

June 2, 2022

**VIA EMAIL ONLY**

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**VIA EMAIL & US MAIL**

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**VIA EMAIL & US MAIL**

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**Re: *In the Matter of the HAVA Elections Complaint of The Public Interest  
Legal Foundation***  
**OAH 71-3500-38362**

Dear Counsel:

Enclosed and served upon you please find the **NOTICE OF RESPONSE TO  
COMPLAINT AND RIGHT TO REQUEST A HEARING** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7874,  
[michelle.severson@state.mn.us](mailto:michelle.severson@state.mn.us), or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON  
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the HAVA Elections  
Complaint of The Public Interest Legal  
Foundation

**NOTICE OF RESPONSE TO  
COMPLAINT AND RIGHT TO  
REQUEST A HEARING**

This matter was referred to the Office of Administrative Hearings by the Minnesota Secretary of State (Respondent) upon receipt of a Help America Vote Act (HAVA) complaint made to that office by The Public Interest Legal Foundation (Complainant) on May 9, 2022. Respondent filed its response to the complaint on May 31, 2022.

Nathan J. Hartshorn and Allen C. Barr, Assistant Attorneys General, appear on behalf of Respondent.

Pursuant to Minn. Stat. § 200.04, subd. 3(d) (2020), and based upon the files and record herein, the Administrative Law Judge issues the following:

**ORDER**

1. The Office of Administrative Hearings hereby provides Complainant with a copy of Respondent's response filed on May 31, 2022, attached.
2. If Complainant requests a hearing on the record to address the allegations in the complaint, it shall give written notice to the Administrative Law Judge, with a copy to Respondent's counsel by **4:30 p.m. on Wednesday, June 15, 2022**.
3. A request for a hearing must be accompanied by a completed Notice of Appearance. The Notice of Appearance form can be found at <https://mn.gov/oah/forms-and-filing/forms/>.
4. If a hearing is requested, the matter will be scheduled during the week beginning July 11, 2022.

Dated: June 2, 2022

  
JESSICA A. PALMER-DENIG  
Administrative Law Judge

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE OFFICE OF THE SECRETARY OF STATE

The Public Interest Legal Foundation,

Complainant,

**SECRETARY'S RESPONSE  
TO COMPLAINT**

vs.

Office of the Minnesota Secretary of State,

Respondent.

Respondent Office of the Minnesota Secretary of State, for its response under Minn. Stat. § 200.04, subd. 3(c), to Complainant Public Interest Legal Foundation's Help America Vote Act (HAVA) Elections Complaint, provides the following:

**GENERAL RESPONSES**

1. The Office has complied and is complying with all applicable requirements that it is subject to under HAVA and Minnesota law. It denies all allegations in the complaint that state or imply otherwise.

2. The only legal requirement that both applies to the Office and is material to this action is the Office's duty to define, maintain, and administer a statewide voter registration list. 52 U.S.C. § 21083(a)(1)(A) (2018); Minn. Stat. § 201.021 (2020). The Office is complying with this requirement.

3. HAVA provides that states may assign list-maintenance tasks such as removing duplicate registrations to the Office or "local election officials." 52 U.S.C. § 21083(a)(2) (2018). Minnesota has divided responsibilities accordingly, such that local county auditors and not the Office are responsible for the elimination of duplicate entries. *See, e.g.*, Minn. Stat. § 201.021

(designating county auditor as chief registrar of voters in each county and limiting the Office's role to defining, maintaining, and administering the centralized system).

4. The Statewide Voter Registration System (SVRS) database, which the Office administers, contains tools that allow election officials to identify potentially duplicate voter records. Under state law, it is ultimately the responsibility of county auditors to use these tools to remove duplicates.

5. County auditors do use these tools, and their efforts at eliminating duplicate records are extremely effective. While Complainants allege that their expert found 586 duplicate records in the SVRS, this would represent less than 0.02% of the more than four million active voter records in the database.

6. Although the declaration that accompanied Complainant's May 9 complaint referenced an exhibit that allegedly shows the voters found to be registered twice, Complainants did not provide a list of the putative duplicates until May 26. In the limited time it has had access to the list, the Office has thus far been unable to verify Complainant's claims regarding duplicate records.

### **SPECIFIC RESPONSES**

7. As to paragraph 1, the Office admits that Congress passed HAVA in 2002. The remainder of paragraph 1 references the specific provisions of HAVA, a statute that speaks for itself.

8. As to paragraphs 2 through 11, the statutes referenced speak for themselves, and those paragraphs contain no factual allegations to admit or deny.

9. The Office admits paragraphs 12 through 14.

10. As to paragraph 15, the Office admits that it is responsible for list maintenance but denies that Minn. Stat § 201.13 is relevant to list maintenance. The Office's legal authority and

responsibility to carry out list maintenance are provided by Minn. Stat. § 201.171. No provision in section 201.171 or in any other Minnesota law requires or authorizes the Office to remove duplicate records from the SVRS.

11. The Office denies paragraph 16. No provision in HAVA or in Minnesota law requires or authorizes the Office to remove duplicate records from the SVRS.

12. As to paragraph 17, Complainant first provided its list of purported duplicates to the Office on May 26. The Office has not had sufficient time to review that list and is therefore currently without knowledge or information sufficient to admit or deny.

13. As to paragraphs 18, the Office does not know what the data scientist in question did or did not do, and the Office is therefore without knowledge or information sufficient to admit or deny.

14. As to paragraph 19, the Office does not know what the data scientist in question did or did not do, and the Office is therefore without knowledge or information sufficient to admit or deny the methodology used by the data scientist or the accuracy of its results.

15. As to paragraph 20, the Office denies that HAVA imposes an obligation on it, as opposed to local election officials, to eliminate duplicate names.

16. As to paragraph 21, the Office denies that the presence of any duplicate registrants demonstrates that sufficient efforts are not taken to remove duplicates.

17. The Office denies paragraphs 22 and 23.

18. As to paragraphs 24 through 29, the Office admits that Complainant is seeking the stated relief, but denies it is entitled to any relief.

Dated: May 31, 2022

Respectfully submitted,

KEITH ELLISON  
State of Minnesota  
Attorney General

/s/**Allen Cook Barr**

NATHAN J. HARTSHORN, #0320602  
ALLEN COOK BARR, #0399094  
Assistant Attorneys General

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St. Paul, Minnesota 55101-2131  
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ATTORNEYS FOR RESPONDENT  
MINNESOTA SECRETARY OF STATE

OAH Docket Number: 71-3500-38362

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

The Public Interest Legal Foundation

vs.

**NOTICE OF APPEARANCE**

Office of the Minnesota Secretary of State

**PLEASE TAKE NOTICE that:**

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**<sup>1</sup>

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

**Agency's Name:** Office of the Secretary of State

Telephone: 651-215-1440

Mailing Address: 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

**Agency's Attorneys:** Nathan J. Hartshorn

Allen Cook Barr

Firm Name: Minnesota Attorney General's Office

Email: nathan.hartshorn@ag.state.mn.us

allen.barr@ag.state.mn.us

Telephone: 651-757-1252; 651-757-1487

Mailing Address: 445 Minnesota Street, Suite 1400, St. Paul, MN 55101

<sup>1</sup> In order to opt in to electronic notice, this form must be emailed to [OAH.efiling.support@state.mn.us](mailto:OAH.efiling.support@state.mn.us). If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2021).  
Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

**Opposing Party's Name:** The Public Interest Legal Foundation  
**Telephone:** 317-203-5599  
**Mailing Address:** 32 East Washington Street, Suite 1675, Indianapolis, IN 46204

**Opposing Party's Attorney:** James V. F. Dickey  
**Firm Name:** Upper Midwest Law Center  
**Email:** James. Dickey@umwlc.org  
**Telephone:** (612) 428-7002  
**Mailing Address:** 8421 Wayzata Blvd., Suite 300, Golden Valley, MN 55426

Dated: May 31, 2022 /s/Allen Cook Barr  
**Signature of Agency's Attorney**



**AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL**

**Re: *The Public Interest Legal Foundation vs. Office of the Minnesota Secretary of State***  
**OAH Docket No.: 71-3600-38362**

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

BRENDA HANSON, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on May 31, 2022, she caused to be served the **Secretary's Response to Complaint**, by depositing in the first-class mail at the City of St. Paul, State of Minnesota a true and correct copy thereof, properly enveloped with postage prepaid addressed to all persons at the addresses indicated below:

James V. F. Dickey  
Upper Midwest Law Center  
8421 Wayzata Boulevard, Suite 300  
Golden Valley, MN 55426

/s/**Brenda Hanson**  
BRENDA HANSON

Subscribed and sworn to before me  
this 31st day of May, 2022.

/s/**Elizabeth A. Soderstrom**  
NOTARY PUBLIC