

Legislators and Citizens File Federal Lawsuit against Minnesota Secretary of State for Sharing Sensitive Personal Private Information

Lawsuit claims state violates federal Drivers Privacy Protection Act

October 12, 2023. *Minneapolis, MN.* Erick Kaardal announced today that the Minnesota Association for Government Accountability, including several of its individual adult members, two minors under age 18, and Minnesota Senators Mark Koran and Calvin Bahr filed a complaint in federal court against the Minnesota Secretary of State Steve Simon. The claim alleges that the Secretary's unauthorized disclosures of the plaintiffs' private information, specifically, their private driver data to third-party organizations violates their rights under the 1994 Drivers Privacy Protection Act ([DPPA](#)), 18 U.S.C. § 2721.

The DPPA was passed to better protect individuals' personal information held by state motor vehicle authorities. The law restricts disclosure and use of highly sensitive personal information in state motor vehicle agency databases, including Minnesota's Department of Public Safety (DPS). Disclosure of private DPS data without a permissible purpose violates federal law. The DPPA has only 14 specific permissible reasons to disclose private driver data. Exceptions to DPPA's non-disclosure rule must be narrowly construed so as not to "[eviscerate the rule they modify](#)." Even so, the Department of State violated the DPPA and has entered into an agreement with the private corporation Electronic Registration Information Center ([ERIC](#)), which obligates the state to share DPPA-protected data without a permissible purpose.

In 2014, the Minnesota legislature authorized the Secretary to enter into an agreement to share data from the statewide voter registration and data from the motor vehicle agency "[in order to maintain voter registration records](#)." However, the private data disclosed far exceeds even what was authorized by the legislature. Among others, the DPS data fields the Secretary's ERIC agreement promises to disclose to ERIC include 1) name, 2) date of birth, 3) address, 4) driver's license or state identification card number, 5) the last four digits of the Social Security number, 6) phone number, and 7) email address for all registered voters and all other individuals in the DPS database.

Minn. Stat. § 201.13 allows the Secretary to enter into an agreement "in order to maintain voter registration records," but the Minnesota legislature authorized no disclosure of private DPS data of unregistered voters to third parties, and voter registration drives are not a recognized exception in the DPPA. Disclosure of private DPS data without a permissible purpose violates the federal DPPA law, which preempts and supersedes any state law authorizing such data sharing agreements. No lawful reason exists to disclose this personal information to third parties. Plaintiffs are concerned that even private data of children—those under the age of 18 who are ineligible to vote—is also being shared.

ERIC is a private nonprofit organization with a purported purpose of assisting states to improve the accuracy of voter rolls and increase access to voter registration. However, records show ERIC's primary focus is to conduct voter registration drives. David Becker, founder of ERIC and long-time board member, described ERIC as the "[single most effective voter registration drive in history](#)."

In a press conference announcing the filing today, Senator Mark Koran said, "Secretary of State Steve Simon's arrangement with ERIC is breaking the law. It exposes private and personally identifying information of Minnesotans to ERIC and their undisclosed contractors, subcontractors and agents... [W]e should be extra zealous in protecting the privacy of our children. Federal law specifically protects sensitive

information we provide to the government when we obtain a drivers' licenses or state photo ID. It's our duty to follow the law to protect our citizens. We hope the courts will act quickly and issue a temporary injunction to prevent further unlawful disclosure.”

ERIC, and its contractors, subcontractors, and agents, claim that the DPS data they receive is authorized under the “public function” exception to the DPPA. That exception states, “For use by...any private person or entity acting on behalf of a Federal, State or local agency in carrying out its function.” However, the ERIC member agreement specifically states that ERIC is not an agent (“agent” is a legal term for one “acting on behalf of” another) for any member. Federal election law preempts state officials from conducting voter registration drives, and the federal Elections Assistance Commission ([EAC](#)) has stated state election officials cannot use federal funds for voter registration drives.

Voter registration is not a recognized exception in the DPPA and the “government function exception” is not a catch-all provision. The ERIC member agreement also requires Minnesota to disclose the DPS data every 60 days, but states are only required to receive information from ERIC or take action once a year. Therefore, the disclosure cannot logically be for any government function.

The 2002 Help America Vote Act ([HAVA](#)), enacted **after** the DPPA, prescribes limitations on the intra-state disclosure of private driver data to state election officials. HAVA does not make an exception to the DPPA for disclosure to third parties.

Almost all potentially “eligible but unregistered,” (EBUs) are individuals who are either ineligible or who declined to register when they completed a transaction at DPS. These possible EBUs are identified by ERIC when comparing DPS data to voter registration database information. Using declination data to attempt to persuade individuals to change their mind about voter registration is not a government function.

**The DPPA requires states to protect all motor vehicle data from disclosure,
regardless of whether the individual is registered to vote or not registered to vote.
The data is private.**

Attorney Erick Kaardal said, “The Secretary of State’s office is in a legally untenable position. It is violating the DPPA and its purported government function is preempted by federal law.”

Relief Requested

The plaintiffs are ultimately seeking injunctive or declaratory relief to stop election officials from further unauthorized disclosures of their private driver data, to ensure their personally identifying information stored with DPS is protected as the federal DPPA requires.

About the Parties

Attorney [Erick Kaardal](#), a partner of [Mohrman, Kaardal & Erickson](#), P.A., has been representing people suing the government to improve it for over 30 years. For election integrity, Kaardal has listed [61](#) examples of election integrity counter-lawfare successes, including 2 U.S. Supreme Court victories.

[Mark Koran](#) and [Calvin K. Bahr](#) serve as current Minnesota Senators and on the Senate Elections Committee.

Minnesota Association for Government Accountability is an association of Minnesota residents who by community organization action seek to improve the government. Twelve individual adult members of the association are joining as plaintiffs, along with two minors under the age of 18.