

Let's Get Political: Fourth Circuit Protects Maryland Voter List as "Political Speech"

July 22, 2019

The First Amendment does not generally confer a right to access government information. But can the First Amendment apply to laws that selectively release government information to certain people for certain purposes? The Fourth Circuit so held this month in *Fusaro v. Cogan*, No. 18-2167 (4th Cir. July 12, 2019), in a case of first impression.

The court allowed a First Amendment challenge to proceed against a Maryland statute that limited access to the state's voter rolls only to Maryland voters who used the list only for purposes "related to the electoral process." Md. Code Ann., Election Law § 3-506 (West 2019). The plaintiff, Dennis Fusaro, a Virginia voter, had requested the list to send voters a letter criticizing an appointed Maryland prosecutor.

The district court dismissed Fusaro's lawsuit, saying he enjoyed no First Amendment right to the voter list. The Fourth Circuit disagreed. It concluded that the First Amendment applied to suspect limitations on access to information where the information is closely tied to political speech and the statute imposes content and speaker-based restrictions.

But rather than strictly scrutinize the law, as traditionally done under the First Amendment, the Fourth Circuit applied a balancing test. It did so because the law did not severely burden speech — the law contained loopholes allowing people to access the list through other means. The court also found that the law did not directly restrict speech, only access to information. And the court considered that judges generally defer to a state's policy choices involving election regulations.

Read the full opinion here. [Fusaro v. Cogan](#), No. 18-2167 (4th Cir. July 12, 2019).

Authored By



David A. Karp

Related Practices

[Appellate & Trial Support](#)

[Media, Entertainment, Music & Sports](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.