

**STATE OF MAINE  
DEPARTMENT OF SECRETARY OF STATE**

**IN RE: Challenge to Petition to Nominate  
Slate of Presidential Electors to Support  
Dr. Cornel West**

**Hearing Officer: Shenna Bellows,  
Secretary of State**

**Challenger Berger's Pre-Hearing Brief  
Regarding Access to Central Voter  
Registration System Data**

As directed at the August 12, 2024, prehearing conference, Challenger Nathan Berger submits this short brief to address “whether 21-A M.R.S.A. § 196-A permits use of the confidential data in the central voter registration system as hearing evidence.” Pre-Hearing Conference Report at 1.<sup>1</sup>

The Secretary should permit the parties to access such data and use it as evidence at the hearing. Use of central voter registration (“CVR”) system data in a petition challenge is expressly contemplated by 21-A M.R.S. § 196-A, the statute governing access to confidential CVR data, and is necessarily permitted under a challenge regime that depends substantially on voter registration status. Alternatively, the Secretary should at a minimum take such voter registration status information into evidence for purposes of *in camera* review.

**I. The Maine statutes permit the parties to access CVR data for purposes of a petition challenge hearing.**

The Secretary should permit the parties to access voter registration information stored in the CVR system for use at the hearing.

*First*, such use is expressly contemplated by the governing statutes. Specifically, 21-A M.R.S. § 196-A(1)(B) allows any party, individual, or organization to access voter registration information “for purposes directly related to . . . a campaign.” A campaign, in this context, means

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<sup>1</sup> Challenger Berger takes no position on the other question resulting from the conference: “whether the unsworn declarations proposed by Challengers Gass and Marquis as evidence are admissible under 5 M.R.S.A. § 9057(5).”

“any course of activities to influence the nomination or election of a candidate.” *Id.* § 1052(1). The definition of “candidate” includes a person petitioning under section 354. *Id.* § 1(5). Thus, a challenge to a candidate’s section 354 petition is necessarily part of a “course of activities to influence the nomination or election of a candidate”—it is an effort to prevent the candidate’s election by invalidating the candidate’s ballot access. Access to CVR data is therefore expressly permitted for purposes of such a challenge.

*Second*, such use is necessarily authorized by Maine’s enactment of a challenge regime that puts voter registration status at issue. The statute governing nomination by petition provides that “nomination petitions for presidential electors may be signed by any Maine voter,” that all “[o]ther signatures are void,” and that a voter signing a petition “must personally sign that voter’s name in such a manner as to satisfy the registrar of that voter’s municipality that the voter is a registered voter.” 21-A M.R.S. § 354(2)–(3). The challenge statute, in turn, authorizes a voter to challenge “the validity of a nomination petition or of names upon a petition.” *Id.* § 356(2). As the CVR system is Maine’s central repository of registration data, these statutes necessarily authorize use of such data for petition challenges based on registration status of petition signatories. Otherwise, challengers and candidates would be unable to use the most directly relevant data source in connection with proceedings under the challenge statutes, to no one’s benefit.

*Third*, all parties appear to agree that use of CVR data is appropriate in this matter. At the pre-hearing conference, counsel for the West Campaign expressed concern about the evidentiary sufficiency of registration data obtained from third-party vendors. Such data, to be clear, is probative evidence of registration status because third-party vendors themselves obtain the data from the CVR system for statutorily authorized uses. But insofar as the West Campaign believes that current CVR data is the best evidence, Challenger Berger does not disagree.

**II. At a minimum, the statutes permit the Secretary to evaluate claims about voter registration status through *in camera* review of CVR data.**

At a minimum, the Secretary is plainly authorized to consult CVR data herself in evaluating Challenger Berger's factual submissions. *See* 21-A M.R.S. § 196-A(1) (authorizing the Secretary to use CVR data for any purpose related to "election and voter registration administration"). Insofar as the Secretary does not grant the parties access to such data, notwithstanding the above arguments, the Secretary should take the voter registration status of challenged signatories into evidence and review it *in camera*.

Dated: August 12, 2024



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