

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

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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).

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