

November 30, 2018



Supreme Court of Virginia
Patricia L. Harrington, Clerk
Supreme Court Building
100 North 9th Street, 5th floor
Richmond, Virginia 23219

RE: Commentary Regarding New Rules Related to Access to Judicial Records

Dear Ms. Harrington,

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include Virginia residents and businesses, we are writing you today to provide brief comment in response to the proposed rules related to Judicial Records access. As a nonprofit organization consisting of over 900 small and large background companies engaged in the background screening profession NAPBS has been dedicated to providing the public with safe places to live and work since 2003. The NAPBS member companies conduct millions of employment-related background checks each year, helping employers, staffing agencies, property managers, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors, tenants, and volunteers.

We at NAPBS appreciate the Supreme Court allowing public comment on their proposal, as it gives a fair chance for individuals and businesses who use those records on a daily basis to inform the Court of issues or situations that might be apparent to court staff crafting the initial draft rules. This is the sort of collaboration that results in the best possible policy for the public, and we are happy to be able to participate.

NAPBS members are considered consumer reporting agencies (CRA's) and as such are highly regulated by the Federal Fair Credit Reporting Act (FCRA) as well as the Federal Trade Commission and Consumer Financial Protection Bureau. Our members are also regulated by a patchwork of federal, state, and local rules pertaining to data security and privacy laws. We follow specific guidelines -- both through statute and industry best practices -- for identity theft prevention, fraud alerts, unauthorized dissemination of information, disposal of records, and other security practices.

Millions of background screening reports are requested in the United States each year. Our members are hired to verify the education, employment, financial, and criminal histories of applicants. There are a number of important reasons for conducting these searches, including: (i) avoiding legal exposure for negligent hiring; (ii) ensuring a safe working environment by reducing the likelihood of workplace violence; (iii) reducing employee theft; (iv) reducing the hiring of individuals based on fraudulent credentials; (v) improving productivity and profits by making better hiring decisions; and (vi) meeting state law requirements designed to protect vulnerable populations like the elderly, the disabled, and children.

We appreciate that the current draft Proposed Rules does not hamper our access to important documents and information we need to provide the most thorough screening possible for our clients.



That said, NAPBS would ask that, as these rules advance and potentially evolve, efforts be made to not only preserve access to documents, but to protect access to important “personal identifiers” like Social Security numbers, full dates of birth, and residential addresses of parties (not witnesses or attorneys), so that background screening professionals have the necessary information to match an individual to a record or rule that same individual out. The FCRA requires background screeners to use reasonable procedures to ensure maximum possible accuracy, personal identifiers are a necessity in this process.

Any lack of personal identifiers in public documents makes it extremely difficult, if not impossible, for NAPBS members to quickly and efficiently provide complete, accurate, and thorough background screening reports for employers, staffing agencies, property managers, and nonprofit organizations, which negatively impacts prospective employees, contractors, tenants, and volunteers. If identifiers are removed from public records, background checks will take longer and increase the potential for law abiding citizens to be denied employment, housing, and other opportunities based on incorrect or incomplete background check matches. This is why it is important we preserve access to these vital pieces of information.

As previously stated, because the current proposed rules do not affect these identifiers, we at NAPBS would encourage the adoption of the rules as proposed, with no alteration.

We thank you for taking the time to hear our comments and for the opportunity to be heard. NAPBS and its members are prepared to discuss any questions you may have and look forward to working with you further on this or any other issue pertaining to our industry. Please feel free to contact me directly with any questions at 402-957-1179 or brent.smoyer@napbs.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Smoyer", is positioned below the word "Sincerely,". The signature is fluid and cursive, with the first name "Brent" and last name "Smoyer" clearly distinguishable.

Brent Smoyer, JD
NAPBS State Government Relations &
Grassroots Director