

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

COMMON CAUSE and DAWN  
ESSINK,

Plaintiffs,  
v.

ROBERT B. EVNEN, in his  
official capacity as the Secretary  
of State of Nebraska,

Defendant.

**CASE NO. 25-3301**

**AMENDED  
MOTION FOR TEMPORARY  
INJUNCTION**

**INTRODUCTION**

1. Late last year, Common Cause and Dawn Essink filed a verified complaint and motion for temporary restraining order seeking to prevent the Secretary of State from releasing Nebraska's voter registration list to the federal government in violation of state law. Immediately after filing the complaint and motion, the Secretary of State, through counsel, notified Plaintiffs that he would not release the voter data pending the Court's resolution of this dispute. Relying on this representation, Plaintiffs did not pursue temporary relief.

2. The following month, the Secretary of State filed a motion to stay the proceedings due to the federal government shutdown. In the motion, the Secretary represented to the Court that he would "not release the requested voter data to the Department [of Justice] while the proceedings are stayed *and litigation is ongoing.*" (Unopposed Mot. to Stay Proceedings, Oct. 17, 2025 (emphasis added)).

3. But the Secretary has changed his mind. Last month, Secretary Evnen informed Plaintiffs through counsel that he would acquiesce to the federal government's demand and release the state's voter file to the federal government on February 12, 2026.

4. Thus, Secretary Evnen has retracted his commitment to withholding the state's voter registration list while "litigation is ongoing." As it currently stands, the Secretary will release the state's voter file to the federal government on February 12, unless the Court orders otherwise.

5. Plaintiffs intend to file a motion for summary judgment in advance of the January 29, 2026, hearing date. To provide the Court with appropriate time to consider and rule on the motion, Plaintiffs seek a temporary restraining order or temporary injunction prohibiting the Secretary of State from releasing the voter registration list pending the outcome of this litigation. As discussed below, temporary relief is appropriate because the Secretary's threatened release of the state's voter data, if effectuated, violates state law and would irreparably harm Nebraska voters' privacy, including those voters who are victims of domestic violence, sexual assault, and stalking.

## ARGUMENT

6. On September 8, 2025, the Civil Rights Division of the U.S. Department of Justice issued a demand to Secretary Evnen for Nebraska's entire voter registration list. The letter requests, among other information, "*all fields*," meaning every registered voter's "full name, date of birth, residential address, his or her state driver's license number or the last four digits of the registrant's social security number[.]"

7. The DOJ's request is not unique to Nebraska. The United States Constitution leaves election administration to the states. *See* U.S. Const. art. I, § 4. But the federal government is currently attempting to expand its role. To this end, the DOJ has requested sensitive voter information from the states. Many have refused the DOJ's request as unlawful and risky to the privacy of their voters. The DOJ has sued over 20 states for access to the sensitive information. Litigation is ongoing across the country.

8. The DOJ's request, if fulfilled, violates Nebraska law in three material respects. First, the DOJ demands copies of the state's entire voter register via encrypted email or a file sharing platform. Under Nebraska law, certain portions of the voter registration register are public record and may be examined at the local election office. But only election officials and law enforcement may make copies, and copies of the register "shall **only** be used for list maintenance as provided in section 32-329 or law enforcement purposes." Neb. Rev. Stat. § 32-330(1) (emphasis added).

9. Although election officials and law enforcement can make and *use* copies of the voter file in certain limited circumstances, they cannot *disclose* those copies to third party requesters, including the federal government or its contractors. And even if they could, disclosure would not be lawful here because the federal government's request (a) is not related to list maintenance under section 32-329, (b) does not specify a legitimate law enforcement purpose, and (c) improperly requests access to the list via the internet. Indeed, it is unclear what exactly DOJ intends to do with the voter data, how it intends to protect it, or with whom it intends to share it. Disclosure would violate the privacy rights of Nebraska's voters and would violate state law.

10. Second, the DOJ's demand seeks personal identifying information that exceeds the scope of Nebraska law. Specifically, the DOJ demands every voter's exact birthday and social security or driver's license information. But Nebraska law prohibits the Secretary of State from providing this information to the federal government, its contractors, or any other third party. *See* Neb. Rev. Stat. § 32-330(3)(b) (listing the scope of information that may be released). Secretary Evnen cannot fulfill the DOJ's demands without violating state law.

11. Third, the DOJ's demand does not provide exceptions. Under Nebraska law, certain additional information in a registered voter's file may be confidential, including information relating to the

voter's name, residence address, and telephone number. Neb. Rev. Stat. § 32-331. Confidentiality of this information protects victims of domestic violence, sexual assault, and stalking. The DOJ's request demands that Secretary Evnen turn over this confidential information. Evnen is prohibited from doing so under Nebraska law. Neb. Rev. Stat. § 32-330(1) ("The Secretary of State . . . shall withhold information in the register designated as confidential under section 32-331.").

12. The DOJ's letter cites the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), and Title III of the Civil Rights Act of 1960 as authority for its demand. But none of these statutes authorize the wholesale transfer of Nebraska's complete voter file, nor do they compel disclosure of confidential data such as exact birthdates, driver's license numbers, or social security numbers. The NVRA requires states to maintain records and allow limited inspection of list-maintenance activities, but it does not mandate the release of sensitive personally identifiable information. HAVA establishes statewide database requirements but provides no mechanism for federal seizure of voter data. And the Civil Rights Act of 1960 requires election officials to preserve records for specified periods but permits federal inspection only in the context of racial-discrimination investigations. In short, the statutory authorities DOJ invokes do not extend to the sweeping demand it has issued to Nebraska.

13. Nebraska law already provides for public inspection of appropriate voter records while expressly shielding sensitive fields such as full birthdates, voter signatures, driver's license information, social security numbers, and addresses of voters entitled to confidentiality protections. The DOJ's request disregards these limits and, critically, does not identify how its collection of Nebraska's complete voter file would comply with the federal Privacy Act of 1974, which requires federal agencies to publish notice and limit collection of personal data to what is relevant and necessary. By exceeding statutory authority and ignoring privacy safeguards, the DOJ's

demand threatens to place Nebraskans' most sensitive information at risk of unlawful disclosure. This risk of exposure and misuse is precisely the harm Plaintiffs seek to prevent.

14. Secretary Evnen has acknowledged the unprecedented nature of the DOJ's demand, stating that he is unaware of any prior request seeking this "level of detail." In 2017, his predecessor rejected a similar demand for Nebraska's voter data. Nevertheless, Secretary Evnen has acknowledged that he "want[s] to cooperate with the Department of Justice" and informed Plaintiffs that he intends to acquiesce to the federal government's demand by February 12, 2026. Accordingly, there is a real and imminent threat that Secretary Evnen will fulfill the DOJ's request in violation of state law. And if that is done, Plaintiffs are without recourse to vindicate their rights.

15. Plaintiffs object to any third-party, including the federal government or its contractors, receiving either their or their members' highly sensitive personal identifying information, including exact birthdates, voter signatures, social security numbers, driver's license information, and voting histories.

16. By registering to vote, Plaintiff Dawn Essink has provided to the state private, sensitive information. She registered to vote with the expectation that her sensitive information will remain private. Voters like Essink trust the state to protect this information. Breaking that trust erodes confidence in elections.

17. Plaintiff Common Cause is a grassroots organization dedicated to empowering all people in Nebraska to make their voices heard in the political process. Common Cause's members live across Nebraska and include registered Nebraska voters. Through its members in Nebraska, Common Cause works to create open, honest, and accountable government that serves the public interest—including by protecting voting rights. Many of Common Cause's Nebraska members are registered voters whose personal information is maintained in the statewide voter registration database held by the

Nebraska Secretary of State. If the Secretary discloses the unredacted voter registration file to DOJ, these members' sensitive personal information—including full residential addresses, voter signatures, dates of birth, driver's license numbers, and portions of social security numbers—would be unlawfully released, causing an invasion of privacy, chilling participation in the electoral process, and undermining confidence in the integrity of Nebraska elections.

18. The threat of irreparable harm is sufficiently imminent. The Secretary of State has informed Plaintiffs that he intends to disclose the voter data by February 12. The parties have a hearing before the Court on January 29. The upshot of Secretary Evnem's disclosure threat is this: the state's entire voter file will be shared with the federal government just two weeks after Plaintiffs are heard. If the data is turned over, there is no way to un-ring that bell. Additionally, sharing over the internet and centralizing this highly sensitive data creates an attractive target for hackers.

WHEREFORE, Plaintiffs respectfully move this Court, pursuant to Neb. Rev. Stat. §§ 25-1062 *et seq.*, to enter a TRO or temporary injunction granting relief as described herein pending the outcome of this litigation.

DATED this 7th day of January, 2026.

COMMON CAUSE and DAWN  
ESSINK, Plaintiffs

/s/ Daniel J. Gutman

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### **Notice of Hearing**

Please take notice that the hearing on Plaintiffs' Motion for Temporary Restraining Order or Temporary Injunction will be held Thursday, January 29, 2026, at 2:00 p.m. before the Honorable Lori Maret, or as soon thereafter as counsel may be heard.

*/s/ Daniel J. Gutman*