

Supreme Court Rejects Constitutional Challenge to Digital Media and Data Privacy Law Blog

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Posted in Public Records

In a unanimous decision authored by Justice Alito, the U.S. Supreme Court today turned away a constitutional challenge to residency requirement of the Virginia Freedom of Information Act. As we previously reported, the Court granted certiorari in a case brought by non-Virginians challenging that requirement under the Privileges and Immunities Clause and the dormant Commerce Clause of the U.S. Constitution. The Court's decision today affirmed a ruling by Fourth Circuit.

Under Section 2.2-3704(A) of the Virginia FOIA statute,

all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records.

Citizens of other states therefore do not have a general statutory right under the Act to access public records in Virginia.

The case was brought by citizens of Rhode Island and California. One sought documents relating to a state agency's delay in filing a child support petition on his behalf. His request was denied because he was not a Virginia citizen, though he later obtained most of the information he wanted from another agency. The other petitioner operates a business that collects real estate tax records. His request for tax records from a particular county in Virginia was likewise denied because of his location.

The petitioners filed suit under Section 1983, contending that the residency requirement of the Virginia FOIA statute was unconstitutional. The Court ultimately rejected those challenges. With respect to the Privileges and Immunities Clause, the Court emphasized that its protection extends only to privileges and immunities that are "fundamental." It went on to hold that the opportunity to pursue a business, the ability to own and transfer property, and the ability to access courts, while fundamental, were not abridged by the FOIA provision at issue. As the Court held,

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the [Privileges and Immunities] Clause does not require that a State tailor its every action to avoid any incidental effect on an out-of-state tradesman.

With respect to access to courts, the Court noted that all persons have access to judicial records in Virginia, as they do to information about himself or herself compiled by a Virginia agency.

In addition, the Court held that access to public information, as a general matter, is not a fundamental matter protected by the Privileges and Immunities Clause. The Court observed that it

has repeatedly made clear that there is no constitutional right to obtain all the information provided by FOIA laws.

In the absence of a long-standing right to access government documents writ large--a statutory right the Court pointed out is of fairly recent vintage--states are not required place citizens and non-citizens on equal footing under their public records laws.

Finally, with respect to the petitioners' dormant Commerce Clause argument, the Court found that nothing about the residency requirement in the Virginia FOIA statute was driven by a desire for economic protectionism. Thus, the act did not regulate or burden interstate commerce in violation of the dormant Commerce Clause.

The upshot of this ruling is that the agencies of government in Virginia may continue to deny public records requests made by out-of-state persons or companies. This result may lead to businesses in Virginia that specialize in making requests for non-Virginians. Such a service may be of particular importance to out-of-state media organizations.