STATE OF MINNESOTA

IN SUPREME COURT

A18-1140

Court of Appeals — Lillehaug, J.
Dissenting, Gildea, C.J., Anderson, J.

Andrew Cilek, et al.,

Respondents,

vs.

Filed: April 8, 2020
Office of Appellate Courts

Office of the Minnesota Secretary of State, et al.,

Appellants.

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Keith Ellison, Attorney General, Christopher M. Kaisershot, Nathan J. Hartshorn, Assistant Attorneys General, Saint Paul, Minnesota, for appellants.

Teresa J. Nelson, David P. McKinney, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota, for amicus curiae American Civil Liberties Union of Minnesota.

Douglas P. Seaton, Upper Midwest Law Center, Golden Valley, Minnesota; and

James V.F. Dickey, Hellmuth & Johnson, Edina, Minnesota, for amicus curiae Center of the American Experiment.

Brett D. Kelley, Kelley, Wolter & Scott, P.A., Minneapolis, Minnesota, for amicus curiae Judicial Watch, Inc.

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S Y L L A B U S

Read together, the plain language of relevant provisions of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01, 13.607 (2018), and the Minnesota Election Law, Minn. Stat. § 201.091 (2018 & Supp. 2019), limits access to the voter registration list contained in the Statewide Voter Registration System. Access by registered voters is limited to "public information lists" and to information provided by the secretary of state.

Reversed.

O P I N I O N

LILLEHAUG, Justice.

This case is about a Minnesota voter's request for access to information in the Statewide Voter Registration System, which contains Minnesota's statewide voter registration list. The case turns on the relationship between portions of the Minnesota Government Data Practices Act, specifically Minn. Stat. §§ 13.01, 13.607 (2018), and a provision of the Minnesota Election Law, Minn. Stat. § 201.091 (2018 & Supp. 2019). Reading together the plain language of these statutes, we conclude that registered Minnesota voters have access to "public information lists" as defined by law, as well as to information provided by the secretary of state. But the Legislature has restricted access to the other information sought by respondents. Accordingly, we reverse the court of appeals.

FACTS

Minnesota has a "single, official, centralized, interactive computerized statewide voter registration list . . . [that] constitutes the official list of every legally registered voter

in the state." Minn. Stat. § 201.021 (2018). This list is contained in the statewide voter registration system, known as the SVRS. *See* Minn. Stat. § 201.081, subd. 1(a) (2018) ("The statewide registration system is the official record of registered voters."); *see also* Minn. Stat. § 201.022, subd. 1 (2018).

"The secretary of state is responsible for defining, maintaining, and administering" the SVRS. Minn. Stat. § 201.021. As presently defined and maintained, the SVRS is a database of records on each of the 5.42 million individuals who have registered at some point to vote in Minnesota, of which 3.26 million are currently registered. Each voter's record in the SVRS has up to 19 data fields: full name; voter identification number; address; date of birth; phone number; e-mail address; driver's license number or last four digits of a social security number; county of residence; election district information; registration status; basis for registration challenge, if any; registration submission method; original registration date; date(s) of updated registration(s); list of prior elections in which the voter voted; status as a voter whose data has been removed from a public information list to protect the voter's safety; status as a recurring absentee voter; previous name, if any; and out-of-state previous address, if any.

The SVRS exists because Minnesota statutes require county auditors and the secretary of state to cooperate to build and maintain it. Under section 201.021, the county auditors are the chief registrars of voters and the chief custodians of their counties' registration records. Under section 201.091, subdivision 1, each county auditor prepares and maintains a current list of registered voters in the county—the "master list." These lists are entered into the SVRS. Minn. Stat. § 201.091, subd. 1.

To maintain the SVRS as an "interactive computerized" list, Minn. Stat. § 201.021, the secretary of state and the county auditors work together to update the master lists, Minn. Stat. § 201.091, subds. 1–2. The "updated master list" for each precinct is prepared for absentee voting, and a "final corrected master list" is prepared for election-day voting. Minn. Stat. § 201.091, subd. 2. The Legislature has expressly limited access to the master list; "[t]he information contained in the master list may only be made available to public officials for purposes related to election administration, jury selection, and in response to a law enforcement inquiry . . . ." *Id.*, subd. 1.

The Legislature has allowed some of the information in the SVRS to be made available for inspection in the form of a "public information list." *Id.*, subd. 4. The statute spells out who has access to the public information list, for what purposes, and what information is on it.

The public information list is not generally available to anyone—it is only available to Minnesota voters. *Id.*, subd. 5. To inspect or acquire the list, voters must state in writing that they will not use "any information contained in the list for purposes unrelated to elections, political activities, or law enforcement." *Id.*, subd. 4. The information included on the public information list is: voter name (unless withheld for safety), address, year of birth, voting history, telephone number (if provided), and voting district. *Id.* Other voter registration information is not on the public information list.

The statute also contains special protections for certain kinds of voter registration information. Political party choice for the presidential nomination primary is "private data

on individuals" under the Data Practices Act,[1] but must be provided to the applicable political party chair. *Id.*, subd. 4a. Also expressly excluded from *both* the public information list and from a response to a law enforcement inquiry are "[r]estricted data": date of birth, social security number, driver's license number, identification card number, military identification card number, and passport number. *Id.*, subd. 9.

With this statutory background in mind, we turn to the facts of this case. Andrew Cilek is the executive director of the Minnesota Voters Alliance, a non-profit organization concerned with government and electoral oversight. On July 21, 2017, Cilek, on behalf of his organization, sought from the Secretary of State "access to non-private government data" from the SVRS. His request included "[v]oter registration, status and voting history information on every Minnesota voter, whether active, inactive or deleted whom the secretary of state maintains or has maintained voter registration data from January 1st, 2016 to present." Cilek's non-exhaustive list of data being sought included:

- Voter ID #
- First, middle, and last names, and any suffix
- Address
- Phone number (if available)
- Year of birth
- Voter history indicating ballot type (i.e., in-person or absentee)
- Voter status (i.e., active, inactive, deleted, challenged, etc.)
- Reason for challenge or other status (i.e., felon, address, etc.)
- All other information routinely provided on the public information CD ("detailed history for all elections").

[1] " 'Private data on individuals' are data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data." Minn. Stat. § 13.02, subd. 12.

Cilek later clarified his request. He said that he did not seek data considered restricted under Minn. Stat. § 201.091, subd. 9; data regarding voters who, for reasons of safety, have withheld their information from public information lists under Minn. Stat. § 201.091, subd. 4; and data regarding voters who are participants in the Safe at Home Program.[2]

On August 1, 2017, the Secretary responded, informing Cilek that he was entitled to information in the SVRS related to currently registered Minnesota voters—essentially, the public information lists—including "voter name, voter address, year of birth of the voter, voting history, information on the voting districts in which the voter resides and is eligible to vote, and the telephone number, if available." The Secretary declined to provide the rest of the information Cilek sought. Specifically, the Secretary declined to produce SVRS information on voter status, the reasons for challenges to voter registration, and information related to individuals who were not currently registered voters.

Cilek sued the Secretary, alleging violations of the Data Practices Act and seeking injunctive and declaratory relief to compel production of the requested data. The district court granted summary judgment to Cilek, and ordered the Secretary to produce the requested data. The court of appeals affirmed. *Cilek v. Office of the Minn. Sec'y of State*, 927 N.W.2d 327 (Minn. App. 2019). We granted the Secretary of State's petition for further review.

[2] The Safe at Home Program is a confidentiality program that reclassifies data on certain individuals as private. *See* Minn. Stat. § 13.045.

ANALYSIS

This appeal arises out of the district court's grant of summary judgment. The facts are undisputed and summary judgment was granted on a question of law. As a result, our review is de novo. *State v. Minn. Sch. of Bus.*, 899 N.W.2d 467, 471 (Minn. 2017). The question of statutory interpretation before us presents a question of law that we also review de novo. *Bruton v. Smithfield Foods, Inc.*, 923 N.W.2d 661, 664 (Minn. 2019). The object of statutory interpretation "is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). "If the intent is clear, we apply the statute according to its plain meaning." *Fish v. Ramler Trucking, Inc.*, 935 N.W.2d 738, 741 (Minn. 2019). "[W]e do not add words or phrases to unambiguous statutes or rules." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014).

This case requires that we interpret—and read together—portions of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01–.90, and the Minnesota Election Law, as defined by Minn. Stat. § 200.01 (2018). The Data Practices Act "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. It prescribes a general regime by which data is presumed to be public and accessible unless classified as "nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." Minn. Stat. § 13.03, subd. 1; *see also id.*, subd. 3.

As the Data Practices Act makes clear in its opening section, however, this regime has its exceptions, including some not contained in chapter 13. Some of the Data Practices Act's sections refer to—and, essentially, incorporate—statutory sections codified outside

of the Act. Minn. Stat. § 13.01, subd. 5(a). Those sections perform one or more of three functions; notwithstanding the general provisions of the Act that follow, they "classify government data as other than public, place restrictions on *access* to government data, or involve data sharing." *Id.* (emphasis added).

Relevant here, Minn. Stat. § 13.607 (2018), part of the Data Practices Act, expressly limits the Act's general regime when campaign and election data are at issue. Mirroring the language of section 13.01, subdivision 5(a), section 13.607, subdivision 1, provides that certain sections codified outside chapter 13 "classify campaign, ethics, and election data as other than public, place restrictions on *access* to government data, or involve data sharing."[3] (Emphasis added.) Five of the succeeding subdivisions in section 13.607 speak of classification and four speak of access, using the terms "disclosure" or "access." All nine subdivisions limit data available to the public notwithstanding the rest of the Data Practices Act. Minn. Stat. § 13.607, subds. 2–8.

Subdivision 6 deals expressly with "registered voter lists." Subdivision 6 states: "Access to registered voter lists is governed by section 201.091." Although "access" is not defined in the Data Practices Act, its plain and ordinary meaning relative to information is the "freedom or ability to obtain or make use of." *Webster's Ninth New Collegiate Dictionary* 49 (1990). An example of such access would be to "make use of . . . classified material." *The American Heritage Dictionary* 10 (5th ed. 2011). And "governed by"

[3] As demonstrated by section 13.01, subdivision 5(a), and section 13.607, subdivision 1, the Legislature limits data availability either by classification or by access restrictions. In the case of voter registration lists, the Legislature did the latter. Minn. Stat. § 13.607, subd. 6; Minn. Stat. § 201.091, subds. 1, 4. Either limitation is effective.

means "[t]o exercise a deciding or determining influence on." *The American Heritage Dictionary* 761 (5th ed. 2011).

Therefore, regardless of how the data in registered voter lists would be *classified* under the Data Practices Act, the plain language of the Act itself limits *access*—the right to obtain or use—to that which is allowed in the governing statute, Minn. Stat. § 201.091. No other interpretation is reasonable. Thus, Cilek's data practices request for access to information from the registered voter lists depends on whether he is entitled to the information under section 201.091. If so, he has a right to access. If not, he has no right to access.

Turning now to Cilek's request, the Secretary of State provided to Cilek—in an electronic medium—all of the information on the public information list, which included the name, address, year of birth, and voting history of each registered Minnesota voter. The Secretary thereby complied with section 201.091, subdivisions 4 and 5.

Cilek, though, contends that the Secretary was required to provide more. He asserts that the Secretary should not have withheld three categories of information: voter status, the reasons for challenges to voter registration, and information related to individuals who are not currently registered voters.

We disagree. We conclude that the Secretary of State followed the plain language of the Data Practices Act and the Minnesota Election Law. Section 13.607, subdivision 6, clearly restricts access to registered voter lists to what is allowed by section 201.091. Subdivisions 4 and 5 of section 201.091 clearly give access only to Minnesota voters and then only to the information on the public information lists. Information not on the public

information lists is not accessible, except to public officials for specified purposes. Minn. Stat. § 201.091, subd. 1. Thus, because he is not a public official, Cilek has no legal right of access to the three categories of information withheld by the Secretary. In declining access to that information, the Secretary of State followed the law.[4]

It is true that, under subdivision 4, "[t]he secretary of state *may* provide copies of . . . other information from the statewide registration system for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute." (Emphasis added.) Subdivision 4 appears to permit the secretary to provide more information than is on the public information list. *See* Minn. Stat. § 645.44, subd. 15 (2018) (" 'May' is permissive.").

In this instance, the Secretary chose not to invoke that permissive authority. We need not reach the question of the circumstances under which a secretary's decision not to provide such information would constitute an abuse of discretion. We need not because

[4] The dissent claims that this analysis both "ignores" the Data Practices Act's general presumption that data is public and turns it "on its head." Hardly. We fully acknowledge the Act's general presumption—a key feature since it was added to the Act in 1991. *See* Act of June 3, 1991, ch. 319, § 1, 1991 Minn. Laws 2170, 2170 (codified at Minn. Stat. § 13.01, subd. 3 (2018)). But one year later, in 1992, the Legislature recognized that other statutes "place restrictions on access to government data." Act of Apr. 29, 1992, ch. 569, § 4, 1992 Minn. Laws 1916, 1918 (codified as amended at Minn. Stat. § 13.01, subd. 5(a) (2018)). A separate amendment to the Act, in 1997, made clear—in the plain language upon which we rely today—that access to voter registration lists is governed by section 201.091, not by the general presumption. Act of June 30, 1997, ch. 3, § 17, 1997 Minn. Laws 1st Spec. Sess. 3188, 3196 (codified as amended at Minn. Stat. § 13.607, subd. 6).

Cilek does not attack the Secretary's decision in that way.[5] Based on his request, Cilek had access to—and received—all of the data to which he, as a Minnesota voter, was entitled as a matter of law.

Cilek makes two additional arguments as to why the Secretary of State's decision not to give Cilek access to more voter registration information was unlawful. First, he attempts to distinguish between "data" and "lists," arguing that, even if the Data Practices Act cedes authority to section 201.091 over "lists," it does not cede authority over "data." Cilek's distinction is one without a difference. By statute, the entirety of Minnesota's official "statewide voter registration list," Minn. Stat. § 201.021, is housed within the SVRS, and incorporates county lists, *see* Minn. Stat. § 201.022, subd. 1. A list is composed of data or, as the Legislature put it, a list has "information" within it. Minn. Stat. §§ 201.022, subd. 1, 201.091, subds. 4–5. It would be nonsensical to say that the Legislature limited access to the list, but simultaneously allowed access to all of the information—the data—that makes up the list. To the contrary, the Legislature made clear in section 13.607, subdivision 6, and section 201.091, what information is accessible, and for what purposes.

Second, Cilek argues that some of the data he seeks, including voter status and the reasons for challenges to voter registration, are accessible as "voting history" under the definition of public information lists in section 201.091, subdivision 4. The Secretary of

[5] At oral argument, counsel agreed that Cilek had not pleaded that the Secretary had abused his discretion. Therefore, we do not decide whether he did. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

State responds that voting history does not include a voter's present status, but whether a specific voter has voted in certain elections. We agree with the Secretary that voter history means whether and when a registered voter has voted in the past. *See, e.g.*, Minn. Stat. § 201.171 (2018) (stating that, "[w]ithin six weeks after every election, the county auditor shall post the voting history for every person who voted in the election"; a late or rejected absentee or mail ballot "is not considered voting history for the purpose of public information lists available under section 201.091, subdivision 4"); Minn. Stat. § 204B.40 (2018) ("No polling place roster may be inspected until the voting history for that precinct has been posted.").

In summary, the Data Practices Act provides that certain restrictions on access to government data are governed by sections codified outside of the Act. In the case of voter registration lists, access is governed by Minn. Stat. § 201.091, part of the Minnesota Election Law. Under that statute, and as a Minnesota voter, Cilek has access to the information on the public information lists. But he does not have access to the voter registration information not on the public information lists. The Secretary of State interpreted the law correctly.

In so ruling, we state what the law is, and express no opinion about what it should be. *See Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 213 (Minn. 2014) (stating that when a statute "needs revision in order to make it embody a more sound public policy, the Legislature, not the judiciary, must be the reviser"). Access to "Big Data" about Minnesota voters requires the balancing of policy values such as transparency, privacy, and discretion. Such balancing is the province of the Legislature that wrote the Data

Practices Act and the Minnesota Election Law, the statutes whose words we have read and interpreted today.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.

D I S S E N T

GILDEA, Chief Justice (dissenting).

The majority acknowledges that the Data Practices Act, Minn. Stat. §§ 13.01–.90 (2018), presumes that government data is public. But the majority ignores this presumption and relies on a portion of the Minnesota Election Law, Minn. Stat. § 201.091 (2018 & Supp. 2019), to conclude that certain data the government has on registered voters is not public. According to the majority, because the Election Law permits public access to a "public information list," the Secretary of State may deny public access to voter registration data that is not part of a public information list. Because the majority flips the presumption of public access and permits the Secretary of State to make his own classifications of government data, I respectfully dissent.

The Data Practices Act provides that "[a]ll government data collected, created, received, maintained or disseminated by a government entity *shall be public* unless classified by statute" or other law as not public. Minn. Stat. § 13.03, subd. 1 (emphasis added). Public data is data that is "accessible to the public." Minn. Stat. § 13.02, subds. 14–15; *see KSTP-TV v. Ramsey Cty.*, 806 N.W.2d 785, 789 (Minn. 2011) (explaining that " 'not public data' is all other government data"). Because there is no statute or other law that classifies the disputed data that respondents seek as not public, under the plain language of the Data Practices Act, the data is necessarily public.

An example helps to illustrate how the Data Practices Act is designed to work. Respondents seek data relating to the reason voters were challenged at registration. There is no dispute in this case that the government is in possession of this data. Under the Data

Practices Act then, this data is "government data[,]" and it is public unless some other statute "classifie[s]" it as other than public. Minn. Stat. § 13.03, subd. 1.

Rather than adhere to the statute's plain language, the majority concludes that the data respondents seek is not public because it is not included on the "public information list" described in Minn. Stat. § 201.901. But nothing in section 201.901 or in any other statute classifies this data as non-public. The majority does not contend otherwise or point to any provision anywhere that classifies the data as something other than public.

The majority instead concludes that the data at issue is not public because the Data Practices Act provides that "[a]ccess to registered voter lists is governed by section 201.091." Minn. Stat. § 13.607, subd. 6. This provision does not support the majority's result.

First, subdivision 6 is not about classification of data; it is about access to data. Reading section 13.607 as a whole makes this clear. In subdivisions 3, 3a, 4, 5a, and 8 of section 13.607, the Legislature makes plain that other statutes outside the Data Practices Act address the classification of data (i.e., whether it is public, nonpublic, or private). *See* Minn. Stat. § 13.607, subds. 3–4, 5a, 8 (noting that data is "classified" under cited statutes). Subdivision 6 is not one of these provisions. Subdivision 6 is not about classification of data; subdivision 6 is about access to data. *See* Minn. Stat. § 13.607, subd. 6 ("Access to registered voter lists is governed by section 201.091."). When the Legislature uses different words, as it did in section 13.607, we presume that the Legislature means different things. *League of Women Voters of Minn. v. Richie*, 819 N.W.2d 636, 662 (Minn. 2012) (Page, J., dissenting) ("[W]hen the Legislature uses two different words in the same statute,

the court presumes that the Legislature means two different things."). The majority effectively ignores this principle, but that disregard is not consistent with our precedent. Because subdivision 6 is not about classification but about access, it does nothing to change the public classification of the data at issue.[1]

The Election Law itself confirms this interpretation because there is nothing in the Election Law that classifies the disputed voter registration data as not public. The majority cites provisions of section 201.091 that address access to public information lists. Because these provisions "clearly give access only to Minnesota voters and then only to the information on the public information lists[,]" the majority reasons that "[i]nformation not on the public information lists" is generally "not accessible." In other words, the majority holds that voter registration data is not public unless specifically designated as public. This reasoning turns the presumption of public access on its head. *See* Minn. Stat. §§ 13.01, subd. 3, 13.03, subd. 1.

Moreover, even if Minn. Stat. § 13.607, subd. 6, were applicable, it would not support the majority's desired result because access to registered voter lists is not at issue here. This appeal concerns voter registration data—data that is not part of a registered

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[1] The majority's one-word proclamation that it is really not re-writing the Data Practices Act is hardly persuasive. Neither is the majority's reliance on some of the Data Practices Act's legislative history. The majority does not contend that there is ambiguity in the statute and so turning to legislative history is inconsistent with the direction the Legislature has given us in Minn. Stat. § 645.16 (2018) (noting that "[w]hen the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . . legislative history"), and with our own precedent, *e.g.*, *Svihel Vegetable Farm, Inc. v. Dep't of Empl't & Econ. Dev.*, 929 N.W.2d 391, 394 n.4 (Minn. 2019) (declining to address legislative history because the statute was not ambiguous).

voter list or public information list. *See* Minn. Stat. § 201.091, subd. 4 (addressing access to "a list of registered voters prepared from the public information list"). Therefore, the majority's reliance on the exception in the Data Practices Act and the access provisions in the Election Law is misplaced.

In sum, the majority's holding gives the Secretary of State discretion to classify voter registration data as not public, even if the data is not designated by any statute as not public. This holding conflicts with the central tenet of the Data Practices Act that "all 'government data' shall be public unless otherwise classified by statute[.]" *Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991). Decisions about the classification of government data and public access to voter registration data are policy matters for the Legislature. As the majority recognizes, if the law needs revision, "the Legislature, not the judiciary, must be the reviser." *Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 213 (Minn. 2014). Accordingly, I would affirm the court of appeals and conclude that respondents are entitled to the disputed data because the data is public under the Data Practices Act.

ANDERSON, Justice (dissenting).

I join in the dissent of the Chief Justice.