

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the HAVA Elections
Complaint of Gregory Buck and
Minnesota Elections Integrity Solutions

**ORDER GRANTING MOTION FOR
SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge James E. LaFave on the Minnesota Secretary of State's motion for summary disposition (Motion).

Eric G. Kaardal and Elizabeth A. Nielsen, Mohrman, Kaardal & Erickson, P.A., appear on behalf of Gregory Buck and Minnesota Elections Integrity Solutions (Complainants). Nathan J. Hartshorn and Allen C. Barr, Assistant Attorneys General, appear on behalf of the Minnesota Secretary of State (Respondent or MnSOS).

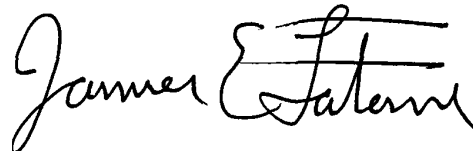
MnSOS filed a response to the Motion on December 12, 2022. The Administrative Law Judge held a motion hearing on December 15, 2022. The Motion record closed at the conclusion of that hearing.

Based on the motion record, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge issues the following:

ORDER

1. Respondent's Motion is **GRANTED**.
2. Further proceedings in this matter are **CANCELLED**.
3. The Complaint is **DISMISSED**.

Dated: February 6, 2022



JAMES E. LAFAVE
Administrative Law Judge

NOTICE

This Order is the final decision in this case. Any party aggrieved by this decision may seek judicial review pursuant to Minn. Stat. § 200.04, subd. 6 (2022).

MEMORANDUM

I. Introduction

This matter arises from a Complaint filed under Title III of the Help America Vote Act of 2002 (HAVA)¹ and Minn. Stat. § 200.04 (2022).

Complainants allege that the MnSOS has improperly provided non-public information from Minnesota's statewide voter registration list (SVRS) to a non-governmental third party, the Electronic Registration Information Center (ERIC). The Administrative Law Judge concludes that neither HAVA nor Minnesota law prohibit the MnSOS from sharing SVRS data with ERIC. Therefore, the MnSOS is entitled to judgment as a matter of law.

II. HAVA

HAVA is a federal statute that establishes standards and requirements related to federal elections.² HAVA provides that:

[E]ach State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.³

The computerized voter list serves as the single system for storing and managing the official list of registered voters within a state, and is the official voter registration list for the conduct of all federal elections.⁴ Any election official within each state, including local election officials, must have immediate electronic access to the information contained in the list.⁵ All voter registration information obtained by a local election

¹ See 52 U.S.C. §§ 21081-21085 (2018).

² *Crowley v. Nevada ex rel. Nevada Sec'y of State*, 678 F.3d 730, 735 (9th Cir. 2012).

³ 52 U.S.C. § 21083(a)(1)(A).

⁴ *Id.*, § 21083(a)(1)(A)(i, viii). HAVA did not nationalize the registration process, and states retained control over their own registration systems for state elections. In practical effect, however, states incorporated HAVA's requirements "into their own state-election systems because it would be duplicative and inefficient to maintain two separate voter-registration programs—one for state elections and the other for federal elections." Richard F. Shordt, *Not Registered to Vote? Sign This, Mail It, And Go Hire a Lawyer*, 78 Geo. Wash. L. Rev. 438, 450 (Feb. 2010).

⁵ 52 U.S.C. § 21083(a)(1)(A)(v).

official must be electronically entered into the list on an expedited basis at the time the election official receives it.⁶ The chief election official of the state must provide support to local election officials so that they are able to enter such registration information.⁷

HAVA requires that “the appropriate State or local election official shall perform list maintenance with respect to the computerized list,”⁸ and such list maintenance “shall be conducted in a manner that ensures that . . . duplicate names are eliminated from the computerized list.”⁹ The state’s election system “shall include provisions to ensure that voter registration records . . . are accurate and are updated regularly . . .” This process includes using a system of file maintenance to remove ineligible registrants, while ensuring that eligible voters are not removed from the list.¹⁰ “The specific choices on the methods of complying with the requirements” of HAVA are “left to the discretion of the State.”¹¹

HAVA provided federal funds to states for election administration and the replacement of outdated voting machines.¹² States that received a payment from the federal government under HAVA were required to establish and maintain a state administrative complaint procedure to adjudicate complaints alleging HAVA violations.¹³ Minnesota adopted an administrative complaint procedure in Minn. Stat. § 200.04, subd. 3, under which complaints against the MnSOS are adjudicated by this tribunal.

III. Factual and Procedural Background

On November 7, 2022, Complainants filed the Complaint with the MnSOS.¹⁴ The Complainants allege that the MnSOS violated HAVA by “sharing nonpublic¹⁵ voter information with an outside entity.”¹⁶ Complainants contend that the MnSOS has a contractual agreement “that compels the state to surrender information to ERIC about voters that is supposed to be private, non-public, and protected by both federal and

⁶ *Id.*, § 21083(a)(1)(A)(vi).

⁷ *Id.*, § 21083(a)(1)(A)(vii).

⁸ *Id.*, § 21083(a)(2)(A).

⁹ *Id.*, § 21083(a)(2)(B).

¹⁰ *Id.*, § 21083(a)(4).

¹¹ 52 U.S.C. § 21085.

¹² See 52 U.S.C. §§ 20901(b), 20902(a)(2) (2018) (providing funding generally for election-related matters, and specifically providing funding to replace voting machines that relied on punch cards or levers to record votes).

¹³ 52 U.S.C. § 21112(a)(1)-(2) (2018)

¹⁴ Letter from Bibi Black to Chief Administrative Law Judge Jenny Starr (Nov. 7, 2022) (referring the Complaint to the Office of Administrative Hearings); HAVA Elections Complaint Form (Nov. 3, 2022) (Complaint).

¹⁵ Complainant posits, without explanation, that the challenged data is non-public. However, the MGDPA defines non-public data as “data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.” Minn. Stat. § 13.03, subd. 9 (2022). Because the data here is clearly data pertaining to individuals, the Administrative Law Judge believes the more appropriate characterization is “not public data,” namely “any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.” *Id.*, subd. 8 (2022).

¹⁶ Complaint Attachment at 1.

state law.”¹⁷ Complainants maintain that the MnSOS’s contractual relationship with ERIC violates HAVA.¹⁸

Under Minn. Stat. § 200.04, subd. 3(b), Respondent was required to forward the Complaint to this tribunal within three business days after receiving it. The MnSOS timely referred the Complaint to this tribunal on November 7, 2022.¹⁹ Minn. Stat. § 200.04, subd. 3(c), provides that the MnSOS then has 20 days to reach an agreement with Complainants or to file a written response to the Complaint.

IV. Standard of Review

The Office of Administrative Hearings has authority to grant summary disposition in cases brought under Minn. Stat. § 200.04.²⁰ Summary disposition is the administrative equivalent of summary judgment.²¹ The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition.²² A motion for summary disposition may be granted when no genuine issue of material fact exists.²³ A genuine issue is one that is not a sham or frivolous,²⁴ and a fact is material if resolving it will affect the result or outcome of the case.²⁵

When considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party, and doubts and factual inferences must be resolved against the moving party.²⁶ The court’s function is not to decide the facts at issue, but to determine whether a genuine dispute of fact exists.²⁷

The moving party must initially show the absence of a genuine issue of material fact.²⁸ When the non-moving party resists a motion for summary disposition on a basis of fact, the non-moving party must show that there are specific facts in dispute which would have a bearing on the outcome of the case.²⁹ A fact at issue must be established by substantial evidence, and a party may not rest upon general averments or denials.³⁰

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ Letter from Bibi Black to Chief Administrative Law Judge Jenny Starr (Nov. 7, 2022).

²⁰ *McGrath v. Minn. Sec’y of State*, No. A11-613, 2011 WL 5829345, at *5 (Minn. Ct. App. Nov. 21, 2011), review denied (Minn. Feb. 14, 2012).

²¹ *Pietsch v. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004); see also Minn. R. 1400.5500(K) (2021).

²² See generally Minn. R. 1400.6600 (2021); Minn. R. Civ. P. 56.

²³ *In re Gillette Children’s Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).

²⁴ See *Highland Chateau, Inc. v. Minn. Dep’t of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

²⁵ *Rathbun v. W.T. Grant Co.*, 300 Minn. 223, 229, 219 N.W.2d 641, 646 (1974).

²⁶ *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).

²⁷ *Id.* at 664.

²⁸ Minn. R. Civ. P. 56.03; *Anderson v. Dep’t of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005).

²⁹ Minn. R. Civ. P. 56.05; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

³⁰ *Russ*, 566 N.W.2d at 70-71.

Evidence offered to support or defeat summary judgment must be such evidence as would be admissible at trial.³¹

V. Analysis

The Administrative Law Judge determines that there are no material disputes of fact, and that the MnSOS is entitled to judgment as a matter of law. As detailed below, neither HAVA, nor Minnesota law, prohibit the sharing of data from the SVRS with ERIC. In fact, this provision of data is explicitly authorized.

A. Minnesota's SVRS and ERIC

Minn. Stat. § 201.021 (2022) provides that:

A permanent system of voter registration by county is established, with a single, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state, and assigns a unique identifier to each legally registered voter in the state. The interactive computerized statewide voter registration list constitutes the official list of every legally registered voter in the state.³²

The SVRS database currently contains approximately 5.75 million registration records, more than 3.65 million of which correspond to individuals who are currently registered to vote in Minnesota.³³ Each individual record contains a collection of information about the voter including, among other things, the voter's name, their residential address, and a "status" field that reflects the current state of the voter's registration.³⁴ SVRS statuses include "active" (i.e., currently registered and not challenged); "challenged" (i.e., currently registered but subject to concerns about the individual's eligibility to vote); "inactive" (i.e., previously but not currently registered); and "deceased."³⁵ Finally, each SVRS record contains the voter's "voting history," which is a list of the prior elections in which the individual has voted.³⁶

Minnesota law divides duties related to the SVRS between Respondent and local election officials. Under Minn. Stat. § 201.022, subd. 1 (2022), Respondent "shall maintain a statewide voter registration system to facilitate voter registration and to provide a central database containing voter registration information from around the

³¹ *Hopkins by LaFontaine v. Empire Fire & Marine Ins., Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991).

³² Prior to HAVA's enactment, county registration lists in Minnesota were linked together by a centralized system maintained by Respondent, See Minn. Stat. § 201.021 (2002). The legislature amended Minn. Stat. § 201.021 in 2004 to comply with HAVA's requirements regarding the use of a statewide list. 2004 Minn. Laws ch. 293, art. 1, § 1.

³³ Decl. of David Maeda.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

state.”³⁷ The MnSOS “is responsible for defining, maintaining, and administering the centralized system.”³⁸

Notwithstanding the Secretary of State’s role in maintaining the centralized system, each county auditor shall be the “chief registrar of voters and the chief custodian of the official registration records in each county.”³⁹ To permit the county auditors to perform required functions, the SVRS “must be accessible to the county auditor of each county in the state.”⁴⁰ County auditors are to “use the [SVRS] to execute the duties of chief registrar of voters and chief custodian of registration records in the auditor’s county.”⁴¹

Under this system of divided responsibilities, county auditors bear the primary responsibility for entering, verifying, and changing information in the SVRS. The MnSOS created, and administers the overall system and, on an ongoing basis, provides information and reports to the county auditors to assist them in their functions.

County auditors are responsible for entering information contained on voter registration applications into the SVRS.⁴² Within ten days after the county auditor enters the information in the SVRS, Respondent must compare the voter’s name, date of birth, and driver’s license number, state identification number, or last four digits of the voter’s Social Security number with the same information maintained in a database by the Minnesota Department of Public Safety (DPS).⁴³

In addition, each county auditor must prepare and maintain a current list of registered voters in the county, known as the “master list.”⁴⁴ The county auditor is required to enter these master lists into the SVRS.⁴⁵ Public access to these master lists is limited: “[t]he information contained in the master list may only be made available to public officials for purposes related to election administration, jury selection, and in response to a law enforcement inquiry . . .”⁴⁶ However, “[t]he Legislature has allowed some of the information in the SVRS to be made available for inspection in the form of a ‘public information list.’ The statute spells out who has access to the public information

³⁷ See also Minn. R. 8200.9305 (2021) (“The secretary of state shall develop and operate a centralized database of all registered voters in the state of Minnesota. The database must be available to each county in the state through a statewide registration system provided by the secretary of state.”)

³⁸ Minn. Stat. § 201.021.

³⁹ *Id.*

⁴⁰ Minn. Stat. § 201.022, subd. 1.

⁴¹ Minn. R. 8200.9305.

⁴² Minn. Stat. § 201.121, subd. 1(a) (2022). By rule, voter registration applications received by Respondent must be forwarded to the appropriate county auditor for entry into the SVRS, except that Respondent shall enter the registration information “[w]ith the approval of the appropriate county auditor.” Minn. R. 8200.9310, subp. 1 (2021).

⁴³ Minn. Stat. § 201.121, subd. 1(c) (2022).

⁴⁴ Minn. Stat. § 201.091, subd. 1 (2022).

⁴⁵ *Id.*

⁴⁶ *Id.*

list, for what purposes, and what information is on it. The public information list is not generally available to anyone—it is only available to Minnesota voters.”⁴⁷

In 2012, a bipartisan group of election officials from seven states formed a multi-state consortium named ERIC (Electronic Registration Information Center).⁴⁸ “The seven states that founded ERIC believed using state-of-the-art data matching technology, a robust data sharing program built on widely accepted information security standards, and an unprecedented commitment to cooperation would vastly improve their ability to maintain accurate voter rolls.”⁴⁹ “It would also have the added benefit of allowing them to reach out to unregistered, but likely eligible, individuals far more accurately and efficiently than anyone else.”⁵⁰ Today, 32 states (including Minnesota) and the District of Columbia are members of ERIC.⁵¹

To achieve ERIC’s goals, each member state submits voter registration and motor-vehicle licensing and registration data to ERIC at least once every 60 days.⁵² ERIC then uses data-matching software to compare each state’s data with the others and with Social Security death data and U.S. Postal Service change-of-address data.⁵³ After conducting these comparisons, ERIC produces seven reports that it delivers to member states: a report of interstate movers; a report of intrastate movers, a report of duplicate registrations; a report of deceased registrants; a report of eligible but unregistered individuals; a change-of-address report; and a voter-participation report.⁵⁴ States then act on these reports by contacting voters whose information is potentially out of date and, if necessary, updating the voter’s records as required by state or federal law.⁵⁵

Minnesota is a member of ERIC; therefore, the MnSOS regularly sends data to ERIC and receives information in return.⁵⁶ The data sent to ERIC relates only to “active” or “challenged” voters in Minnesota, and includes (1) the voter’s unique voter ID number; (2) the voter’s full name; (3) the voter’s residence address, including the county; (4) the most recent date on which the voter registered to vote; (5) the means by which the voter submitted their most recent registration application; (6) the most recent date on which the voter voted in an election; (7) the voter’s date of birth; (8) the last four digits of the voter’s Social Security number, if they have provided such a number to election officials; and (8) the voter’s driver’s license or state identification car number, if they have provided such a number to election officials.⁵⁷ For added security, the

⁴⁷ *Cilek v. Office of Minn. Sec’y of State*, 941 N.W.2d 411, 413 (Minn. 2020) (citations omitted).

⁴⁸ ERIC FAQs, https://ericstates.org/wp-content/uploads/2023/01/ERIC_FAQS_V1.3_01-20-2023.pdf (last visited Jan. 24, 2023).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Decl. of D. Maeda.

⁵⁷ *Id.*

MnSOS provides the dates of birth, Social Security numbers, driver's license numbers, and state identification car numbers to ERIC in encrypted form.⁵⁸

After receiving this information from the MnSOS, and conducting its comparison, ERIC provides Minnesota with the relevant results.⁵⁹ The MnSOS receives the reports ERIC provides, but neither the Secretary of State's office, nor ERIC, directly modifies SVRS records based on those reports.⁶⁰ Rather, the MnSOS forwards the information to the appropriate county auditor for the voter in question.⁶¹ It is then up to the auditor to determine whether an SVRS record needs to be revised based on information provided by ERIC.⁶²

B. Summary of the Parties' Arguments

Complainants contend that the MnSOS has a contractual agreement "that compels the state to surrender information to ERIC about voters that is supposed to be private, non-public, and protected by both federal and state law."⁶³ Complainants maintain that the MnSOS's contractual relationship with ERIC violates HAVA.⁶⁴

The MnSOS argues that it has not violated HAVA or Minnesota law because neither prohibits sharing SVRS information with ERIC. In fact, according to the MnSOS, state law explicitly allows this type of data sharing. Lastly, the MnSOS contends that Complainants' remaining arguments are unrelated to HAVA and therefore are outside of this tribunal's jurisdiction. The Administrative Law Judge agrees.

C. Respondent Has Not Violated HAVA or Minnesota Law

1. Minnesota Law Authorizes Respondent to Share Data with ERIC

Complainants' assertion presumes that the data in question is "non-public." Yet, Minnesota law explicitly authorizes the MnSOS to provide the challenged data to ERIC:

If, in order to maintain voter registration records, the secretary of state **enters an agreement to share information or data with an organization governed exclusively by a group of states**, the secretary must first determine that the data security protocols are sufficient to safeguard the information or data shared. **If required by such an agreement, the secretary of state may share the following data from**

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Complaint at 2.

⁶⁴ *Id.*

the statewide voter registration system and data released to the secretary of state under section 171.12, subdivision 7a:

- (1) name;
- (2) date of birth;
- (3) address;
- (4) driver's license or state identification card number;
- (5) the last four digits of an individual's Social Security number;
and
- (6) the date that an individual's record was last updated.

If the secretary of state enters into such an agreement, the secretary and county auditors must process changes to voter records based upon that data in accordance with this section. Except as otherwise provided in this subdivision, when data is shared with the secretary of state by another state, the secretary of state must maintain the same data classification that the data had while it was in the possession of the state providing the data.⁶⁵

Moreover, the legislative history of this provision indicates that its purpose was to allow Minnesota to join ERIC.⁶⁶

2. HAVA Does Not Restrict the Sharing of SVRS Information

Complaints under section 200.04 must relate to “the administration” of HAVA, including “complaints about voting system standards, computerized statewide registration lists and equipment, voter registration requirements, and other features of state implementation of the act.”⁶⁷ Complainant argues that the “SVRS database is not HAVA compliant,” presumably because of Respondent’s data-sharing agreement with ERIC.⁶⁸

But Complainants fail to specifically identify what provisions of HAVA are violated by the MnSOS’s contractual relationship with ERIC. Rather, Complainants point to general HAVA provisions and then reach the conclusion that this data sharing is prohibited, despite the explicit authorization in Minn. Stat. § 201.12, subd. 3(d). A review of the federal statutory provisions demonstrate that Complainants’ allegation is meritless; HAVA simply does not prohibit data sharing in this manner.

Complainants also raise several policy concerns. For instance, Complainants state: “Providing a third-party entity, here ERIC, with non-public voter data and non-

⁶⁵ Minn. Stat. § 201.13, subd. 3(d) (2022) (emphasis added).

⁶⁶ *Hearing on H.F. 2265 Before H. Comm. on Elections*, 88th Leg. at 15:08-45 (Mar. 4, 2014) (statement of Rep. Carolyn Laine) (explaining that the purpose of the legislation was to permit Minnesota to join ERIC).

⁶⁷ Minn. Stat. § 200.04, subd. 1.

⁶⁸ Complaint.

registered data provides a basis for misuse, particularly, the possibility of partisan systematic advantage in elections.”⁶⁹ Complainants further state: “The Secretary’s sharing of SVRS data with ERIC also raises technological security concerns.”⁷⁰ Those policy concerns are beyond the scope of this proceeding and are matters that should be submitted to the Legislature and Governor for their consideration.⁷¹

Lastly, Complainants state that “HAVA is not the only federal law the Secretary is violating with his ERIC agreement contract.”⁷² Complainants alleges that the MnSOS is violating 18 U.S.C. § 2721 (2018), which prohibits “[a] State department of motor vehicles, and any officer, employee, or contractor thereof” from sharing personal information. This allegation is beyond the scope of this HAVA proceeding, but even if it weren’t, the argument fails.

18 U.S.C § 2721 bars disclosure of certain data including drivers’ license numbers, by a State department of motor vehicles, and any officer, employee, or contractor thereof . . .” neither the MnSOS or ERIC qualify as those. Moreover, even if the statute did reach the MnSOS, 18 U.S.C § 2721 permits use of protected data “by any government agency . . . in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions. HAVA would qualify.

VI. Conclusion

The MnSOS is not violating HAVA by sharing SVRS data with ERIC. There are no disputes of material fact remaining to be decided, and the MnSOS is entitled to judgment as a matter of law. As a result, the MnSOS’s Motion is **GRANTED**.

J. E. L.

⁶⁹ Complaint at 6-7.

⁷⁰ Complainant’s Opposition Response at 23.

⁷¹ See Minn. Stat. § 200.04, subds. 1, 3.

⁷² Complaint at 13.