IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

1789 FOUNDATION, INC. d/b/a CITIZEN AG and JENNIFER MCKINNEY,

Plaintiffs,

v. Case No. 24-CV-755

ELECTRONIC REGISTRATION INFORMATION CENTER, CENTER FOR ELECTION INNOVATION AND RESEARCH, DAVID J. BECKER, and WISCONSIN DEPARTMENT OF TRANSPORTATION,

Defendants.

BRIEF OF WISCONSIN DEPARTMENT OF TRANSPORTION IN SUPPORT OF ITS MOTION TO DISMISS

Plaintiffs 1789 Foundation Inc. d/b/a Citizen AG and Jennifer McKinney have sued defendants Wisconsin Department of Transportation ("DOT"), Electronic Registration Information Center ("ERIC"), Center for Election Innovation and Research ("CEIR"), and David J. Becker. (Dkt. 1.) Plaintiffs bring claims under the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§ 2721–25, alleging that ERIC, CEIR, and Becker have unlawfully obtained information from DOT regarding licensed Wisconsin drivers and that the non-DOT defendants have put that information to unlawful use.

Plaintiffs' complaint against DOT suffers from four fatal flaws. First, they lack standing to sue because they have failed to allege a concrete injury. Second, the DPPA does not create a cause of action against DOT. Third, DOT is protected by Eleventh Amendment immunity. And fourth, even if Plaintiffs could bring their claim against DOT, their claim lacks merit because they accuse DOT of engaging in conduct that is expressly authorized by the DPPA. Accordingly, Plaintiffs' claim against DOT should be dismissed.

FACTUAL ALLEGATIONS

The bulk of Plaintiffs' complaint consists of allegations regarding the non-DOT defendants that are irrelevant to Plaintiffs' claims against DOT. Accordingly, this section will summarize only Plaintiffs' allegations regarding DOT, addressing their other allegations only as necessary for context. These allegations are considered true only, of course, for the purpose of DOT's motion to dismiss.

Citizen AG is a Florida nonprofit with members in Wisconsin. (Dkt. 1 ¶¶ 4, 9.) Jennifer McKinney is a Wisconsin resident. (Dkt. 1 ¶ 13.) ERIC is a Washington, D.C. nonprofit that describes itself as "a membership organization consisting of state election officials working together to improve the accuracy of state voter registration lists." (Dkt. 1 ¶ 18.) CEIR is a Washington, D.C. nonprofit with the stated purpose of "support[ing] state election officials in enhancing the accuracy of voter registration lists." (Dkt. 1

¶ 19.) Becker is the founder of ERIC and CEIR as well as the current executive director of CEIR. (Dkt. 1 ¶ 20.)

On August 15, 2024, Citizen AG submitted an open-records request to WEC seeking "an electronic copy of the membership agreement between the State of Wisconsin and [ERIC] . . . to understand the terms under which Wisconsin participates in ERIC." (Dkt. 1 ¶ 144; 1-7.) WEC responded the following day, writing:

> Attached please find a copy of the original executed ERIC membership agreement and the current agreement as amended pursuant to paragraph 14 of the membership agreement and Article VI, Section 5 of the bylaws. The most current version of the membership agreement and bylaws are typically posted on the ERIC website: https://ericstates.org/

(Dkt. 1-7:5.) WEC included a copy of an agreement titled "ELECTRONIC REGISTRATION INFORMATION CENTER, INC. MEMBERSHIP AGREEMENT," executed by Angie Rogers on behalf of ERIC and by Kevin J. Kennedy on behalf of "Wisconsin Government Accountability Board/Wisconsin Elections Commission" ("GAB/WEC"), dated May 17, 2016. (Dkt. 1-6:1, 8.) On the signature page, the agreement states: "Note: Effective June 30, 2016 the Wisconsin Government Accountability Board becomes the Wisconsin Elections Commission." (Dkt. 1-6:8.)

The agreement provides that GAB/WEC will become a member of ERIC, with the obligation to "transmit to ERIC [specified] data related to its voter

files and motor vehicle records (collectively, the 'Member Data')." (Dkt. 1-6 § 2.) The agreement provides that GAB/WEC will transmit only a specified, limited set of data to ERIC:

> (1) all inactive and active voter files *(excluding those records that are confidential or protected from disclosure by law)*, including those fields identified in Exhibit B, and (2) all licensing or identification records contained in the motor vehicles database *(excluding those fields unrelated to voter eligibility*, such as fields related to an individual's driving record), including those fields identified in Exhibit B.

(Dkt. 1-6 § 2.b (emphasis added).)[1] Exhibit B of the agreement specifies that GAB/WEC will submit the following "Voter Registration and motor vehicles data fields":

1. All name fields
2. All address fields
3. Driver's license or state ID number
4. Last four digits of Social Security number
5. Date of birth
6. Activity dates as defined by the Board of Directors
7. Current record status
8. Affirmative documentation of citizenship
9. The title/type of affirmative documentation of citizenship presented
10. Phone number
11. E-mail address or other electronic contact method

[1] Plaintiffs allege that the agreement gave ERIC "unfettered access to Wisconsin's DMV database" (Dkt. 1 ¶ 146), but this allegation is not consistent with the actual agreement, and the Court need not take it as true. *Rosenblum v. Travelbyus.com Ltd.*, 299 F.3d 657, 661 (7th Cir. 2002).

(Dkt. 1-6:9.)

The agreement also requires GAB/WEB to transmit "data relating to individuals that exists in the records of other agencies within its jurisdiction that perform any voter registration functions . . . ('Additional Member Data')." (Dkt. 1-6 § 3.) The agreement requires both ERIC and GAB/WEC to "use their best efforts to prevent the unauthorized use or transmission of any private or protected Member Data; Additional Member Data; and data included in reports provided by ERIC ('ERIC Data')." (Dkt. 1-6 § 4.a.) If ERIC discloses any "motor vehicle data" without authorization, whether accidentally, intentionally, or via a third party, "ERIC shall immediately give notice" to GAB/WEC. (Dkt. 1-6 § 4.d.)

The agreement requires GAB/WEC, "[u]pon receipt of "ERIC Data regarding eligible or possibly eligible citizens who are not registered to vote," to contact those citizens "and inform them how to register to vote." (Dkt. 1-6 § 5.a.) And it requires GAB/WEC, upon receipt of "credible ERIC Data (meaning the state has validated the data) indicating that information in an existing voter's record is deemed to be inaccurate or our-of-date," to contact that voter to either correct the inaccuracy, update the voter's record, or inactivate the voter's record. (Dkt. 1-6 § 5.b.)

The remainder of Plaintiffs' allegations concerning DOT consist of legal conclusions that the agreement terminated on June 30, 2016, when WEC

replaced GAB, and that DOT violated the DPPA by disclosing data to ERIC after the agreement's supposed termination. Those legal conclusions will be addressed below.

LEGAL STANDARD

A plaintiff's complaint must "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.* The court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

ARGUMENT

Plaintiffs' claim against DOT should be dismissed for four reasons. First, they fail to allege a concrete injury in fact, describing only a bare procedural violation of the DPPA. Second, the DPPA expressly excludes state agencies like DOT from suit. Third, Plaintiffs' claim against DOT is barred by the Eleventh

Amendment to the United States Constitution. And fourth, Plaintiffs accuse DOT of nothing more than conduct that is expressly authorized by the DPPA.

I. Plaintiffs lack standing because they fail to allege a concrete injury in fact.

Article III of the United States Constitution requires a plaintiff's complaint to describe an "injury in fact" that is "fairly traceable" to the defendant's challenged conduct. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs assert no injury in their complaint that satisfies the standard of an injury in fact. Thus, neither plaintiff has standing to sue.

A. Jennifer McKinney

As for McKinney, Plaintiffs allege that she has standing under Wis. Stat. § 5.06 "insofar as Ms. McKinney is a taxpayer and Defendants are spending taxpayer money on illegal activities or funding activities." (Dkt. 1 ¶ 16.)

As an initial matter, it is difficult to understand why Plaintiffs believe that Wis. Stat. § 5.06 applies to their claims against DOT or any other defendant, as this Wisconsin statute concerns elector complaints against "an election official" regarding "nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections." Wis. Stat. § 5.06(1). The term "election official" is statutorily defined as "an individual who is charged with any duties relating to the conduct of an election."

Wis. Stat. § 5.02(4e). Plaintiffs identify no duties with which DOT has been charged that relate to the conduct of an election. Moreover, even if Plaintiffs did identify such a duty on the part of DOT, McKinney would first be required to file a complaint with the Wisconsin Elections Commission before filing suit against DOT. Wis. Stat. § 5.06(2).

In any event, McKinney's assertion of taxpayer standing is squarely foreclosed by *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006). In that case, the plaintiffs sought to challenge a state tax credit on the grounds that it would "deplete[] the funds of the State of Ohio to which the Plaintiffs contribute through their tax payments." *Id.* at 342–43. The Court held that the plaintiffs did not have standing as taxpayers because they had failed to allege a "concrete and particularized" injury, alleging only a "a grievance the taxpayer[s] suffer[ed] in some indefinite way in common with people generally." *Id.* at 344. That is precisely the type of injury that McKinney describes when she alleges that "Defendants are spending taxpayer money on illegal activities or funding activities" (Dkt. 1 ¶ 16). Any such general injury is insufficient to confer standing.

Plaintiffs also allege that McKinney has suffered "an invasion of privacy due to the unauthorized access, use, and disclosure of her DMV data." (Dkt. 1 ¶ 174.) This allegation is merely a legal conclusion that should be disregarded, as Plaintiffs fail to identify any injury that McKinney has suffered due to the

alleged disclosure of her data that would confer standing. What Plaintiffs allege is, at most, nothing more than a bare procedural violation of the DPPA. As this Court recently stated in another DPPA case, "To meet th[e] requirement [of an injury in fact], both the Supreme Court and Seventh Circuit Court of Appeals have recently, repeatedly emphasized that plaintiffs must allege that they suffered a concrete harm, while the allegation of a bare procedural violation, divorced from any concrete harm, does not satisfy Article III standing." *Baysal v. Midvale Indem. Co.*, No. 21-cv-394-wmc, 2022 WL 1155295, at *1 (W.D. Wis. Apr. 19, 2022), *aff'd* 78 F.4th 976 (7th Cir. 2023).

To allege more than "a bare procedural violation," Plaintiffs "must allege 'that the violation harmed or presented an appreciable risk of harm to the underlying concrete interest that Congress sought to protect by enacting the statute.'" *Id.* at *1 (quoting *Casillas v. Madison Ave. Assocs., Inc.,* 926 F.3d 329, 333 (7th Cir. 2019)). Furthermore, the plaintiff must allege an injury that "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citation omitted). Here, Plaintiffs allege no concrete harm that would affect McKinney in a personal and individual way. Rather, they describe a supposed violation that would affect McKinney no more and no less than any other citizen, which is precisely the type of injury that *Spokeo* rejects as insufficient to confer standing.

Plaintiffs also allege that McKinney's "fundamental right to vote" has been "undermined." (Dkt. 1 ¶ 174.) They fail to explain why this is the case, but DOT infers that this is based on their allegation elsewhere in the complaint that defendants' alleged actions

> burden the federal and state constitutional rights to vote of all individual members of Citizen AG who are lawfully registered to vote in Wisconsin by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, instilling in them the fear that their legitimate votes will be nullified or diluted, and actually diluting their votes.

(Dkt. 1 ¶ 7.) Throughout the complaint, Plaintiffs refer to supposed "bloating" of state voter rolls due to defendants' alleged actions, by which they seem to mean both large-scale voter-registration efforts (Dkt. 1 ¶¶ 12, 45, 130) and alleged actions by non-DOT defendants to "add[] non-citizens to voter rolls" (Dkt. 1 ¶¶ 167, 169, 171).

In any event, federal courts have roundly rejected comparable theories of generalized "vote dilution" under Article III. *See Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596, 608–09 (E.D. Wis. 2020) (collecting cases). *Feehan* is illustrative. It involved a challenge by a Wisconsin voter to the results of the 2020 presidential election based on allegations that the election was conducted so unlawfully that "Wisconsin's voters, courts, and legislators, cannot rely on" the reported results. *Id.* at 609. The federal district court held

that the plaintiffs' alleged injuries were the same "that any Wisconsin voter suffers if the Wisconsin election process were [conducted as unlawfully] as the plaintiff alleges." *Id.* This type of harm, the court held, is not the type of "particularized, concrete injury sufficient to confer standing." *Id.* Courts addressing similar vote-dilution theories across the country are in accord. *See Wis. Voters All. v. Pence*, 514 F. Supp. 3d 117, 120 (D.D.C. 2021); *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 712 (D. Ariz. 2020); *Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336, 354–55 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021).

Should Plaintiffs seek refuge in Supreme Court cases regarding vote dilution by malapportionment, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533 (1964), or by racial gerrymandering, *e.g.*, *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) ("LULAC"), such cases will not aid them. Malapportionment cases involve vote dilution in the specific context of one person, one vote. In *Reynolds*, the Court considered vote dilution by state legislative malapportionment in which voters in less populated rural districts were overwhelmingly overrepresented in the state legislature in comparison with voters in more heavily populated districts. 377 U.S. at 545–51. The vote dilution at issue in such malapportionment cases is an *individualized* harm that is *specific* to voters in more heavily populated districts. And in *LULAC*,

the Court considered vote dilution by racial gerrymandering, in which the votes of one race were diluted in comparison with the votes of other races. 548 U.S. at 427. Here, McKinney identifies no way in which *her* vote would be "diluted" any differently than the vote of any other eligible voter in the state.

B. Citizen AG

Plaintiffs allege that Citizen AG has standing under Wis. Stat. § 227.40 (Dkt. 1 ¶ 17), which governs judicial review of agency "rule[s] or guidance document[s]," Wis. Stat. § 227.40(1). But that statute plainly does not grant standing to Citizen AG for three reasons. First, the complaint fails to identify any rule or guidance document that Plaintiffs challenge. Second, Wis. Stat. § 227.40(1) states that "the exclusive means for judicial review" of any rule or guidance document must be an action for declaratory judgment brought in *state court*, not federal court. Third, Plaintiffs do not explain how supposed standing in a state administrative rule challenge claim provides standing for Citizen AG under the federal DPPA.

Plaintiffs wrongly assert that Citizen AG has associational standing to sue on behalf of its members. (Dkt. 1 ¶¶ 7–9). To sue on behalf of its members, an association must satisfy three requirements: 1) "its members would otherwise have standing to sue in their own right"; 2) "the interests at stake are germane to the organization's purpose"; and 3) "neither the claim asserted nor the relief requested requires the participation of individual members in the

lawsuit." *Friends of the Earth, Inc. v. Laidlaw Env. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (citation omitted). At a minimum, Citizen AG does not satisfy the first requirement. Citizen AG alleges that Defendants' alleged actions "burden [its members'] federal and state constitutional rights to vote . . . by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, instilling in them the fear that their legitimate votes will be nullified or diluted, and actually diluting their votes." (Dkt. 1 ¶ 7.) But as explained above, such concerns are not enough to grant McKinney standing, so Citizen AG cannot bootstrap standing for itself by aggregating such concerns.

Nor do Plaintiffs fare any better with their attempt to assert standing for Citizen AG to sue on its own behalf. An organization can establish standing in the same way as an individual: by "satisfy[ing] the usual standards for injury in fact, causation, and redressability." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 393–94 (2024). Plaintiffs' complaint does not meet this requirement. They allege that "Citizen AG was forced to divert significant resources from its regular programmatic activities, including election monitoring and compliance initiatives, to investigate and counteract Defendants' unauthorized use of DMV data. This diversion of resources has impaired Citizen AG's ability to fulfill its mission and has caused financial and operational burdens." (Dkt. 1 ¶ 173.) Elsewhere, they allege that these

supposed resource diversions include investigation, analysis, and member communications. (Dkt. 1 ¶ 12.) "But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *All. for Hippocratic Med.*, 602 U.S. at 394. That is precisely the "injury" that Plaintiffs allege Citizen AG has suffered, and it is insufficient to confer standing.

In sum, neither McKinney nor Citizen AG has alleged a concrete injury in fact, so neither party has standing to sue DOT.

II. Neither plaintiff has a cause of action against DOT under the DPPA.

Plaintiffs purport to sue DOT under the DPPA, but they fail to acknowledge that the DPPA explicitly excludes state agencies like DOT from suit.[2] The DPPA creates a civil cause of action against "[a] *person* who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter," on behalf of "the individual to whom the information pertains." 18 U.S.C. § 2724(a)

[2] DOT is also protected from suit by the Eleventh Amendment to the United States Constitution, as explained below. Before considering "whether the Eleventh Amendment forbids a particular statutory cause of action to be asserted against States," a court should first consider "whether the statute itself *permits* the cause of action it creates to be asserted against States (which it can do only by clearly expressing such an intent)." *Vt. Agency of Nat'l Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 779 (2000).

(emphasis added). The statute then defines "person": "'person' means an individual, organization or entity, *but does not include a State or agency thereof*." 18 U.S.C. § 2725(2) (emphasis added). Accordingly, neither plaintiff may sue DOT under the DPPA.

And regardless of McKinney's ability to sue DOT under the DPPA, Citizen AG plainly cannot bring suit against any defendant under the statute. The DPPA creates a cause of action only for "the individual to whom the [disclosed] information pertains." 18 U.S.C. § 2724(a). Citizen AG is not an individual, nor do Plaintiffs allege that any of Citizen AG's information has been unlawfully disclosed by DOT. Accordingly, Citizen AG's DPPA claim should be dismissed for this second reason.

III. DOT is protected from suit by Eleventh Amendment immunity.

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State . . . ." U.S. Const. amend. XI. "Although by its terms the [Eleventh] Amendment applies only to suits against a State by citizens of another State, [the Supreme Court has] extended the Amendment's applicability to suits by citizens against their own States." *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001) (collecting cases). The Eleventh

Amendment bars suits against a state agency brought by private parties "regardless of the nature of the relief sought." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100–01 (1984); *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44, 54 (1996). "State agencies are treated the same as states" and "a state agency *is* the state for purposes of the eleventh amendment." *Kroll v. Bd. of Trs. of Univ. of Ill.*, 934 F.2d 904, 907 (7th Cir.1991), *cert. denied*, 502 U.S. 941 (1991) (citations omitted). In short, it "grants states immunity from private suits in federal court without their consent." *Nuñez v. Ind. Dep't of Child Servs.*, 817 F.3d 1042, 1044 (7th Cir. 2016).

The Eleventh Amendment plainly applies here. DOT is, of course, an agency of the state. Wis. Stat. § 15.46. And Plaintiffs are, of course, private parties. DOT is therefore immune from Plaintiffs' claim against it. Accordingly, their claim must be dismissed.

IV. The alleged disclosure of driver information by DOT to ERIC is permissible under the DPPA.

Finally, even if the Court reaches the merits of Plaintiffs' claim against DOT, Plaintiffs fail to state a claim upon which relief may be granted. Plaintiffs allege that the non-DOT defendants engaged in improper electioneering activities, but they do not allege that DOT was complicit in those activities. Rather, they say that DOT violated the law by providing drivers' personal information to ERIC without a valid agreement to do so—even though

Plaintiffs attach just such an agreement to their complaint. (Dkt. 1-6.) The alleged disclosure therefore falls under the DPPA's express provision that driver information "may be disclosed . . . [f]or use 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." 18 U.S.C. § 2721(b), (b)(1).

Plaintiffs say that the agreement is invalid because it was made between ERIC and the Wisconsin Government Accountability Board ("GAB"), which was statutorily replaced by the Wisconsin Elections Commission ("WEC") shortly after the agreement's execution. Plaintiffs rely on the agreement's provision that GAB "may not sell, assign, or otherwise transfer any of its rights or interests or delegate any of its duties or obligations in this Agreement, without the prior written consent of ERIC." (Dkt. 1-6 § 12.) Plaintiffs allege that this provision barred WEC from taking GAB's place under the contract and that the agreement was therefore "terminated on June 30, 2016, when GAB was eliminated by the Wisconsin Act 118." (Dkt. 1 ¶¶ 148, 150.)

Plaintiffs' position is contrary to the express language of the agreement, as in executing the agreement, ERIC and GAB provided that WEC would take GAB's place. Kevin J. Kennedy signed the agreement on behalf of "Wisconsin Government Accountability Board/*Wisconsin Elections Commission*," and the signature page included a note expressly stating, "Effective June 30, 2016[,]

the Wisconsin Government Accountability Board *becomes the Wisconsin Elections Commission*." (Dkt. 1-6:8 (emphasis added).) Even if WEC were not considered a party to the agreement at the time of its execution, this language would unquestionably demonstrate ERIC's "prior written consent" to replace GAB with WEC. This conclusion is in keeping with the Legislature's intent that WEC would assume GAB's contractual obligations:

> (5) CONTRACTS. All contracts entered into by the government accountability board that are in effect on the effective date of this subsection shall remain in effect and are transferred to the elections commission and the ethics commission. The secretary of administration shall determine which contracts are transferred to each commission. The elections commission and the ethics commission shall carry out all contractual obligations under each contract until the contract is modified or rescinded by that commission to the extent allowed under the contract.

2015 Wis. Act 118 § 266(5).

Plaintiffs' contention that the agreement expired when WEC replaced GAB is without merit because the parties to the agreement clearly expressed their intent that WEC would be a party to the agreement. And regardless of what Plaintiffs may believe that the non-DOT defendants might do with driver information disclosed under the agreement, they allege nothing that would make DOT liable for those defendants' actions. Indeed, the agreement expressly provides that ERIC must "use [its] best efforts to prevent the unauthorized use or transmission of" data it receives, and it must notify WEC

"immediately" if there is any "unauthorized disclosure of motor vehicle data by ERIC." (Dkt. 1-6 §§ 4.a, 4.d.) Accordingly, any disclosure of driver information by DOT to ERIC plainly falls under the DPPA's provision that driver information may be disclosed to ERIC as an "entity acting on behalf of a [state] agency in carrying out its functions," 18 U.S.C. § 2721(b)(1), and Plaintiffs' claim against DOT should be dismissed.

CONCLUSION

For the reasons above, DOT asks the court to grant its motion to dismiss Plaintiffs' claims against it.

Dated this 11th day of December 2024.

Respectfully submitted,

Electronically signed by:

s/ Aaron J. Bibb
AARON J. BIBB
Assistant Attorney General
State Bar #1104662

STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

Attorneys for Defendant Wisconsin Department of Transportation

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0810 (AJB)
(608) 266-1792 (SCK)
(608) 294-2907 (Fax)
bibbaj@doj.state.wi.us
kilpatricksc@doj.state.wi.us