

TESTIMONY
IN SUPPORT OF

Legislation – HB1212

Election Law – Voter Registration List –Right to
Opt Out of the Sale of Personally Identifiable Information

Sponsored by Delegate Arentz

Presented by Charlene Conners

March 7, 2023

INTRODUCTION

The passing of House Bill 1212 will truly encompass the freedom that our government is built upon; that is the concept of the “Will of the People”. There can be no better represented of this concept than to allow the each individual citizen to have autonomy and their free will to choose what they personally feel is the best for them.

Some have suggested that I should edit my written Testimony to make it shorter and an easier read. I disagree. This is well worth the read. My Testimony is deliberately inclusive of pertinent information so as to provide sufficient knowledge for the General Assembly Members to have the clearest understanding of a failing system that is supported by a faulty MD Code and practices that place millions of Maryland voters at risk for identity crimes, scams and places the integrity of the electoral process in jeopardy. The best chance for this Bill to be moved forward and become law is through educating of those who will make the decisions regarding House Bill 1212. Dozens of the citizens that I have spoken with over the last two years, have questioned whether their representatives know this information. Up until now, my answer has been “they should know”. This is the second time that a House Bill has been presented to the Ways and Means Committee regarding an opt-out prevision. It has gone through some alterations but the original premise remains the same. Therefore, in the future their representatives will not have deniability of the subject matter.

Presented at the end of my written Testimony is a viable solution that has the ability to keep everyone content with the passage of House Bill 1212; except those who are bad actors.

TESTIMONY

My name is Charlene Conners. I have been a voter in the State of Maryland for several decades. I am in favor of the proposed HB1212 as this Bill will provide the means for all Maryland voters to “opt-out” from having their personally identifiable information (PII) sold by the Maryland Board of Elections (the “Board”). By passing House Bill 1212 and providing the Maryland voters with their self-determination to control their PII through the opt-out provision, Maryland has the unique opportunity to become the respected leader in the fundamental right of privacy. Maryland has this opportunity to show the Nation that we care about our citizen’s right for privacy in this ever changing digital world. Essentially, this General Assembly has the opportunity for an easy bipartisan solution for an ever increasing risk to all voters and no reasonable person should have any objections to providing this protective measure to all Maryland voters regardless of their party affiliation. Moreover, many other countries have already established privacy laws that protect the PII of their citizens. Americans citizens are twice as likely to become victims of identity crimes and scams than any other citizen globally.

Providing an opt-out provision in the Election Law will not purge any voter from the Statewide Voter Registration List and therefore no voter will be disqualified from casting their vote. Additionally, providing the voters with the opt-out provision will not offend the NVRA or the Maryland Public Information Act. Maryland already has a voter confidentiality program whereby some groups of voters may restrict the sale or disclosure of their PII, and this program can easily be extended to allow all voters to be eligible for voter confidentiality through the

opt-out. Protective measures should not be available only to persons who identify with a specific group of persons such as Judges, candidates and their family members, etc., and withheld from others.

As Defendants in *Judicial Watch v. Linda Lamone, et al.*, ELH-17-2006 (MD, 2019), the State of Maryland and the Maryland Attorney General Office recognizes that the unrestricted and massive dissemination of PII as sold by the Board places voters at an unreasonable risk for identity crimes and scams.

The State of Maryland has established guidelines regarding the disposal of government documents which contain sensitive information, such as the PII of millions of registered voters. Because there can be no control mechanisms in place to ensure proper disposal of the documents once the Board sells the Voter Registration Data, voters are placed at risk by possible, or probable, improper disposal of this information. The State of Maryland should have consistency in regulations and practices throughout all state agencies. And, if such consistency cannot be obtained owing to the particular activity of one agency, and that activity places citizens at an unreasonable risk for crimes against them, then the ethically and morally the citizens must have the opportunity to restrict the disclosure or the sale of their PII by an opt-out provision.

Nationally, voter registration information is estimated to be the largest concentration of unregulated compilations of PII under the control of any one government institution; the Board. 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. 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. The integrity of the Electoral Process of this State may be jeopardized by this action. 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 Board and that process may easily be accomplished through the opt-out provision allowed by House Bill 1212.

The proposition that the right of freedom of thought protected by the US Constitution First Amendment against State action includes both the right to speak freely and the right to refrain from speaking at all, *Board of Education v. Barnette*, 319 U.S. 624, 633-634, 63 S.Ct. 1178, 1182-1183, 87 L.Ed. 1628 (1943); *id.*, at 645, 63 S.Ct., at 1188., and that the right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind." *Id.*, at 637, 63 S.Ct., at 1185. Essentially then, the right of an individual "not to speak" is not a modern Court opinion, but one that dates back decades. Essentially, not providing an opt-out provision in the Election Law that supports the voter's Constitutional right not to speak must be viewed as forced speech which offends the First Amendment. Remembering the Supreme Court has long recognized that individuals have a Constitutionally protected interest in avoiding disclosure of personal matters which must include the right to informational privacy.

There are over four million registered voters in Maryland. Accordingly, approximately 68% of the Maryland citizens are registered voters. The PII of the 16 and 17 year old registered voters is included in the sale of voter data by the Board. In other words, the Board has been selling the PII of thousands of minors for decades without the consent of their parent(s). This practice is explicitly oppositional to the policies of other State agencies. Following my personal two yearlong survey of Maryland citizens, few Maryland voters are aware their information is sold by the Board. Individuals seemingly to have the greatest knowledge of this practice are those individuals who sell the data, who buy the data, and those who benefit from voter confidentiality. As such, clearly the Board lacks sufficient transparency in its current practices which in itself places voters at an unreasonable risk for associated crimes such as identity fraud and scams. In addition to the lack of transparency related to the selling of voters' information, the MD Code, Election Law § 3-506 cannot provide the voters with appropriate privacy protections and fails to provide reasonable security measures regarding the sale of the PII of each and every voter. Even though MD Code, Election Law, § 3-506 (a)(1) states in part "A copy of a list of registered voters shall be provided to a Maryland registered voter..." it is truly moot as it is a non-effective Code. The Courts have found that the State may not restrict the data to "a Maryland registered voter" and therefore, the entities or citizens of any other state may purchase the Maryland voter registration data. Additionally, the Courts did not limit the availability of this sensitive data to only citizens of other states. Consequently, foreign nationals, who happen to reside in any state, now have the ability to purchase the PII of over four million Maryland voters by completing the Application for Voter Registration Data and paying a fee. It is alarming and an absurdity to believe it reasonable that the State of Maryland, through the

General Assembly, could defend a practice whereby the PII of over four million Maryland voters can be sold to a citizen of a foreign country without the express knowledge of the Maryland citizen, and without the citizen's ability to protect their own PII from this type of sale through an opt-out provision. Furthermore, very frequently, the Board emails the purchased Voter Registration Data to a party who did not submit the required Application and who did not sign the required Oath that the data was to be used only for the Electoral Process. As such, neither the Board nor the State of Maryland have the ability to verify, with certainty, the true identity of the recipient of the data sent by the Board. This action along must be viewed as a danger to the integrity of the Electoral Process and thereby a realistic threat to the national security of this country.

Additionally, challenges to the Use Provision of MD Code, Election Law § 3-506 (a)(1)(iii) have been argued in the Maryland Courts and I, along with many other individuals, believe that Use Provision will be tested again with the resulting effect similar as the "Maryland registered voter" provision that has been deemed conflict preemption. Notwithstanding the Use Provision as a limiting factor, as disclosed in *Fusaro*, the State stated in part "the applicants are not required to disclose their intended use of the List to the State Board because the State Prosecutor makes that determination" and Charlton T. Howard, III, MD State Prosecutor during *Fusaro* litigation, advised the Court "...that, to date, no one had been prosecuted by the State Prosecutor for violating the Use Provision". Additionally in *Fusaro*, the Court held "[Mr. Fusaro] can also obtain the voter registration information from third-party sources". Meaning, the Court in *Fusaro*, recognizes the ability of any member of society to gain access to the voter registration data from sources that purchased the data according to the current law; reselling of

voter registration data without legal controls that the MD Code was intended to provide. Because the Court in *Fusaro* recognized his, or any other person's, ability to circumvent the intent of the law by purchasing the Voter Registration Data from a third-party, thereby not necessarily requiring Mr. Fusaro to abide the Use Provision, the Court expressly indicated methods exist to obtain the voter registration data that do not meet the requirements established by this General Assembly through the MD Code, Election Law, § 3-506, therefore this MD Code, in its entirety, is moot as it relates to any condition of access to the sensitive data. Consequently, the Use Provision and along with any restrictiveness to whom shall be provided the list of registered voters, fails to provide the Maryland voters with the protective measures that the Code was intended provide. It is essential to provide laws that are meaningful in action rather than "it just looks good on paper". This supports the opt-out provision of HB1212 as the MD Code and the State of Maryland cannot protect the PII of voters.

Owing to the facts stated above, the MD Code and the State of Maryland cannot protect the PII of the Maryland voters, therefore, the State of Maryland, through the members of the Maryland General Assembly, is obligated to provide the Maryland voters with an alternative to the failing and faulty MD Code, Election Law, § 3-506. This may be easily accomplished by allowing every voter to have an opt-out measure to secure their privacy and protect their PII.

An argument to support the passing of the opt-out provision, concerns the Court's opinion in *Houchins v. KQED, Inc.*, 438 U.S. 1, 16 (1978), the Supreme Court ruled that the First Amendment does not "guarantee the public a right of access to information generated or controlled by government". As noted in *Dennis Fusaro*, No. 18-167, US Court of Appeals for the

Fourth Circuit, held that the general rule is that of *Houchins*, "...the decision to make government information available to the public is generally a 'question of policy' for the 'political branches'. In *Fusaro*, Howard, who was serving as State Prosecutor and named as one of the State's Defendants, declared the "...the List contains 'sensitive, personally identifiable information...". Therefore, the Court has found that the General Assembly has the responsibility to provide policy for the protection of information generated and controlled by government agencies and as such the General Assembly has the authority to establish the opt-out provision in the MD Code.

As a society, we must change laws to provide our citizens with the necessary protection according to the current threats of modern times. And, the citizens look to their elected representative to effectively amend laws to the benefit of society at large. This is particularly important when faced with an outdated Code such as § 3-506 that fail to produce the security of data that the Code was designed to protect. One of today's most prevalent threats to the American citizens comes from disclosure of PII which is regularly used for identity crimes and scams. It is well understood by the world of cyber security that the best way to protect oneself from identity crimes and scams is to restrict one's exposure to those individuals intent upon using such information to commit their criminal activities.

Currently, the Board sells the Voter Registration Data which contains the voter's name, address, date of birth, gender, personal voter ID number, party affiliation, and voting history which includes the voter's date of registration. 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 and “personally identifiable information” means any information that, taken along or in combination with other information, enables the identification of an individual. This particular information sold by the Board discloses only information about each individual voter, making each voter a person in interest.

The Freedom of Information Act and the Maryland Public 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 Data is made for the purpose of scrutinizing the performance of the agency, it may be inappropriate for the Board to allow the purchase of the Voter Registration Data since it is only a collection of the PII of each voter, and therefore, the information contained on this government record cannot shed light on functioning of the agency. Essentially, when a political candidate buys the Voter Registration Data, the data is being purchased for the express purpose of obtaining the PII of each and every voter 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. Additionally, the National Voter Registration Act does not support the purchase of the Voter Registration Data by candidates who wish to mail flyers to their constituents. In fact, an audit of the Application for Voter Registration Data clearly shows that the purpose of buying the voter registration data generally has not been to shed

light onto the functions of this agency; the audit shows the data is purchased for the PII of individual voters. Further, the audit shows that the data is not purchased for the purpose of assessing the accuracy and currency of the voter database. 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. This is only one example of the misuse of the voter data taking place.

The State of Maryland and the Board have deemed the PII contained on the Voter Registration Data sold 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 Data as sold by the Board. Further, allowing some individuals their ability to restrict the disclosure or the sale of their information acknowledges the potential risks associated with the disclosure and sale. Some groups have a legal right to protect their PII 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 information by allowing all voters equal options to “opt-out” from disclosure of their PII on the Voter Registration Data.

By providing all voters the ability to “opt-out” from this disclosure through the sale of the Voter Registration Data, the Board 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). There is most certainly a societal expectation of privacy relating to the electoral process. As Thomas Emerson viewed political privacy as “In its social impact a system of privacy is vital to the working of the democratic process”.

This House Bill is supported by the design of the US Constitution First Amendment, as the reading of which states in part, “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 PII is appropriately supported by the Constitution.

One viable solution for providing candidates with the means to have access to their constituents is to establish a “Tab” on the existing Board’s website whereby candidates will have their ability to promote their platform to the public at large, disseminating their viewpoints, objectives, etc., free from the distraction of misinformation as seen in other forms of media content. In fact, this process would provide the candidates with the technology to post the same political flyers, that they would have mailed to their constituents, and bring their campaign efforts into the digital age of technology. This should be a simple matter of applying

an additional tab on the current website. Some of the immediate benefits of this process would include; the availability of the information to a larger population than available on the list of voters sold by the Board; an increasingly larger percentage of the population prefers obtaining information digitally; less costly to promote their campaign overall; less consumption of paper products and less waste of these products impacting waste disposal, both of which are environmentally superior to the bygone days of mass mailings.

Fortunately for the Maryland voters, by preparing and presenting this House Bill, Delegate Arentz has shown integrity as a leader. Moreover, Delegate Arentz shows his commitment in action for the safety and wellbeing of the Maryland voters. It is my greatest hope today that this General Assembly will join Delegate Arentz by supporting House Bill 1212 and add their personal commitment to the citizens of Maryland.

Respectfully submitted,

Charlene Conners