

COA Opinion: “Separate records” created for 2008 presidential primary subject to disclosure under FOIA

10. March 2010

On March 9, 2010, the Court of Appeals published a 2-1 decision in *Practical Political Consulting, Inc. v. Secretary of State*, No. 291176. During the 2008 presidential primary in Michigan, the Secretary of State was required to keep a “separate record” that included the name, address, and qualified voter file number of each elector and the participating political party ballot selected by that elector. Practical Political Consulting requested a copy of these records under the Freedom of Information Act (FOIA). After the Secretary of State denied this request, Practical Political Consulting brought suit against her. The trial court entered summary judgment against her. The Secretary appealed, arguing that the requested records were exempt under § 13(1)(a) of FOIA (the “privacy exemption”) and § 13(d) of FOIA (the statutory exemption). The Court of Appeals affirmed the trial court.

The Court of Appeals concluded that these “separate record[s]” did not qualify under the statutory exemption for “voter registration records.” Further, the statutory exemption did not apply to the “information” contained in the records because the “information” was not a “declaration of party preference” (or no party preference) that the statute exempts from disclosure. The Court of Appeals also concluded that the privacy exemption did not apply to these “separate record[s]” or the information contained in them because this is not the disclosure of personal information. The Court of Appeals further concluded that even if it were a disclosure of personal information, it would not constitute a “clearly unwarranted” invasion of an individual’s privacy.

Judge Kelly’s dissent may be found [here](#).