A system of voter privacy must include the registration of the voter, privacy of a voter’s party affiliation selection along with the physical voting process; all of which must be enjoyed freely away from the glare of the public eye. To prevent the possibility of voter viewpoint discrimination and persecution for one’s political viewpoint, the voter’s personal choice for party affiliation must remain private. Considering the current political atmosphere in our nation, it is more important than ever to protect the voter’s information regarding their party affiliation; unless the voter wishes to share that information. I personally do not want my neighbors to have access to my chosen party affiliation. Since I do not have posters or flags declaring my party choice to the public, I feel that it is improper for the Maryland Board of Elections to share that information without my consent. Therefore, party affiliation must remain out of the public eye for the political privacy provided under the Constitutional Law.

As Thomas Emerson viewed political privacy as “In its social impact a system of privacy is vital to the working of the democratic process”.

TESTIMONY - ADDENDUM:

The voter is a private citizen, who is not necessarily a public figure or a person of interest. The personal information is not compiled and maintained by the Maryland Board of Elections for the purpose of public safety or national security. As an example, speaking for myself, I am not a public figure or a person of public interest. I do not hold public office, nor, have I committed any crimes, and I do not pose any threat to the public, and as such, I am a private citizen. Therefore, my personal information does not need to be disclosed to the public, without my consent. Otherwise, disclosure of my private personal information could reasonably constitute an unwarranted invasion of privacy. My personal privacy interest right for privacy outweighs the public interest right to obtain the compilation of my personal information collected and maintained by the Maryland Board of Elections. Further, “...courts have found that the mere fact that some of the information may be known to some members of the public does not negate the individual’s privacy interest in preventing further dissemination to the public at large.” *Forest Serv. Employees for Env’tl. Ethics*, 524 F.3d at 1025 n.3.

The Maryland Public Information Act (PIA) was influenced and adopts statutes from the Freedom of Information Act (FOIA) in which citizens have a right to request government records

on the activities of government agencies. As such, these Acts were intended to maintain transparency of government agencies by providing the citizenry with the ability to access government records for public inquiry into the activities, policies and procedures of government agencies as a means to discover wasteful practices or wrongdoing by the agencies; applies to official information which may shed light on the agency's performance of statutory duties. It is not the purpose of these Acts to provide the public with a means to have access to personal information about private citizens merely because a government agency accumulated such information on a list; specifically, since the individual voter did not necessarily engage in activities under scrutiny. The Voter Registration List is a compilation of personal information that reveals nothing about the agency's conduct. Therefore, the Voter Registration List does not exist as a record of what the government is doing. Additionally, following the influence of the FOIA, Exemption 6 protects information about individuals in "personnel and medical files and similar files", when disclosure of such information would constitute a "clearly unwarranted invasion of personal privacy". The term "similar files" must applied to the personal information maintained on each individual listed on the Voter Registration Lists because the voter's personal information "is personal to the individual named therein", therefore, the disclosure would be "clearly unwarranted" under the FOIA. Any personal information disclosed to the public about an individual voter, particularly to a third party who seeks the information to resell or solicit the voter, cannot shed light on the functioning of the agency. Essentially, when a political candidate requests the Voter Registration List, the List is being requested for the express purpose of obtaining the personal information of each and every voter on the List as opposed to requesting government records to scrutinize the agency's performance of statutory

duties; consequently, this practice violates the intent of both Acts, and therefore, constitutes an unwarranted invasion of personal privacy.

Fundamentally, the legislative body members that will debate and vote on this House Bill, which will provide the Maryland voters with a means to “opt-out” from having their personal information disclosed to the public, are the same individuals who benefit from the information that they, themselves, obtain from the Maryland Board of Elections to solicit voters during their campaigns. Ironically, the members of the legislative body enjoy a benefit of confidentiality; thereby, restricting disclosure of their personal information to the general public. Fortunately for the Maryland voters, by preparing and presenting this House Bill, Delegate Arentz has shown integrity as a leader. Moreover, Delegate Arentz shows commitment and actions for the safety and wellbeing of the voters; as, he has put aside his own potential prospect of losing the ability to gain voter’s personal information for upcoming electoral campaigns by presenting this House Bill.

Neither of these Acts were created to spy of American citizens by obtaining personal information or to victimize innocent American citizens by unwarranted and unwanted disclosure of their personal information to the public. The Acts were not intended to provide entities with a vast amount of personal information subject to data aggregation and reselling the information for a profit; which is a commercial interest not a public interest.

Within each of the Acts mentioned, there are many exemptions and exceptions which prevent disclosure of personal information deemed a threat to an individual or a group of individuals. Some examples of protected Maryland records are: the official residence of the

Governor in Annapolis; Judges; police officers; prosecutors; individuals running for public office or serving as an officer of a political campaign; victims of or witness to felony; persons being threatened; the Maryland Dept. of Agriculture (MDA) must redact any information from any documents subject to disclosure under the Public Information Act that are related to Nutrient Management Plans (NMP) if such information would allow for the identification of the individual for whom the NMP was prepared and maintained by the MDA; Library circulation records of a public library, collection, or grouping of information that identifies an individual who uses the library's materials, services, or facilities are protected; the location of an endangered or threatened species of plant or animal, unless the request is made by the property owner. Therefore, it is reasonable to assert that each and every Maryland voter should have protection under the law from public disclosure of their personal information as the personal information allows for the identification of a specific individual.

Additionally, an opponent's objection to this House Bill, which provides the voter with the means to protect their personal information, cannot be supported by calling on the First Amendment, as the reading of which states, "Congress shall make no lawabridging the freedom of speech, or of the press...." . The determination of our forefathers expressly stating "freedom" allows a choice to speak or not to speak and allows the choice of press, meaning publication, or not of press. Further, the term "Congress" has been deemed to represent all government legislative bodies. Hence, no government agency may have a Constitution right to demand that a citizen, or voter, surrender their personal information for public disclosure against the individual's will. Therefore, providing the Maryland voters with the means to

“opt-out” from disclosure of their personal information is appropriately supported by the Constitution.

The primary obligation of our government is to protect its citizens. In this instance, the voters are citizens first and voters second. The balance between a public interest right of disclosure of the voter’s personal information cannot overcome the weight of the voter’s private interest rights for nondisclosure of their personal and private information; without the consent of the voters. As such, each and every voter on the Voter Registration List has an individual private interest right for nondisclosure of their personal information that must be balanced against the public interest right of the person(s) requesting the disclosure. The Maryland Voter List contains approximately four million voters. Based on the mere fact that the Maryland Board of Elections compiles and maintains the Voter Registration List should not justify disclosure of that personal information to any requesting individual or entity. When the Voter Registration List is sold, the purchaser obtains a vast list of individual voter personal information; and, once the voter information is sold, the Maryland Board of Elections lacks any ability to protect the voter from fraud and theft since this information is no longer under their control. This places the Maryland voter at risk. Therefore, this is contrary to the primary obligation of the government, that is, the protection of its citizens.

Further, the compiled collection of personal information on each voter needs to be considered a unique personal identifier. As collectively, the Voter Registration List contains the voter’s, the name, address, date of birth, gender, the Voter ID Number, party affiliation, voting history, and in some cases, the voter’s phone number. Collectively, this information provides

sufficient identifying information to identify the specific individual voter out of all other voters in the United States. Because this collective sum of information identifies a specific individual, the sum of the information must be designated as “personal identifying” information, and, as such, must be protected by federal privacy laws the same as the social security number is protected. The Voter ID Number is an absolute specific identifier and should be protected under federal and state privacy laws. The Supreme Court recognized “there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.” *U.S. Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763-64 (1989). Interestingly, if a private corporation was hacked whereby data such as the individual’s name, address, date of birth, gender, and phone number were obtained, it would be called a cyberattack.

Nationally, voter registration information is estimated to be one of the largest concentrations of unregulated compilations of personal information under the control of a government agency. Political data companies have obtained massive amounts of voter registration information that is then aggregated with other sources of personal data to form vast computer data dossiers on American citizens. It is known in the data compilation industry, that once this information has been merged into one compilation set of data, i.e. dossiers, it becomes a sum of data that cannot be differentiated and resorted back into its individual parts of information prior to resale and transfer. Therefore, the only means to protect voter’s private personal information from unwarranted and unwanted distribution is to mediate protective measures prior to the initial sale of the information by the Maryland Board of Elections.

Additionally, the complete dossier can be transferred to entities outside of the United States and cannot be protected by the voter or the government owing to jurisdiction laws.

It is an expectation that the Maryland Board of Elections would follow the same requirements that have been placed upon the private sector; specifically, The Modernization Act, which regulates the financial industries' collection, use, and disclosures of personal information, which requires notices to their customers of actions taken regarding personal information, and the protection of such information. As such, it is a reasonable expectation, by Maryland voters, that the State of Maryland and the Maryland Board of Elections will protect the voter's private personal information. The current practice lacks adequate transparency and protection of the voter's personal information. Voters are not informed that their private personal information obtained during the registration process will be purchased; they are not provided with the identities of person(s) or entities purchasing the personal information; they are not provided with the intended use of the information. Further, the intended use of the information and/or the parties obtaining the information may be objectionable to an individual voter or pose a threat to the welfare of the individual voter. I was not informed that my personal information was sold and that my personal information could or would be transferred out of the State to unknown parties. I personally surveyed dozens of voters and only one voter was not surprised that her information was surrendered to the public. 100% of the voters surveyed expressed concern that their private personal information is provided to the public and expressed the desire in having the law changed to stop this practice.

If voters were informed that their private information was going to be sold without their consent, voters would be reluctant to provide the Maryland Board of Elections with their personal information during the registration process and/or would be reluctant to continue allowing the Maryland Board of Elections to maintain their personal information; as such, this practice infringes on the electoral process by executing barriers to the voters. This practice also impacts the voter's confidence in the entire electoral system, and as such, may discourage voter registration. Violation of this expectation to maintain private information may be considered a Breach of Confidence as the voter's reasonable expectation, when registering to vote and the continuation of that relationship between voter and the Maryland Board of Elections, is that their personal information is maintained in a protective manner. Further, if the Duty of Care in protecting the voter's information is not going to be established by the Maryland Board of Elections, then it would be a reasonable expectation that the Maryland Board of Elections would notify the voters of that fact. This further supports the HB 1140 by providing the voter with an opt-out option which would strengthen the voters' confidence in the process.

Because of the disclosure of personal information available on the Voter Registration List, as referenced above, the voter is at increased risk for identify theft, fraud and scams putting their financial wellbeing at risk. Using the information contained on the Voter Registration List, scammers have the ability to target particularly vulnerable groups of individuals such as the elderly or target citizens residing in a specific area of a county. Additionally, this information is currently available to entities outside the state of Maryland and can be transferred out of the country as well. Once this personal information has been transmitted outside the country, the

citizen can no longer have protection by any governmental agency owing to jurisdiction laws. The recovery from scams and Identity fraud takes time and personal expense. Monies lost to fraud often cannot be recovered.

In addition to the possible threat of fraud and theft, election fraud is highly possible using the personal information available on the Voter Registration List. This can easily be accomplished by individuals within the state as well as out of the state and country. As such, the current practice undermines the integrity of the electoral process. Since the Voter ID Number specifically identifies the voter and is used for the election process, this information should only be in the possession of the voter and the Maryland Board of Elections. No other individual should be in possession of the Voter ID Number. Additionally, since the Voter ID Number has previously been compromised through disclosure of this information, it is a reasonable expectation that new Voter ID Numbers should be issued to Maryland voters.

One of my personal experiences with a phone scammer who pretended to be a Microsoft technical service representative, stated that Microsoft had detected a virus in my computer system. I knew that this was a scamming attempt and I asked if I may interview him. In summary, he agreed to answer some questions and disclosed that: the targets were only Americans because all Americans are rich; that his business obtained the calling list of individual's information from the U.S. government; and that he was physically calling from China. I am 100% sure that his accent was not that of a Chinese national. I promptly informed him that very few Americans are rich and that most work hard for their money. It was most concerning to me that he told me that our government sells the citizen's information.

Certainly, our citizen's information is not sold directly to foreign entities by our governmental agencies. Therefore, the evidence strongly supports the idea that our information is processed through a data broker. This clearly shows the ability of foreign entities to obtain personal information from government agencies through a data broker and they are able to use this personal information to perpetrate fraudulent activities against Americans.

Another example of my personal experience is summarized. Several months ago I had a phone conversations with a sales representative and with the owner of the political data company located in Florida. It was disclosed during these conversations that: the company obtains the Voter Registration List from a Maryland resident who buys the list, then sends the information to this company; this company has obtained voter information from all fifty states; that this company compiles the voter information with many other sources of information to bank in their computer system; that this company resells the information to other entities; that there are many data broker companies doing the same thing and obtaining similar personal information on voters. I was unable to ascertain whether this company sold their data to entities outside of the U.S.

The data broker example above clearly demonstrates the ability to circumvent the current Maryland law which directs that only a Maryland resident may purchase the Voter Registration List. The example also shows that this company obtains vast amounts of the Maryland voters' personal information for the purpose of compiling this information with other sources of information with the intent to resell the data for a profit, making it a retail business industry, therefore, any request made for voter's personal information is solely based on a commercial

interest, not a public interest right for disclosure intended to scrutinize the functioning of a government agency. Further, any such request for personal information on an individual voter based on a commercial interest cannot be obtained under the FOIA or Maryland PIA. Each particular individual voter on the Voter Registration List has a personal interest right for privacy of their personal information which outweighs any commercial interest right to obtain the information. As such, providing information on particular individuals in this manner constitutes an unwarranted invasion of privacy as the requested seeks no official information about the functioning of the agency.

The Maryland Board of Elections should never have the power to act as an information “broker” willing and able to provide a collection of voters’ private information for a fee. Collecting personal data on a particular private citizen, maintaining this data and then selling this data for a fee, describes a business as a “data broker” or at the very least, a “clearinghouse”. Accordingly, the current practice places the Maryland Board of Elections in the business of a “data broker” instead of in the intended duties of serving the voters of Maryland. Recently, members of the Maryland Board of Elections have been defendants in litigation by out-of-state entities desiring the ability to purchase personal information of Maryland voters, including the voter’s date of birth. The Maryland Board of Elections is obligated to provide information mandated by the current law. This is even more justification for changing the current law.

The modern privacy laws are premised on the Fair Information Practices (FIPs), as established by our government, which apply principles that organizations should follow to

provide individuals with appropriate controls over the collection, use, and disclosure of their personal information (data), and accountability in the management of this information. This practice should be expected not only in the private sector but also within governmental agencies, such as the Maryland Board of Elections. By allowing all Maryland voters the ability to “opt-out” from disclosure of their personal information, the Maryland Board of Elections will be in line with more current privacy practices already established by our government.

Respectfully submitted,

Charlene Conners