

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

The Heritage Foundation and Mike Howell,

Plaintiffs,

Court File No.: _____

v.

COMPLAINT

Office of the Minnesota Secretary of State and
Minnesota Department of Public Safety,

Defendants.

For their Complaint against Defendants Office of the Minnesota Secretary of State and Minnesota Department of Public Safety, Plaintiffs The Heritage Foundation and Mike Howell hereby state and allege as follows:

PARTIES

1. Plaintiff The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, About Heritage, <https://www.heritage.org/about-heritage/mission> (last visited Oct. 23, 2024). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public.

2. Plaintiff Mike Howell leads The Heritage Foundation’s Oversight Project and is an investigative columnist for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via open records requests and other means in order to best inform the public

and Congress for the purposes of Congressional oversight. “The requests and analyses of information are informed by Heritage’s deep policy expertise. By its nature, the Oversight Project is primarily engaged in disseminating information to the public.” Oversight Project, <https://www.heritage.org/oversight> (last visited Oct. 23, 2024). The Oversight Project and Plaintiff Howell’s journalistic work is published most frequently on X (formally known as Twitter) to provide information directly to the American people. *See* Oversight Project (@OversightPR), X (last visited Oct. 23, 2024), <https://twitter.com/OversightPR>.

3. In addition to Mr. Howell’s journalistic work, staff for the Oversight Project routinely appear on television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate.

4. Defendant Office of the Minnesota Secretary of State is a government entity and state agency as defined in Minn. Stat. §§ 13.02, subd. 7a and subd. 17. Its address is Veterans Service Building, 20 W. 12th Street, Suite 210, Saint Paul, MN 55155.

5. Defendant Minnesota Department of Public Safety is a government entity and state agency as defined in Minn. Stat. §§ 13.02, subd. 7a and subd. 17. Its address is 445 Minnesota Street, Suite 1000, Saint Paul, MN 55101.

JURISDICTION AND VENUE

6. The district courts of Minnesota are courts of general jurisdiction, having original jurisdiction over “all civil actions within their respective districts.” Minn. Stat. § 484.01, subd. 1.

7. Minn. Stat. § 13.08, subd. 1 provides a civil cause of action for any party damaged as a result of a government entity’s violation of the Minnesota Government Data Practices Act (“MGDPA”).

8. The MGDPA creates several civil causes of action through which Plaintiffs “who suffer any damage as a result of [a] violation” of the MGDPA may seek redress “against the responsible authority or government entity.” *See* Minn. Stat. § 13.08, subd. 1, 2, & 4.

9. The Minnesota Uniform Declaratory Judgment Act (“UDJA”), Minn. Stat. § 555.01, *et seq.*, confers upon this Court the “power to declare rights, status, and other legal relations” in the form of a declaratory judgment. Minn. Stat. § 555.01.

10. The Court has jurisdiction over the Defendants because their principal offices are in Ramsey County. Minn. Stat. § 484.01, subd. 1

11. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, Subd. 3, which authorizes an action against the state under Chapter 13 to be brought in any county.

THE GOVERNMENT DATA PRACTICES ACT REQUESTS

12. On September 26, 2024, Plaintiffs submitted MGDPA requests to the Minnesota Secretary of State and the Minnesota Department of Public Safety for:

- a. Data sufficient to show the number of voters inactivated following the Department of Public Safety Driver and Vehicle Services Division’s manual review of 103,986 individual records completed on September 10, 2024.
- b. Data sufficient to show: (a) the categories of information missing from the inactivated individuals; and (b) the number of individuals that were inactivated for each category of missing information within the inactivated individuals.
- c. Data sufficient to show the number of inactivated individuals that have voted in prior elections. Please provide the data for the 2016, 2018, 2020,

and 2022 cycles.

- d. Data sufficient to show the number of inactivated individuals that were sent mail-in ballots in prior elections. Please provide the data for the 2016, 2018, 2020, and 2022 cycles.
- e. Data sufficient to show the number of inactivated individuals that have subsequently been re-added to the active voter rolls.

(Exhibits 1 & 2).

13. Defendant Minnesota Department of Public Safety has not provided an acknowledgment or substantive response to the MGDPA request.

14. Defendant Office of Minnesota Secretary of State has provided only an automatic reply acknowledging receipt of Plaintiffs' MGDPA Request. **(Exhibit 3).**

STATEMENT OF CLAIMS

Count 1

(Action to Compel Disclosure Pursuant to Minn. Stat. § 13.08, Subd. 4)

15. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

16. The MGDPA “establishes a presumption that all government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, Subd. 3.

17. Plaintiffs are entitled to disclosure of the requested data pursuant to Minn. Stat. §§ 13.03, Subd. 1, and 13.08, Subd. 4.

18. Defendants have constructively denied Plaintiffs' access to requested records in violation of the MGDPA.

19. Defendants' denial of access was willful.

20. Plaintiffs were harmed as a result of Defendants' willful violation of the MGDPA.

21. For these reasons, Plaintiffs have standing to challenge Defendants' response.

22. Under Minn. Stat. § 13.08, subd. 4, Plaintiffs are entitled to an order compelling the Defendants' compliance with the MGDPA—specifically, that the public data be swiftly produced for no more than cost.

23. The Defendants' violation of the MGDPA also entitles Plaintiffs to an award to costs and disbursements, including reasonable attorneys' fees, and justifies assessment of a civil penalty against Defendants. Minn. Stat. § 13.08, Subd. 4.

COUNT II

(Action for Damages Pursuant to Minn. Stat. § 13.08, subd. 1)

24. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

25. Plaintiffs have suffered and continue to suffer damages, in an amount to be proven at trial, as a result of Defendants' violation of MGDPA.

26. Plaintiffs' damages include those accrued through the wrongful denial of its right to access public government data, and the time, costs, and reasonable attorneys' fees incurred to challenge Defendants' unlawful conduct.

27. The Defendants' violations of the MGDPA were willful.

28. The Defendants' willful violations of the MGDPA make them liable for exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation. Minn. Stat. § 13.08, subd. 1.

COUNT III

(Action for Mandatory Injunctive Relief Pursuant to Minn. Stat. § 13.08, subd. 2)

29. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

30. Defendants have violated and propose to continue violating the MGDPA. Accordingly, Plaintiffs seek an injunction pursuant to Minn. Stat. § 13.08, subd. 2.

31. Plaintiffs request that the Court “make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate” the MGDPA, Minn. Stat. § 13.08, subd. 2, including, but not limited to,

- a. Requiring the Defendants to establish internal procedures for timely response to MGDPA requests;
- b. Requiring the Defendants to periodically upload data on inactivated voters to a publicly accessible database;
- c. Any such other injunctive relief the Court deems necessary to ensure the Defendants’ compliance with the MGDPA.

COUNT IV
(Declaratory Judgment Pursuant to Minn. Stat. § 555.01, *et seq.*)

32. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

33. Plaintiffs are entitled to declaratory judgment interpreting the MGDPA and the parties’ respective rights and obligations thereunder.

34. Plaintiffs seek judgment declaring that the requested data is government data that must be kept pursuant to Minn. Stat. § 15.17, subd 1 and is public data pursuant to Minn. Stat. § 13.03, subd. 1.

35. Plaintiffs seek judgment declaring the Defendants’ failure to produce this public data to Plaintiffs’ constitutes a violation of the MGDPA.

36. Plaintiffs seek judgment declaring that the Defendants’ violation of the MGDPA is willful.

37. Plaintiffs seek judgment declaring that Defendants have an obligation under the MGDPA to provide the requested data to Plaintiffs in a suitable electronic medium for no more than cost.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully prays for the following relief:

- A. Declaratory relief, pursuant to Minn. Stat. § 555.01, as described herein;
- B. Injunctive relief, pursuant to Minn. Stat. § 13.08, subd. 2, as described herein;
- C. An order compelling the Defendants' compliance with the MGDPA, pursuant to Minn. Stat. § 13.08, subd. 4, including providing Plaintiffs electronic copies of the requested data for no more than cost;
- D. An award of exemplary damages, pursuant to Minn. Stat. § 13.08, subd. 1, for the Defendants' willful violation of the MGDPA;
- E. An assessment of a civil penalty against the Defendants, pursuant to Minn. Stat. § 13.08, subd. 4;
- F. Fees, costs, and disbursements, including reasonable attorneys' fees, pursuant to Minn. Stat. § 13.08, subd. 4; and
- G. All such other relief as the Court may deem necessary and just.

Dated: October 25, 2024

Respectfully submitted,

CROSSCASTLE PLLC

/s/ Harry N. Niska
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Ryan D. Wilson (#400797)
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**CHALMERS, ADAMS, BACKER, AND
KAUFMAN**

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**CHAMBERS OF SAMUEL EVERETT DEWEY,
LLC**

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LAW OFFICE OF ERIC NEAL CORNETT

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THE HERITAGE FOUNDATION

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214 Massachusetts Ave., N.E.
Washington, DC 20002
Telephone: (202) 608-6060
Email: Kyle.Brosnan@heritage.org

* *pro hac vice* forthcoming

Counsel for Plaintiffs

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, for the party against whom the allegations in this pleading are asserted.

Dated: October 25, 2024

/s/ Harry N. Niska

EXHIBIT 1

The Oversight Project



SENT VIA: secretary.state@state.mn.us

September 26, 2024

The Honorable Steve Simon
Minnesota Secretary of State
Veterans Service Building,
Suite 210
20 W. 12th St.
Saint Paul, MN 55155

Dear Secretary Simon,

Pursuant to Minnesota's Government Data Practices Act, Minn. Stat. § 13.01, *et seq.*, I respectfully request the following data:

1. Data sufficient to show the number of voters inactivated following the Department of Public Safety ("DPS") Driver and Vehicle Services Division's ("DVS") manual review of 103,986 individual records completed on September 10, 2024 (herein after "inactivated individuals").¹
2. Data sufficient to show: (a) the categories of information missing from the inactivated individuals; and (b) the number of individuals that were inactivated for each category of missing information within the inactivated individuals.
3. Data sufficient to show the number of inactivated individuals that have voted in prior elections. Please provide the data for the 2016, 2018, 2020, and 2022 cycles.
4. Data sufficient to show the number of inactivated individuals that were sent mail-in ballots in prior elections. Please provide the data for the 2016, 2018, 2020, and 2022 cycles.

¹ See Letter from Bob Jacobson, Commissioner of Public Safety, to Kevin Cline and David Hann, Sept. 12, 2024 ("DVS completed its manual review of 103,986 individual records on September 10, 2024. Out of an abundance of caution, the Office of Minnesota Secretary of State inactivated approximately 1% of those records pending confirmation of various pieces of voter registration information including address, name, and citizenship.") *found at* https://oversight.heritage.org/Minnesota_Letters.pdf.

5. Data sufficient to show the number of inactivated individuals that have subsequently been re-added to the active voter rolls.

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “data” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. By definition, a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as encompassing any and all. The

singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

The term “person” is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any employee, and any other units thereof.

The term “employee” means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.

A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

This request for records includes any attachments to those records or other

materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

Please comply fully with Minn. Stat. § 13.01 *et seq.* The statute “established a presumption that government data are public and are accessible by the public for both inspection and copying unless there is a federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, subd. 3.

Requests for government data must be complied with in an “appropriate and prompt manner.” Minn. Stat. § 13.03, subd. 2(a). In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than five business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

The requested data is of utmost importance and urgency for the upcoming 2024 Presidential Election. On September 23, 2024, senior elected officials within the Minnesota Congressional delegation and the Republican National Committee indicate that they had been in communication with the Secretary of State’s Office and the Department of Public Safety for “over a month” regarding “information necessary to remove known noncitizens from the Minnesota voter rolls.”² The letter expressed the officials’ frustrations over the lack of transparency and garnered national media attention.³ As detailed in this correspondence and news reporting concerns over the integrity of Minnesota’s voter rolls has been exacerbated by the adoption of “opt-out” voter registration.

Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific reason for denial in accordance with Minn. Stat. § 13.03, subd. 3(f). Moreover, to the extent that

² See Note 1, *supra*.

³ Danielle Wallace, *GOP urges ‘transparency’ on whether Walz admin removing noncitizens from Minnesota voter rolls*, Fox News, Sept. 24, 2024, found at <https://www.foxnews.com/politics/gop-urges-transparency-whether-walz-admin-removing-non-citizens-minnesota-voter-rolls>

responsive records may be withheld in part, produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full. I am willing to accept a rolling production of responsive documents as they become available.

Fee Waiver Request

Pursuant to the discretion authorized to you under Minn. Stat. § 13.03, subd. 3(c), I respectfully request a waiver or reduction of all fees. *See* Minn. Stat. § 13.03, subd. 3(c). (An agency “*may* require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data.” (emphasis added)).

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation’s commercial interest. Heritage Foundation’s mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,⁴ broadcast media⁵ (traditional and nontraditional) and press releases.⁶ The requested information is in the public interest because of concerns about the integrity of Minnesota’s voter rolls and broader concerns about noncitizens voting in federal elections.⁷

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal⁸ (a major

⁴ Heritage Foundation on X. [@ Heritage] (Accessed: 2024, February 23). 690.2K Followers on X. <https://twitter.com/Heritage>

⁵ Fox News. (Accessed: 2024, February 23). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

⁶ Heritage Foundation. (Accessed: 2024, February 23). Press. <https://www.heritage.org/press>.

⁷ AP News (Accessed: 2024, September 9). Data indicates voting by non-citizens is rare. Republicans are pressing measures to make sure of it. <https://apnews.com/article/noncitizens-voting-republicans-election-2024-immigration-09b86e6768f755fd875f3c51b0e8ea70>

⁸ Daily Signal. (Accessed: 2024, February 23). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

The Oversight Project



news outlet⁹), I actively gather information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts¹⁰ or articles. I also post our distinct work on our Oversight Project social media page.¹¹ By function, the Oversight Project is primarily engaged in disseminating information to the public. Staff members for the Oversight Project regularly appear in television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

/S/ Mike Howell
Mike Howell
Executive Director of the Oversight
Project and Investigative Columnist
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

⁹ Daily Signal on X. [@DailySignal] (Accessed: 2024, February 23). 86.1K Followers on X. <https://twitter.com/DailySignal>

¹⁰ Apple. (Accessed: 2024, February 23). The Daily Signal Podcast. <https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

¹¹ Oversight Project on X. [@OversightPR] (Accessed: 2024, February 23). 13.1k Followers on X. <https://twitter.com/oversightpr>

EXHIBIT 2

The Oversight Project



SENT VIA: kim.parker@state.mn.us

September 26, 2024

Kim Parker
Data Practices Designee
Minnesota Department of Public Safety
Office of the Commissioner
445 Minnesota Street, Suite 1000
Saint Paul, MN 55101

Dear Secretary Simon,

Pursuant to Minnesota's Government Data Practices Act, Minn. Stat. § 13.01, *et seq.*, I respectfully request the following data:

1. Data sufficient to show the number of voters inactivated following the Department of Public Safety ("DPS") Driver and Vehicle Services Division's ("DVS") manual review of 103,986 individual records completed on September 10, 2024 (herein after "inactivated individuals").¹
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The term “data” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. By definition, a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as encompassing any and all. The

singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

The term “person” is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any employee, and any other units thereof.

The term “employee” means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.

A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

This request for records includes any attachments to those records or other

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Please comply fully with Minn. Stat. § 13.01 *et seq.* The statute “established a presumption that government data are public and are accessible by the public for both inspection and copying unless there is a federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, subd. 3.

Requests for government data must be complied with in an “appropriate and prompt manner.” Minn. Stat. § 13.03, subd. 2(a). In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than five business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

The requested data is of utmost importance and urgency for the upcoming 2024 Presidential Election. On September 23, 2024, senior elected officials within the Minnesota Congressional delegation and the Republican National Committee indicate that they had been in communication with the Secretary of State’s Office and the Department of Public Safety for “over a month” regarding “information necessary to remove known noncitizens from the Minnesota voter rolls.”² The letter expressed the officials’ frustrations over the lack of transparency and garnered national media attention.³ As detailed in this correspondence and news reporting concerns over the integrity of Minnesota’s voter rolls has been exacerbated by the adoption of “opt-out” voter registration.

Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific reason for denial in accordance with Minn. Stat. § 13.03, subd. 3(f). Moreover, to the extent that

² See Note 1, *supra*.

³ Danielle Wallace, *GOP urges ‘transparency’ on whether Walz admin removing noncitizens from Minnesota voter rolls*, Fox News, Sept. 24, 2024, found at <https://www.foxnews.com/politics/gop-urges-transparency-whether-walz-admin-removing-non-citizens-minnesota-voter-rolls>

responsive records may be withheld in part, produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full. I am willing to accept a rolling production of responsive documents as they become available.

Fee Waiver Request

Pursuant to the discretion authorized to you under Minn. Stat. § 13.03, subd. 3(c), I respectfully request a waiver or reduction of all fees. *See* Minn. Stat. § 13.03, subd. 3(c). (An agency “*may* require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data.” (emphasis added)).

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation’s commercial interest. Heritage Foundation’s mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,⁴ broadcast media⁵ (traditional and nontraditional) and press releases.⁶ The requested information is in the public interest because of concerns about the integrity of Minnesota’s voter rolls and broader concerns about noncitizens voting in federal elections.⁷

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal⁸ (a major

⁴ Heritage Foundation on X. [@ Heritage] (Accessed: 2024, February 23). 690.2K Followers on X. <https://twitter.com/Heritage>

⁵ Fox News. (Accessed: 2024, February 23). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

⁶ Heritage Foundation. (Accessed: 2024, February 23). Press. <https://www.heritage.org/press>.

⁷ AP News (Accessed: 2024, September 9). Data indicates voting by non-citizens is rare. Republicans are pressing measures to make sure of it. <https://apnews.com/article/noncitizens-voting-republicans-election-2024-immigration-09b86e6768f755fd875f3c51b0e8ea70>

⁸ Daily Signal. (Accessed: 2024, February 23). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

The Oversight Project



news outlet⁹), I actively gather information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts¹⁰ or articles. I also post our distinct work on our Oversight Project social media page.¹¹ By function, the Oversight Project is primarily engaged in disseminating information to the public. Staff members for the Oversight Project regularly appear in television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

/S/ Mike Howell
Mike Howell
Executive Director of the Oversight
Project and Investigative Columnist
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

⁹ Daily Signal on X. [@DailySignal] (Accessed: 2024, February 23). 86.1K Followers on X. <https://twitter.com/DailySignal>

¹⁰ Apple. (Accessed: 2024, February 23). The Daily Signal Podcast. <https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

¹¹ Oversight Project on X. [@OversightPR] (Accessed: 2024, February 23). 13.1k Followers on X. <https://twitter.com/oversightpr>

EXHIBIT 3

Fw: Data Practices Act Request - SOS

From OversightProject <OversightProject@heritage.org>

To neal@cornettlegal.com

Date Wednesday, October 16th, 2024 at 11:11 AM

From: State, Secretary (OSS) <secretary.state@state.mn.us>

Sent: Thursday, September 26, 2024 3:19 PM

To: OversightProject <OversightProject@heritage.org>

Subject: Automatic reply: Data Practices Act Request - SOS

Dear Constituent:

Thank you for contacting the Office of the Minnesota Secretary of State.

We serve Minnesotans in the areas of elections, business filings and registration, and the state's address confidentiality program. We will respond to your inquiry as soon as possible.

Please find below the ways you can reach our office.

ADMINISTRATION: 651-201-1324

ELECTIONS:

Metro Area: [651-215-1440](tel:651-215-1440)

Greater MN: [1-877-600-VOTE \(8683\)](tel:1-877-600-VOTE)

MN Relay Service: [711](tel:711)

*****The Administration and Election Divisions are temporarily located in the Veterans Service Building with limited public access. Please contact the office if you need to conduct business in person.*****

BUSINESS, LIEN & NOTARY INFORMATION PHONE LINE:

Metro Area: [651-296-2803](tel:651-296-2803) (9 a.m. to 4 p.m.)

Greater MN: [1-877-551-6767](tel:1-877-551-6767) (9 a.m. to 4 p.m.)

MN Relay Service: [711](tel:711)

Email: business.services@state.mn.us

UCC Email: ucc.dept@state.mn.us

Notary Email: notary.sos@state.mn.us

BUSINESS SERVICES ADDRESS:

[Get Directions](#)

First National Bank Building
332 Minnesota Street, Suite N201
Saint Paul, MN 55101

The Secretary of State Business Services public counter is open (Effective July 19, 2021) only for a limited number of appointments.

Please verify on [Microsoft Bookings](#) or contact our call center for information on appointment availability.

Again, thank you for contacting the Office of the Minnesota Secretary of State.

NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

OversightProject

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002

heritage.org