

Supreme Court Agrees to Review Virginia Records

Digital Media and Data Privacy Law Blog

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Last week, the United States Supreme Court agreed to hear an important case involving Virginia's public records law. The case, *McBurney v. Young*, involves a challenge to a provision of the state law that says that "public records shall be open to inspection and copying by any *citizens of the Commonwealth* . . ." (emphasis added). In other words, citizens of another state need not apply.

A challenge to this provision limiting the availability of public records to Virginia citizens was brought by, among other plaintiffs, a citizen of Rhode Island who used to live in Virginia and had his divorce and child custody case litigated in Virginia. When *McBurney's* ex-wife defaulted on her child support obligations, *McBurney* submitted a public records request to the state Division of Child Support Enforcement for certain documents relating to his family's case. The department denied his request, citing, among other things, that he was not a Virginia citizen.

McBurney challenged this basis in federal court, asserting that limiting the scope of the law to Virginia citizens violated the Privileges and Immunities Clause of the U.S. Constitution.

Meanwhile, a second plaintiff -- a California resident operating a tax assessment records business that relied on access to Virginia records -- had brought a separate case challenging the same provisions. This plaintiff also asserted a P & I claim, but added a "dormant" Commerce Clause claim, asserting that the law improperly burdened interstate commerce.

As to the P & I claims, the district court held that no fundamental right was at issue, and therefore the P & I Clause was not violated. As to the Commerce Clause, the district court denied the claim, holding that the statute does not "implicate principles of economic protectionism" and therefore is constitutional.

The United States Court of Appeals for the Fourth Circuit affirmed the district court's decision, and the plaintiffs sought Supreme Court review.

Seeking Supreme Court review is not without risk for media organizations. After all, a ruling from the Supreme Court affirming the validity of Virginia's law might open the door to states across the country adding similar provisions to their public records laws, in hopes of limiting access. Such a development would require out of state media organizations to ask a resident "proxy" to make a request on the organization's behalf.

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We will keep you posted as the Supreme Court considers this case.