

No. _____

In the
Supreme Court of the United States

Association for Government Accountability;
Mark Koran, Senator; Calvin Bahr, Senator;
James Roschen; Debra Roschen; Megan Nelson;
Andrew Nelson; Dawn Appel; Daniel Appel;
Cindy Kohn; David Kohn; Tammi Johnson;
Larry Johnson; Meghan Hewitt; A.H., by her next
friend and parent Meghan Hewitt; Sarah Johnson;
A.J., by his next friend and parent Sarah Johnson,

Petitioners,

v.

Steve Simon, individually and in his official capacity
as Minnesota Secretary of State, or his successor;
David Maeda, individually and in his official capacity
as Director of Elections for State of Minnesota,
or his successor,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Ex Parte Young* exception for prospective injunctive relief applies in federal court actions against state officials in their official capacities under the Drivers Protection Privacy Act of 1994, 18 U.S.C. 2721, et seq., where the Act omits “state officials” as a defined “person” and the Act’s remedial scheme is not detailed and incomplete because it omits relief from continuing individual “state official” violations of federal law questioning the application of the exception to the *Ex parte Young* exception articulated in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

PARTIES TO THE PROCEEDINGS

Association for Government Accountability; Mark Koran, Senator; Calvin Bahr, Senator; James Roschen; Debra Roschen; Megan Nelson; Andrew Nelson; Dawn Appel; Daniel Appel; Cindy Kohn; David Kohn; Tammi Johnson; Larry Johnson; Meghan Hewitt; A.H., by her next friend and parent Meghan Hewitt; Sarah Johnson; A.J., by his next friend and parent Sarah Johnson are the Petitioners. They were the plaintiffs, and appellants in the lower court proceedings.

Steve Simon, individually and in his official capacity as Minnesota Secretary of State, or his successor; David Maeda, individually and in his official capacity as Director of Elections for State of Minnesota, or his successor were the defendants and appellees in the lower court proceedings.

RELATED PROCEEDINGS

Assn. for Govt. Accountability v. Simon, 128 F.4th 976 (8th Cir. 2025), A-1 to A-5.

Assn. for Govt. Accountability v. Simon, No. CV 23-3159 (PAM/DTS), 2024 WL 692713, (D. Minn. Feb. 20, 2024), *aff'd*, 128 F.4th 976 (8th Cir. 2025), A-9 to A-19.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment and decision of the Eighth Circuit.

OPINION BELOW

The opinion of the court of appeals is reported at 128 F.4th 976 (8th Cir. 2025) (*Infra*, A-1 to A-5).

JURISDICTION

The judgment of the district court was entered on February 20, 2024. Plaintiffs-Appellants filed a notice of appeal on February 23, 2024. The court of appeals mandate was issued on March 11, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. ¶ 2724:

(a) Cause of Action.—

A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies.—The court may award—

* * *

(4) such other preliminary and equitable relief as the court determines to be appropriate.

18 U.S.C. § 2724(2)

In this chapter—

* * *

(2) “person” means an individual, organization or entity, but does not include a State or agency thereof;....

STATEMENT

The core premise of this petition is the contention that under the Drivers Privacy Protection Act, Congress did not intend to foreclose private actions against the misconduct of individual state officials for prospective injunctive relief. It is not the government’s function to disclose private driver data of its citizens. The ability of individual citizens to protect themselves from the misconduct of state officials in light of the purpose of to the DPPA is an important question that has not been and requires the law to be settled by this Court.

For decades, the lower courts have misinterpreted and misapplied the remedial scheme of the DPPA precluding prospective injunctive relief against the misconduct of individual state officials that should be afforded to plaintiffs as a private right of action under *Ex parte Young* principles of law. This

failure allows state officials to continue federal law illegalities with impunity. The issue involves whether this Court's created exception to *Ex parte Young*'s exception, found under *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), as applicable to the DPPA. In *Seminole Tribe*, this Court held that the *Ex parte Young* doctrine does not apply where Congress has prescribed "a detailed remedial scheme for the enforcement against a State of a statutorily created right." *Id.* at 74. However, a DPPA remedial scheme limits the authority to the Attorney General to sue only one specific state agency, while omitting individual "state officials" as subject to prospective injunctive relief is neither detailed nor complete.

While the DPPA, Public Law No. 103-322 codified as amended by Public Law 106-69, 18 U.S.C. 2721, et seq., originally enacted in 1994 to protect the privacy of personal information assembled by State Department of Motor Vehicles. Congress did not intend the DPPA to protect misconduct and abuses of all other individual state officials. Courts proclaim that individual government official misconduct as untouchable under the DPPA. Petitioners contend that Congress never intended not to provide a remedy that displaced *Ex Parte Young* actions.

1. The Petitioners, The Association for Government Accountability, some of its members, and two children of members (AGA) sued Minnesota's Secretary of State Steve Simon and Director of Elections David Maeda (together, the Secretary), in their official and individual capacities. The AGA alleged that the Secretary violates the DPPA when he shares the personal information of individual motor vehicle records with a third party, here, the

Electronic Registration Information Center (ERIC), an “organization governed exclusively by a group of states to improve the accuracy of the voter registration records in the [statewide voter registration system].” (quoting the interagency agreement between the Department of Public Safety and the Office of the Secretary of State). A-2. The AGA allege that the Secretary shared private driver’s data with ERIC, as a third-party entity.

In accordance with congressional mandates under the Help America Vote Act (enacted in 2002), a state’s motor vehicle service (Department) is to provide to the office of the Secretary of State, from the motor vehicle service’s data base, driver license data. See 52 U.S.C. § 21083(5)(B)(i). The data is to be used to update the state-wide voter registration system. To that end, the Secretary entered into an agreement with the Minnesota Department of Public Safety, acting through its Driver and Vehicle Services division, to effect the congressional mandate under HAVA, and effect specific provisions of Minnesota’s agreement with ERIC. Amend. Compl. Distr. Ct. Doc. 7.

Minnesota is one of 24 states that entered into an ERIC agreement. The agreement requires Minnesota to disclose the state’s private driver data with ERIC. *Id.* ERIC in turn, creates lists of unregistered potential eligible voters referred to as “EBUs”—eligible but unregistered. *Id.* Notably, the EBU includes individuals who have declined to register to vote, registrations of which are available when renewing or obtaining a driver’s license. *Id.* While at the motor vehicle department, here, referred

to in Minnesota as the Department of Public Safety (DPS):

- People may either register to vote or decline to register to vote.
- The DPS database, therefore, contains both people who have registered to vote and those who have declined to register to vote.
- When ERIC receives the DPS database and the statewide voter registration database (the SVRS is mandated under HAVA), ERIC compares them to determine who has declined to register to vote or who is unregistered.
- The Secretary and ERIC understand that the people who have declined to register to vote at DPS are individuals who are in the DPS database, but who do not have a matching voter record in the SVRS database.
- ERIC creates an EBU list (potentially eligible but unregistered voters) of these people who have declined to register to vote or are unregistered to vote, returning the EBU list to the Secretary.

Distr. Ct. Doc. 16.

Once the EBUs are returned to the Secretary, the ERIC agreement mandates the Secretary to

contact “each and every” person on the EBU list regardless of voter registration status.¹ *Id.*

The Minnesota Legislature authorized the Secretary to participate in ERIC. Minn. Stat. § 201.13(d). Distr. Ct. Doc. 41. However, Minn. Stat. § 171.12, subd. 7a, limits the disclosure of private driver data to the Secretary, in line with the DPPA. While § 18 U.S.C. § 2721 provides for *criminal* penalties enforced upon the DPS for misuse of private driver data and a *civil* penalty provision applies to other individuals, and as AGA contends, this includes state officials such as the Secretary, when the state official engages in misconduct or abuse of authority violating the DPPA and outside the authority granted under Minn. Stat. § 201.13(d). 18 U.S.C. § 2724(a). Amend. Compl. Distr. Ct. Doc. 7.

The DPPA provides a 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.” 18 U.S.C. § 2724(a). “Person” is defined as “an individual, organization or entity, but does not include a State or agency thereof.” *Id.*, § 2725(2). And the DPPA allows the disclosure of personal information “[f]or use by any government agency ... in carrying out its functions.” *Id.*, § 2721(b)(1). Because of the Secretary’s misconduct, acting outside the scope of Minn. Stat. § 201.13(d), the AGA filed its

¹ “When a member receives ERIC Data regarding eligible or possibly eligible citizens who are not registered to vote, the Member shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote....” Amend. Compl. Distr. Ct. Doc. 7-1.

amended complaint seeking prospective injunctive relief against the Secretary in his official capacity.

2. The district court denied AGA's motion for a preliminary injunction and granted the Secretary's motion to dismiss. A-18. The court concluded that although the AGA raised an argument that the DPPA did not have a complete remedial scheme, the court could not find any case to support the contention. A-14. Relying upon an earlier Minnesota district court decision, in *Potocnik v. Carlson*, 9 F.Supp. 3d 981, 991 n.5 (D. Minn. 2014) (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74 (1996)), the court further opined that because the DPPA expressly precludes states and state agencies from lawsuits, no matter what relief is sought—including prospective injunctive relief—the AGA amended complaint must be dismissed. *Id.*

In *Potocnik*, the district court's footnote found that “the DPPA...permits suits for injunctive relief against state officials acting in their official capacities....” *Potocnik*, 9 F.Supp. 3d at 991 n.5. However, the *Potocnik* court would nevertheless conclude that “[b]ecause the DPPA specifically provides for a separate civil-penalty provision against state motor-vehicle departments...the Court interprets the DPPA to preclude even suits for prospective relief against state officials acting in their official capacities.” *Id.*

3. On appeal to the United States Court of Appeals for the Eighth Circuit, affirmed the district court's decision. A-5. The court agreed that normally, under the *Ex Parte Young* doctrine “a private party can sue a state officer in his official capacity to enjoin

a prospective action that would violate federal law.”” A-3, quoting *281 Care Comm. v. Arneson*, 638 F.3d 621, 632 (8th Cir. 2011). In turn, the court opined that “*Ex parte Young* ordinarily does not apply, however, ‘where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right.’” A-3–4, quoting *Seminole Tribe*, 517 U.S. at 74.

The appellant court further concluded that the DPPA has a detailed remedial scheme because the Attorney General is vested with power to impose civil penalties upon state departments of motor vehicles “that has a policy or practice of substantial noncompliance” with the DPPA. § 2723(b).” A-4. Yet, the AGA contended, it was not the DPS (Minnesota’s department of motor vehicles), that violated the DPPA, but the Secretary. Amend. Compl. Distr. Ct. Doc. 7. Nevertheless, the appellate court concluded, citing yet another district court decision, in *Nisi v. Brown*, 369 F. Supp. 3d 848, 854 (N.D. Ill. 2019), that Congress did not intend to authorize a more sweeping imposition of injunctive relief to include other state officials:

“That Congress explicitly excluded states from the DPPA’s definition of persons subject to civil suits while creating a separate avenue of enforcement against one particular type of agency strongly suggests that it did not intend to authorize the more sweeping injunctive relief which would be available against any state official sued in her

official capacity under *Ex parte Young*.”

A-4, quoting *Nisi v. Brown*, 369 F. Supp. 3d 848, 854 (N.D. Ill. 2019).

Notably, the court uses the phrase “strongly suggests” to describe Congressional intent to limit the sweep of injunctive relief, a position at polar ends with the AGA. *Id.*: Amend. Compl. Distr. Ct. Doc. 7. Relying on 28 U.S.C. § 1983 case law, the Eighth Circuit, while agreeing “state official” are “literally persons,” found “a suit against a state official in his official capacity is ‘no different from a suit against the State itself.’” A-3, quoting *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Thus, the court concluded that, “[b]ecause the Secretary in his official capacity is ‘a State or agency thereof,’ he is not a ‘person’ who can be sued under the DPPA.” A-3, citing § 2725(2).

REASONS FOR GRANTING THE PETITION

It is not the government’s function to disclose private driver data of its citizens. And, no person is above the law, a core fundamental element to the “rule of law.” *See, Trump v. U.S.*, 603 U.S. 593, 690 (2024) (“[O]ur Government has long functioned under an accountability paradigm in which no one is above the law.”). The underlying purpose of the Driver Protection Privacy Act of 1994 was to protect the privacy of personal information assembled by State Department of Motor Vehicles. In this regard, the DPPA provides for a private cause of action under 18 U.S.C. § 2724(a) to sue a “person” who knowingly obtains, discloses, or uses personal information from

a motor vehicle record that is not permitted under the DPPA, in federal court for the appropriate remedy under § 2724(b). Those listed remedies include equitable relief. *Id.*

But, when individual government officials, acting in their official capacities violate the dictates of the DPPA, Congress would not have conceded that individual state official misconduct as above the law and immune from all forms of remedies. For when a state official is acting outside their authority, prospective injunctive relief is available.

It is of imperative public importance that the Secretary's claims of immunity from injunctive relief be resolved by this Court. The Secretary's position, adopted by both the district court and the Eighth Circuit, are profoundly mistaken. Individual state officials are "persons" under the DPPA, regardless of immunity provided to "states" and "state agencies." 18 U.S.C. § 2724(2). Continuing government misconduct knowingly engaged by individual state officials cannot be immune from prospective injunctive relief, if the fundamental concept of the "rule of law" is to be maintained.

**Individual state officials are
"persons" whom, when engaged
in misconduct are subject to
prospective injunctive relief.**

This case involves a paradigmatic issue of imperative public importance. Citizens who are harmed by the misuse of private data because of the misconduct of individual state officials are entitled to a remedy under the DPPA. Although the DPPA

definition of “person” precludes “states” and “state agencies, thereof,” does not preclude individual state officials. 18 U.S.C. § 2274(2). While Congress specifically excluded states and agencies under 18 U.S.C. § 2715(2), Congress did not exclude individual state officials; the silence of Congress is controlling where Congress knows how to say something, but chooses not to. *Ela v. Destefano*, 869 F.3d 1198, 1202 (11th Cir. 2017) (citation omitted). Prospective injunctive relief under DPPA falls within the Eleventh Amendment immunity exception recognized by this Court in *Ex Parte Young*, 209 U.S. 123 (1908).

Here, lower courts go too far in adopting the proposition, as the Eighth Circuit has done so, to blantly suggest “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.” A-3, quoting *Will*, 491 U.S. at 71. They do so without acknowledging that “[o]f course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because ‘official-capacity actions for prospective relief are not treated as actions against the State.’” *Id.*, n.10 (citations omitted). Here, the AGA sued for prospective injunctive relief against the individual state officials’ misconduct under the DPPA. Amend. Compl. Distr. Ct. Doc. 7. Here, the principles of *Ex Parte Young* apply.

The DPPA’s remedial scheme granting the Attorney General to bring an action against state departments of motor vehicles, does not displace any *Ex Parte Young* action that seeks to compel, prospectively, individual state official compliance with the DPPA. 28 U.S.C. § 2723(b). Indeed, as

Congress precluded the state and state “agencies thereof,” its grant of authority to the Attorney General to sue a “state agency,” may complete the scheme against the “state” and “state agencies” thereof, but does not to individual state officials.²

It is understood that a “state” is institutional political body of a particular territory. The phrase “state agencies thereof” falls within this Court’s developed “arm-of-the-State” doctrine used “as a tool for determining which entities created by a State enjoy its Eleventh Amendment protection and which do not. This Court has found that a private suit against a state agency is barred by the Eleventh Amendment.” *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 312 (1990).

In stark contrast is the definition of an “individual” under the DPPA’s definition of person. The DPPA defines “person” as “an individual, organization or entity, but does not include a State or agency thereof”:

“[P]erson” means an individual, organization or entity, but does

² Under the DPPA, the remedial scheme is complete as it pertains to the State Motor Vehicle Departments, and thus, individual state officials in those departments would be precluded from suit as Congress intended. However, as it addresses one specific department, it precludes all other individual state officials of any other state agency. This makes sense in light of the original purpose of the DPPA regarding and targeting motor vehicle departments in particular and the abuses arising from that specific department where private data was released.

not include a State or agency
thereof

18 U.S.C. § 2725(2) (emphasis added). The Merriam Webster Dictionary provides the following principal definition for the word “individual”:

1a: a particular being or thing as
distinguished from a class,
species, or collection: such as
(1): a single human being as
contrasted with a social group or
institution a teacher who works
with individuals

See [https://www.merriam-webster.com/dictionary/individual#:~:text=\(1\),as%20distinguished%20from%20a%20group](https://www.merriam-webster.com/dictionary/individual#:~:text=(1),as%20distinguished%20from%20a%20group) (last visited: May. 15, 2025) (emphasis in original).

Under this dictionary definition, the Secretary is an “individual” because he is “a single human being as contrasted with a[n] … institution,” here, of the Secretary of State’s office. *Id.* Seeking prospective injunctive relief for the misconduct of individual state officials, the Secretary under this definition does not rest within the meaning of “State” or “an agency thereof.”

But courts prescribe to this Court’s notion that there exists an exception within the *Ex Parte Young* exception as suggested in *Seminole Tribe*. As with the district court and the court of appeals in this case, other courts have adopted the position that under the DPPA, Congress intended to foreclose private actions against state officials regardless of the type of

relief sought. Under *Seminole Tribe*, this Court opined that where Congress prescribed a detailed remedial scheme for the enforcement against a State of a statutory created right, it limited the liability otherwise available against a state officer under *Ex Parte Young*. *See*, A-3-4; A-1.

But the remedial scheme does not preclude individual state official misconduct. On its face, the statutory provisions do not exclude “individuals” who are state from being sued for DPPA violations for injunctive relief. Congress enacted a remedial scheme under § 2724(a) and § 2725(2) to ensure that all DPPA-violating individuals, including state officials are subject to at least one form of civil action enforcement.

That Congress explicitly excluded states from the DPPA's definition of persons subject to civil suits while creating a separate avenue of enforcement against one particular type of state agency does not strongly suggest that it did not intend to authorize the more sweeping injunctive relief which would be available against any state official sued in his official capacity under *Ex parte Young*. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (“the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.”). The absence of “state officials” within the definition of “person” is intentional and has significance in the meaning of “person.”

Section 2724(a), by its unambiguous terms, creates a private right of action for individuals to sue DPPA-violating individuals whoever they are. *See, e.g., Orduno v. Pietrzak*, 932 F.3d 710, 717 (8th Cir.

2019) (city's police chief is a "person" liable under DPPA for violations). Section 2724 authorizes a civil action for prospective equitable relief against any state official's misconduct as a "person who knowingly obtains, discloses or uses personal information, from a motor vehicle record" in violation of the DPPA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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