ALAN WILSON
ATTORNEY GENERAL

August 29, 2016

Ms. Marci Andino, Executive Director
South Carolina Election Commission
1122 Lady Street, Suite 500
Columbia, SC 29201

Dear Ms. Andino:

You have asked for our opinion concerning "furnishing certain information contained on voter registration lists." Specifically, you set forth the issue as follows:

> South Carolina Code Ann. § 7-5-170(2) provides that a voter must provide the following information when submitting an application to register to vote: name, sex, race, social security number, date of birth, residence address, mailing address, telephone number of the applicant and location of prior voter registration. Subsection (1) provides that the social security number contained in the application must not be open to public inspection. South Carolina Code Ann. § 7-3-20(6) requires the Executive Director of the State Election Commission to furnish each county board of voter registration and election with a copy of all registered voters in each precinct in the county, which shall be used as the official list of voters. The Executive Director is also required under S.C. Code Ann. § 7-3-20(12) to furnish, at a reasonable price any precinct lists to a qualified elector requesting them.
>
> The Family Privacy Protection Act in § 30-2-300(3) requires state and local governments to minimize the instances that personal identifying information is disseminated externally with the general public. Personal identifying information is defined as "social security number, date of birth . . . name, home address, [and] home telephone number. . . ." S.C. Code Ann. § 30-2-30(1). Additionally, the Domestic Violence Reform Act requires that the address from a complainant for a permanent restraining order must be ". . . kept under seal, and not subject to Freedom of Information Act requests. . . ." S.C. Code Ann. § 16-3-1910(D). The South Carolina Supreme Court ruled in Glassmever v. City of Columbia, that disclosure of home addresses and personal telephone numbers was "an unwarranted invasion of an individual's privacy and thus . . . were exempt from disclosure under the privacy exemption of the state Freedom of Information Act." 414 S.C. 213 (2015).
>
> In light of the conflict between Section 7, Section 30 and the recent Supreme Court ruling, the Commission is requesting clarification as to whether certain information

> must be redacted from voter registration lists prior to being furnished to any qualified elector.

Law/Analysis

S.C. Code Ann. Section 7-5-170(1) and (2) provide as follows with respect to the application for voter registration:

> (1) Written application required. -- A person may not be registered to vote except upon written application or electronic application pursuant to Section 7-5-185, which shall become a part of the permanent records of the board to which it is presented and which must be open to public inspection. However, the social security number contained in the application must not be open to public inspection.
>
> (2) Form of application. -- The application must be on a form prescribed and provided by the executive director [of the State Election Commission] and shall contain the following information: name, sex, race, social security number, date of birth, residence address, mailing address, telephone number of the applicant, and location of prior voter registration. The applicant must affirm that he is not under a court order declaring him mentally incompetent, confined in any public prison, has never been convicted of a felony or offense against the election laws, or if convicted that he has served his entire sentence, including probation time, or has received a pardon for the conviction. Additionally, the applicant must take the following oath: "I do solemnly swear (or affirm) that I am a citizen of the United States, and that on the date of the next ensuing election, I will have attained the age of eighteen years and am a resident of South Carolina, this county, and of my precinct. I further swear (or affirm) that the present residence address listed herein is my sole legal place of residence and that I claim no other place as my legal residence." Any applicant convicted of fraudulently applying for registration is guilty of perjury and is subject to the penalty for that offense.

(emphasis added). As can be seen, the only exception to the requirement of "public inspection" contained in § 7-5-170 is "the social security number contained in the application." This single exception was added by Act No. 239 of 2004.

The Family Privacy Protection Act of 2002 is codified at § 30-2-10 et seq. While § 30-2-30(1) defined "personal information" broadly, the Act required in § 30-2-50(C) that

> [a]ll state agencies shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(emphasis added). Subsection (A) of § 30-2-50 states that "(A) A person or private entity shall not knowingly obtain or use any personal information from a state agency for commercial solicitation directed to any person in this State." Subsection (E) of § 30-2-50 further provides

that "[t]his chapter does not apply to a local government entity of a subdivision of this State or local government." In an opinion issued in 2013, Op. S.C. Att'y Gen., 2013 WL 3960434 (July 19, 2013), we advised that "the 'Family Privacy Protection Act of 2002' applies only to State agencies and entities." Accordingly, this Act would be applicable only to records of the SEC and not to county records generally.

Moreover, we have also opined that the Family Privacy Protection Act "now prohibits the release of certain personal information if such will be used for commercial solicitation purposes." Op. S.C. Att'y Gen., 2002 WL 31341824 (September 26, 2002) (emphasis added). Section 30-2-30(3) defines "commercial solicitation" as follows:

> "Commercial solicitation" means contact by telephone, mail or electronic mail for the purposes of selling or marketing a consumer product or service. "Commercial solicitation" does not include contact by whatever means for the purpose of:
>
> (a) Offering membership in a credit union;
> (b) Notification of continuing education opportunities;
> (c) Selling or marketing banking, insurance securities, or commodities services provided by an institution or entity defined in or required to comply with the Federal Gramm-Leach-Bliley Financial Modernization Act, 133 Stat. 1338; or
> (d) Contacting persons for political purposes using information on file with state or local voter registration offices.

(emphasis added). Thus, the Family Privacy Protection Act defines "commercial solicitation" to exempt expressly from its reach the "contacting [of] persons for political purposes using information on file, with State or local voter registration offices." In other words, the Family Privacy Protection Act exempts the use of voter registration information as "commercial solicitation."

We turn now to the rules of construction for interpreting these statutes. Generally, when interpreting a statute or statutes, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Co., 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning, and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Dept., 247 S.C. 132, 146 S.E.2d 1661 (1966). These principles of statutory construction are stated in Op. S.C. Att'y Gen., 2011 WL 1444708 (March 29, 2011).

In addition, '[s]tatutes pertaining to the same subject matter must be harmonized if at all possible." Op. S.C. Att'y Gen., 2015 WL 1382879 (March 9, 2015), citing In Interest of Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995). Moreover,

> "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect."

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). As the Court in Capco emphasized, "[r]epeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement." 366 S.C. at 141, 628 S.E.2d at 41.

Glassmeyer v. City of Cola., supra, also bears discussion. In Glassmeyer, Petitioner brought an action seeking a declaratory judgment as to whether the City of Columbia violated the Freedom of Information Act (FOIA) in connection with his records request. Petitioner contended that the City contravened FOIA by failing to disclose home addresses, personal telephone numbers and personal email addresses for applicants to the position of city manager. The Petitioner had requested all materials relating to not less than the final three applicants for the vacancy. According to the Court of Appeals, "[t]he City provided these documents but redacted certain information including the home addresses of applicants, some, but not all, of the telephone numbers belonging to applicants and their respective references, applicants' drivers license numbers and restrictions to their respective drivers licenses; and some, but not all, of their reasons for leaving or wanting to leave previous employment positions."

The trial court in Glassmeyer concluded that FOIA "compelled disclosure of home addresses, personal telephone numbers and personal email addresses for applicants to the position of city manager." 414 S.C. at 218, 777 S.E.2d at 838. However, the Court of Appeals disagreed. The Court of Appeals relied upon § 30-4-40(a)(2), known as the "privacy exception," which exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." The Court's analysis that the "privacy exception" applied was as follows:

> South Carolina Code section 30–4–40(a)(2) (2007), known as the "privacy exemption," exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." As this court noted, "Section 30–4–40(a)(2) does not specifically list or define the types of records, reports, or other information that should be classified as personal or private information exempt from disclosure." Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 352, 594 S.E.2d 888, 895 (Ct.App.2004). Thus, we must "resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other." Id. The right to privacy is

defined as the right of an individual to be let alone and to live a life free from unwarranted publicity. Id. "However, 'one of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest.' " Id. (quoting Soc'y of Prof'l Journalists v. Sexton, 283 S.C. 563, 566, 324 S.E.2d 313, 315 (1984)).

Interpreting the privacy exemption contained in the Michigan Freedom of Information Act, the Supreme Court of Michigan found employees' home addresses and telephone numbers were exempt from disclosure. Mich. Fed'n of Teachers & Sch. Related Pers. v. Univ. of Mich., 481 Mich. 657, 753 N.W.2d 28, 43 (2008). It explained, "Where a person lives and how that person may be contacted fits squarely within the plain meaning of this definition [of information of a personal nature] because that information offers private and even confidential details about that person's life. . . . [T]he release of names and addresses constitutes an invasion of privacy, since it serves as a conduit into the sanctuary of the home." Id. at 40. In addition, the court noted, "The potential abuses of an individual's identifying information, including his home address and telephone number, are legion." Id. In concluding the disclosure of this information would constitute an unwarranted invasion of an individual's privacy, the Michigan court explained as follows:

> Simply put, disclosure of employees' home addresses and telephone numbers to plaintiff would reveal little or nothing about a governmental agency's conduct, nor would it further the stated public policy undergirding the Michigan FOIA. Disclosure of employees' home addresses and telephone numbers would not shed light on whether the University of Michigan and its officials are satisfactorily fulfilling their statutory and constitutional obligations and their duties to the public. When this tenuous interest in disclosure is weighed against the invasion of privacy that would result from the disclosure of employees' home addresses and telephone numbers, the invasion of privacy would be clearly unwarranted.

Id. at 43 (internal citations omitted).

Similarly, the U.S. Supreme Court found disclosure of employees' addresses would not appreciably further "the citizens' right to be informed about what their government is up to" and "would reveal little or nothing about the employing agencies or their activities." U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 497, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994). It held, "Because the privacy interest of bargaining unit employees in nondisclosure of their home addresses substantially outweighs the negligible FOIA-related public interest in disclosure, we conclude that disclosure would constitute a 'clearly unwarranted invasion of personal privacy.' " Id. at 502, 114 S.Ct. 1006 (citation omitted).

Glassmeyer contends the City's disclosure of the information would not result in a substantial invasion of privacy because the telephone numbers and addresses are publicly available information and email addresses are generally available through online research. The U.S. Supreme Court rejected a similar argument, explaining,

> It is true that home addresses often are publicly available through sources such as telephone directories and voter registration lists, but "[i]n an organized society, there are few facts that are not at one time or another divulged to another." The privacy interest protected by [the federal exemption] "encompass[es] the individual's control of information concerning his or her person." An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.

U.S. Dep't of Def., 510 U.S. at 500, 114 S.Ct. 1006 (first and third alterations in original) (citations omitted). Similarly, the Supreme Court of Michigan found,

> An individual's home address and telephone number might be listed in the telephone book or available on an Internet website, but he might nevertheless understandably refuse to disclose this information, when asked, to a stranger, a co-worker, or even an acquaintance. The disclosure of information of a personal nature into the public sphere in certain instances does not automatically remove the protection of the privacy exemption and subject the information to disclosure in every other circumstance.

Mich. Fed'n of Teachers & Sch. Related Pers., 753 N.W.2d at 42.

Home addresses and telephone numbers are information our General Assembly has recognized as entitled to protection for personal privacy. In legislation enacted subsequent to the FOIA, the General Assembly recognized, "Although there are legitimate reasons for state and local government entities to collect social security numbers and other personal identifying information from individuals, government entities should collect the information only for legitimate purposes or when required by law." S.C. Code Ann. § 30–2–300(2) (Supp.2014). It thus provided, "When state and local government entities possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public." S.C. Code Ann. § 30–2–300(3) (Supp.2014) (emphasis added).

In the Family Privacy Protection Act, the General Assembly recognized the need for state agencies to develop privacy policies and procedures to limit and protect the collection of personal information. S.C. Code Ann. §§ 30–2–10 to –50. It included in the definition of "personal information" home addresses and home telephone numbers. S.C. Code Ann. § 30–2–30 (2007).

We find the home addresses, personal telephone numbers, and email addresses of the applicants are information in which the applicants have a privacy interest. However, we must balance the privacy interest of the applicants against the interest of the public's need to know this information. We find the trial court was mistaken in stating the public's interest would be served by disclosure of the applicants' home addresses because "[t]he public has a right to know whether the applicants live in the city of Columbia, the area over which the city manager has authority." The City only

> redacted the street name and number of the applicants' home addresses. It provided Glassmeyer with the city name and zip code. Thus, the public could determine the city in which the applicants lived through the materials the City provided. The trial court did not declare any interest served by revealing the personal phone numbers or email addresses of the applicants.
>
> Glassmeyer asserts the disclosure of the information would serve the public's interest by demonstrating whether the applicants were truthful in their applications. Other than the home addresses, telephone numbers, and email addresses, the City has disclosed the applicants' entire applications, including their educational backgrounds and employment histories. We fail to see how disclosure of the limited information the City seeks to protect would serve to establish the veracity of the applicants more than the information already provided.
>
> In balancing the interests of protecting personal information against the public's need to know the information, we find no evidence in the record demonstrates disclosure would further the FOIA's purpose of protecting the public from secret government activity. Accordingly, we hold the applicants' home addresses, personal telephone numbers, and personal email addresses are "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" and are exempt from disclosure under section 30-4-40(a)(2).

414 S.C. at 220-223, 777 S.E.2d at 839-841.

In our own opinions, we have opined frequently as to the application of the "privacy exception" to addresses, telephone numbers, etc. In Op. S.C. Att'y Gen., 2011 WL 1444708 (March 29, 2011), for example, we stated:

> Typically, over the years, this Office has concluded that a person's home address is public information because such information is readily available through other sources such as the telephone book or City Directory. In an opinion dated July 16, 1987, for example, we stated that the release of home addresses would generally not constitute an unreasonable invasion of personal privacy inasmuch as "[r]esidence addresses and telephone numbers have been deemed disclosable since the same are often ascertainable by reference to many publicly attainable books and records." Ops. Atty. Gen., October 2, 2000 [customer home addresses for Seneca Light and Water company]; September 30, 1993 [mailing list for the Department of Agriculture publication], see Michigan State Employees Assn. v. Dept. of Management and Budget, 135 Mich. App. 248, 353 N.W.2d 496 (1984); Hechler v. Casey, 175 W.Va. 434, 333 S.E.2d 799 (1985).
>
> We have advised, however, that caution must be exercised in disclosing residence addresses and telephone numbers, as §30-4-40(a)(2) exempts from disclosure "information of a personal nature where the disclosure thereof would constitute unreasonable invasion of personal privacy. . . ." Op. S.C. Atty. Gen., July 16, 1987. We note that Article I, §10 of the South Carolina constitution expressly protects against "unreasonable invasion of privacy." In an opinion dated October 2, 2000, we

> cautioned that "if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, a determination as to disclosure must be made on a case-by-case basis. . . ." This remains the opinion of this office. In common parlance, the term "unlisted" clearly implies the individual in question has requested the number and/or address not be given out through directory services. This factor weighs heavily regarding the heightened privacy interest of that individual in the non-disclosure of the unlisted number of address.

Moreover, in Op. S.C. Att'y Gen., 1987 WL 245477, Op. No. 87-69 (July 16, 1987), we opined:

> [r]residence addresses and telephone numbers have been deemed disclosable since the same are often ascertainable by reference to many publicly attainable books and records. Michigan State Employees Association v. Department of Management and Budget, 135 Mich. Ap. 248, 353 N.W.2d 496 (1984); Hechler v. Casey, 333 S.E.2d 799 (W. Va. 1985).
>
> Caution should be exercised in disclosing these two items. Section 30-4-40(a)(2) exempts from disclosure "information of a personal nature where the disclosure thereof would constitute unreasonable invasion of personal privacy. . . ." As indicated by the Michigan State Employees Association decision and others cited therein, such disclosure of residence address has not been deemed an invasion of privacy. However, if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, a determination as to disclosure must be made on a case-by-case basis, following guidelines in cases such as Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.O.2d 313 (1984) and Child Protection Group v. Cline, 350 S.E.2d 541 (W.Va. 1986), enclosed. . . . To the extent that today's opinion is inconsistent with the opinions, dated January 25, 1978 and August 5, 1977, today's opinion as to the release of home addresses and telephone numbers of state employees will be deemed to be controlling.
>
> An individual's social security number should most probably not be disclosed pursuant to a freedom of information request. The disclosure of a Social Security Account Number unless authorized by statute such as the federal Privacy Act, has been found to constitute a clearly unwarranted invasion of personal privacy. Swisher v. Department of the Air Force, 459 F.Supp. 337, aff'd. 660 F.2d 369 (8th Cir. 1981).

On the other hand, as Glassmeyer makes clear, the increasing concern for the protection of one's privacy has resulted in a number of decisions in other jurisdictions which conclude that this type of information is private. See, e.g. Wade v. I.R.S., 771 F.Supp.2d 20 (D.D.C. 2011) [I.R.S., balancing the privacy interests against the public's interest in disclosure, properly withheld agents' home telephone numbers and addresses under the personal privacy exemption].

As the Supreme Court of Kentucky explained in Kentucky New Era, Inc. v. City of Hopkinville, 415 S.W.3d 76, 88 (Ky. 2013),

> [t]he added disclosure of the addresses, telephone numbers, social security numbers and driver's license numbers of the victims, witnesses, and uncharged subjects appearing in the police arrest and incident reports, adults and juveniles alike, would constitute a clearly unwarranted invasion of personal privacy. . . .

This is the holding of Glassmeyer as well.

However, the foregoing decisions, including Glassmeyer, did not address the question of disclosure of voter registration information, which is usually required to be disclosed for various discrete reasons. In Greidinger v. Davis, 988 F.2d 1344, 1354-55 (4th Cir. 1993), the Fourth Circuit had before it the validity of Virginia's statutory scheme regarding the release of voter registration information which required even the disclosure and dissemination of the registered voter's Social Security Number. There, the Court considered whether such release constituted a compelling state interest with respect to chilling the constitutional right, to vote. The Fourth Circuit explained its reasoning as follows:

> Virginia's voter registration form requires a registrant to supply, among other things, his name, address, SSN, age, place of birth, and county of previous registration. Virginia's interest in preventing voter fraud and voter participation could easily be met without the disclosure of the SSN and the attendant possibility of a serious invasion of privacy that would result from that disclosure. Accord, Pilcher v. Rains, 853 F.2d 334, 337 (5th Cir. 1988) (requirement that voters signing ballot access petition supply "voter registration number" not necessary to distinguish among voters sharing common names). . . . Most assuredly, an address or date of birth would sufficiently distinguish among voters that shared a common name. Moreover, the same state interest could be achieved through the use of a voter registration number as opposed to an SSN. Following this tack, Virginia could derive the same benefits as the disclosure of a SSN. Thus, to the extent § 24.1-23(8) and § 24.1-56 allow Virginia's voter registration scheme to "sweep [ ] broader than necessary to advance electoral order," Norman [v. Reed], 502 U.S. at ____, 112 S.Ct. at 706, it creates an intolerable burden on Greidinger's fundamental right to vote.

Further, authorities construe Voter Registration statutes as controlling with respect what voter registration application information is disclosable to the public. For example, in Op. Miss. Att'y. Gen., 2015 WL 174886 (No. 2015-00065) (March 27, 2015), the Mississippi Attorney General concluded that:

> [w]ith regard to voter registration files, we note that Section 23-15-165(6)(b) speaks specifically to information which must be redacted and states "copies of statewide, district, county or municipal Voter Registration files, excluding social security numbers, telephone numbers and date of birth and age information, shall be provided

> to any person. . . ." Given the specificity of the statute, we are of the opinion that addresses found in voter registration files are not subject to redaction.

Not only did this Mississippi opinion conclude that addresses should not be redacted, but as well the Mississippi Attorney General relied upon the separate voter registration provision to do so.

Similarly, case law in other jurisdictions applies the separate Voter Registration enactment rather than FOIA. For example, in Pennsylvanians For Union Reform v. Pa. Dept. of State, 138 A.2d 727 (Pa. Comm. Ct. 2016), the Court addressed a conflict between provisions in the Right-To-Know law and the Voter Registration Act. There, the Court concluded that the Voter Registration Act constituted an exception to the Right-To-Know law. According to the Court, "[i]n the Voter Registration Act, the general Assembly established a comprehensive framework within which the Department [of State] is responsible for compiling, organizing, maintaining and disseminating voter registration records." The Court went on to say the following:

> [t]hese records include names, addresses, birth dates, party registration, and voting history. It is the Department that has been entrusted with the custody, control, and protection of voter registration information, and the Secretary of the Department who has been delegated the authority to develop reasonable safeguards in the form of regulations governing the public's access to that information. 25 Pa.C.S. § 1404(a)(1). The affidavit of Commissioner Marks states the purposes for which voter registration information is made available, including "to assist candidates for public office in identifying constituents and carrying out campaign-related activities[, and to help p]olitical parties, candidates for public office, political campaigns, and special-interest groups use the information to identify constituents and carry out election-related activities." (R.R. at 67a.) He also explained that due to the "unique nature of the records, the General Assembly and the Department, . . . have imposed [] reasonable safeguards to ensure that the information is not used improperly." (Id.) Commissioner Marks reiterated that those wishing to gain access to such information must abide by the reasonable safeguards set forth by the Department, as authorized by the General Assembly, including completing the Department's form, presenting proof of identification, "stat[ing,] in writing [on a form prescribed by the Department] that any information obtained from the list will not be used for purposes unrelated to elections, political activities or law enforcement," and paying the reasonable $20.00 fee. (R.R. at 67a): 25 Pa.C.S § 1404(b)(3), (c)(i)-(2);4 Pa. Code § 183.14(a). (b) (1)-(5).
>
> We conclude that the RTKL provisions conflict with the access provisions of the Voter Registration Act and the Department's regulations, and therefore, the RTKL's access provisions do not apply to PFUR's request for voter registration information. Moreover, the Department's regulations expressly establish the manner and medium in which the public information list may be made available for public inspection and copying to those who request access to it. See 25 Pa.C.S. § 1404(a)(1) (providing that "[a] commission shall provide for computer inquiries concerning individual registered electors"), (c)(l) (providing that "[t]he commission . . . may provide copies

> in some other form . . ."); 4 Pa. Code § 183.14(j) (providing that "[t]he Department... will supply the public information list in a paper copy or in an electronic format.") (emphasis added). Commissioner Marks also attested to the fact that PFUR would be able to access all the information it sought from the full voter export, or public information list, a fact that PFUR acknowledged at oral argument. Therefore, we conclude that PFUR was granted access to the requested voter registration information in accordance with the Voter Registration Act and the Department's regulations, and in a manner and medium in which the Voter Registration Act and the Department's regulations explicitly allow.

138 A.3d at 733.

Likewise, in Project Vote/Voting for America v. Long, 889 F. Supp.2d 778 (E.D. Va. 2012), the Virginia District Court considered the question of whether redaction of additional personal information besides Social Security Numbers is permitted by the National Voter Registration Act's (NVRA) disclosure provisions. The Court answered in the negative. The case had been remanded back to the District Court by the Fourth Circuit (see 682 F.3d 331 (4th Cir. 2012) for determination of that issue). The District Court reasoned:

> Moreover, and contrary to Defendants' argument, Congress has made its intent clear with regard to disclosure of an applicant's address, signature, and birth date; disclosure of that information, unlike SSNs, is required by the statute. As the Fourth Circuit stated:
>
> > It is not the province of this court ... to strike the proper balance between transparency and voter privacy. That is a policy question properly decided by the legislature, not the courts, and Congress has already answered the question by enacting NVRA Section 8(i)(1), which plainly requires disclosure of completed voter registration applications.
>
> Project Vote, 682 F.3d at 339. . . The plain meaning of the NVRA's disclosure requirement is that disclosure of completed voter registration applications containing the address, birth date, and signature of applicants includes disclosure of that information. See Project Vote, 752 F.Supp.2d at 710. Further, the NVRA requires that all states accept a federal form designed in accordance with the statute's guidelines as a voter registration application. See 42 U.S.C. § 1973gg–7. That form, the National Mail Voter Registration Form, requires, among other things, the applicant's address, date of birth, and attestation by signature or mark under the penalty of perjury. See 11 C.F.R. § 9428.4; see also Gonzalez v. Arizona, 677 F.3d 383, 395–96 (9th Cir.2012) (discussing the contents of the National Mail Voter Registration Form). Thus, there is no question that Congress intended that such information be disclosed under the statute.
>
> Defendants' comparison of this information to the court's rationale for redacting SSNs is also unfounded. SSNs, as this court has previously held, are "uniquely sensitive and vulnerable to abuse." See Project Vote, 752 F.Supp.2d at 711–12. The Fourth Circuit agreed with the court's analysis. See Project Vote, 682 F.3d at 339

> (discussing Greidinger v. Davis, 988 F.2d 1344 (4th Cir.1993)). . . This court also notes that, in contrast, applicants are not required to disclose their full SSNs to complete the National Mail Voter Registration Form unless their state of residence requires such information. See 11 C.F.R. § 9428.4(a)(6).
>
> The court does not disagree with Defendants' position that "allowing any person [to review] the voter registration applications of individuals that are protected [by Virginia Code § 24.2–418.B] without the redaction of their home addresses would utterly abrogate these protections." Mot. Review ¶ 8. However, as this court and the Fourth Circuit made clear, the proper balance between transparency and voter privacy is a legislative question that "Congress has already answered." Project Vote, 682 F.3d at 339; Project Vote, 752 F.Supp.2d at 710. As this court found in its July 20, 2011, Opinion, "to the extent that any Virginia law, rule, or regulation forecloses disclosure of completed voter registration applications with the SSNs redacted," such law is "preempted by the NVRA." Project Vote, 813 F.Supp.2d at 743. . . As such, the court DENIES Defendants' request in their Motion for Review to make any redactions of completed voter registration forms beyond the applicant's SSN.

889 F. Supp.2d at 781-782.

Thus, there are precedents in other jurisdictions which deem the specific voter registration law to be controlling. South Carolina's law, Section 7-5-170(2), dates back in some form to 1950. See Act 2059 of 1950. Section 23-68 of the 1962 Code, like current § 7-5-170(2), provided that the application "shall be open to public inspection." The original application form required the applicant to submit his or her address, but not the applicant's Social Security Number. In 2004, pursuant to Act No. 239 of 2004, the General Assembly enacted the exception providing that "the social security number contained in the application as required by this section must not be open to public inspection." As noted above, this is the single exception to public access contained in the Act.

Long before FOIA was enacted, we advised in an opinion that the entire voter registration application was open to the public. In Op. S.C. Att'y Gen., 1964 WL 11469 (July 3, 1964) we concluded that "[r]egistration records, including application for certificates, may be viewed by any member of the public at any reasonable time convenient to the Registration Board." See also Op. S.C. Att'y Gen., 1962 WL 12453 (August 10, 1962 [public inspection of the application "includes the right to make copies of these applications."]. This being the case, neither the General Assembly, in enacting the original statute requiring the application to contain certain information, nor this Office, in its 1962 and 1964 opinions, deemed the information required to be contained in the application, to be protected by personal privacy. Thus, it seems illogical to conclude now that FOIA, which is not a confidentiality act, see Op. S.C. Att'y Gen., 2005 WL 1574915 (May 23, 2006), would make such information confidential where it was not confidential prior to FOIA's enactment.

Moreover, § 7-5-170(2) was reenacted in toto as late as 2012 with the enactment of Act No. 265 of 2012. Again, the only exception to the "open to public inspection" requirement is the

Social Security Number mandated to be contained in the application. We do not believe FOIA's enactment limited § 7-5-170(2), which as other jurisdictions have concluded with respect to voter registration laws, stands on its own. First, it is generally held that a later enacted general statute does not repeal an earlier more specific statute. Spartanburg County Dept. of Social Services v. Little, 309 S.C. 122, 420 S.E.2d 499 (1992).

Second, the reenactment of § 7-5-170(2) in 2012 is also instructive. Certainly, the General Assembly is presumed to have knowledge of prior legislation when any subsequent legislation is enacted. Op. S.C. Att'y Gen., 1991 WL 632984 (March 28, 1991). And, a reenactment in toto is a strong indication that the General Assembly considers the reenacted statute to be in force. Op. S.C. Att'y Gen., 1983 WL 181887 (May 16, 1983).

Third, the fact that the General Assembly, in § 7-5-170(2) has mandated only one entry in the voter registration application not disclosable to the public – the Social Security Number of the applicant – is an indication it did not intend others to be non-disclosable. In Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000), our Supreme Court applied the well-recognized rule of construction that

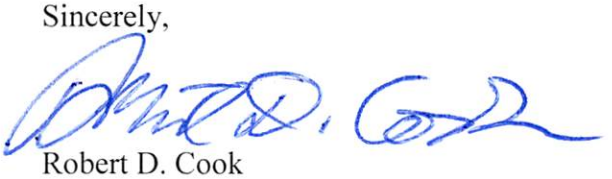
> [t]he canon of construction "expressio unius est exclusio alterius" or "inclusio unius est exclusio alterius" holds that "to express or include one thing implies the exclusion of another, or of the alternative." . . . . The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed. Norman J. Singer, Sutherland Statutory Construction § 47-23 at 227 (5th ed. 1992) (citations omitted).

Conclusion

While our conclusion is not free from doubt, it is our opinion that a court would most likely construe § 7-5-170(2) as standing on its own, independent of other statutes, such as FOIA or the Family Privacy Protection Act. Importantly, § 7-5-170(2) existed in similar form prior to these statutes and was reenacted in toto in 2012. Thus, by making all information on the voter registration application disclosable to the public, except for the Social Security Number, the Legislature did not appear to deem such information as protected by privacy. Therefore, we do not believe the General Assembly intended to make non-disclosable information from the voter registration application because the statute providing for the application (§ 7-5-170(2)) expressly requires such information to be made public. Important also is the fact that § 7-5-170(2) exempts from public disclosure only Social Security Numbers. The well-recognized doctrine of statutory construction, "expressio unius est exclusio alterius" ("to express or include one thing implies the exclusion of another") would thus lead to the conclusion that the General Assembly does not intend any other exceptions to public disclosure. A permissible FOIA exemption cannot be deemed to modify a separate statute mandating disclosure of information.

As far as the Glassmeyer case is concerned, while it is true that in that case, certain information, such as home addresses, were protected by the "privacy" exemption of FOIA, we do not believe such is the case here, for the reasons outlined above. Again, the information contained in the voter registration application was made public long before FOIA and § 7-5-170(2) was reenacted long after FOIA's passage. The Legislature thus cannot be considered to have done a futile act. Moreover, the General Assembly obviously intended public access to voter registration information to be paramount because of the necessity of using such information as part of the political process in conducting campaigns. Thus, if such information is to be exempted from disclosure, we think it important that the Legislature do so explicitly, rather than as part of a general exemption to FOIA which is, of course, not mandatory. Considering that this is a somewhat difficult issue, you may wish to seek either legislative or judicial guidance for the future.

Sincerely,



Robert D. Cook
Solicitor General