COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
CASE NO. 21-011

EXECUTIVE BRANCH ETHICS COMMISSION **COMPLAINANT**

FINAL ORDER

ALISON LUNDERGAN GRIMES **RESPONDENT**

The Executive Branch Ethics Commission having considered the entire record herein, including both parties' motions for summary judgment and their responses and replies thereto, the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 27, 2023, and both parties' exceptions thereto, by unanimous vote, hereby adopts in part and modifies in part the Recommended Order of the Hearing Officer and issues this Final Order.

INTRODUCTION

In this case, Respondent filed a motion for summary judgment in favor of Respondent that also included an argument for dismissal of some or all claims on grounds of limitation of action. The Executive Branch Ethics Commission (hereinafter, "EBEC") filed a response, which contained a countermotion for summary judgment in favor of EBEC, to which Respondent replied. Since there are no genuine issues of material fact in dispute, judgment is appropriate as a matter of law.

Respondent is alleged to have violated ethics rules when, as Secretary of State, she directed employees to download voter registration records for her own use and directed

employees to distribute voter registration records in the form of customized voter lists without complying with required governmental processes for doing so or collecting the mandatory fees.

Count I alleges that Respondent used her position to direct subordinates to use state time and resources to download and store information from the Voter Registration System (hereinafter, "VRS") onto flash drives for a personal, private purpose without following the established processes of government to obtain the information. Neither party disputes that a Secretary of State has access to VRS data for performing public duties, but EBEC contends Respondent downloaded the voter lists for a private purpose, without paying the mandatory fees or submitting sworn forms required by law. Respondent admits multiple downloads of the voter information.

Count II alleges that Respondent used her position to direct subordinates to use state time and resources to download and distribute customized voter lists without paying the required fees. Again, Respondent admits downloading and distributing customized voter lists free of charge, but claims it was in response to an Open Records request and fees were not required. The key question is whether voter lists can be distributed via the Open Records Act without payment of fees and whether Respondent in fact was processing an Open Records request.

Additionally, Respondent contends EBEC failed to present evidence that she "knowingly" committed acts that constitute ethical violations and claims she had a "good faith" belief that her actions were lawful. Respondent also claims some or all of the violations are time-barred from prosecution.

The two counts alleged violations of four different provisions in KRS 11A.020. The hearing officer found that dismissal of the alleged violation of KRS 11A.020(1)(c) was appropriate because EBEC did not provide evidence of an essential element: "financial gain for

[Respondent] or any members of [Respondent's] family." We agree. The alleged violation of KRS 11A.020(2), has an essential element "appearing before a state agency." The hearing officer found that there was not clear and convincing evidence that Respondent's actions constituted an appearance before a state agency within the meaning of the term. We agree.

What remains in the two counts are alleged violations of KRS 11A.020(1)(a) and (d), which provide as follows:

> (1) No public servant, by himself or through others, shall knowingly:
> (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest; . . .
> (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

The above provisions must be interpreted and applied consistent with the public policy behind the law as defined in KRS 11A.005, which requires that:

> (a) A public servant be independent and impartial;
> (b) Government policy and decisions be made through the established processes of government;
> (c) A public servant not use public office to obtain private benefits; and
> (d) The public has confidence in the integrity of its government and public servants.

The Commission has the burden to prove Respondent violated KRS 11A.020(1) by "clear and convincing evidence." The Complainant has the burden of proof under KRS 13B.090(7) in establishing the violations. The Commission "has the burden to show the propriety of a penalty. . . . The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue." KRS 13B.090(7).

PRELIMINARY DISCUSSION OF APPLICABLE LAW

I. NO STATUTE OF LIMITATION APPLIES TO THE VIOLATIONS CHARGED

The legislature expressly addressed limitations of action in Chapter 11A, creating a four-year limitation for prosecuting violations of KRS 11A.040, which carry a potential criminal penalty. However, the legislature did not impose any limitation of action on violations of KRS 11A.020. *Livingood v. Transfreight, LLC*, 467 S.W.3d 249, 257 (Ky. 2015) cites:

> "[W]here the legislation includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that the legislature acted intentionally and purposefully in the disparate inclusion or exclusion." *Turner v. Nelson,* 342 S.W.3d 866, 873 (Ky.2011) (citing *Palmer v. Commonwealth*, 3 S.W.3d 763 (Ky.App.1999).

Respondent argues this presumption is defeated with regard to limitations of actions if a statute of limitation exists for judicial proceedings that is analogous to the administrative proceeding. Specifically, Respondent argues KRS 413.120(2) applies because, Respondent contends, civil penalties for ethics violations are statutory liabilities and KRS 413.120(2) imposes a five-year limitation for liabilities created by statute when no other time is fixed by the statute creating the liability. Respondent also argues other statutes with different limitation periods are analogous as well.

A difficulty with Respondent's argument is that Chapter 413 applies to judicial proceedings. Ky. Const § 27 divides the power of government into three separate and independent branches: legislative, executive, and judicial:

> The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

EBEC is an Executive Branch agency. It is not part of the judicial branch. An administrative proceeding is not an action within the meaning of general statutes of limitation. *Metts v. City of Frankfort*, 665 S.W.2d 318, 319 (Ky. App. 1984) cites:

> K.R.S. 413.250 provides that an action "shall be deemed to commence on the date of the first summons or process issued in good faith from a court having jurisdiction of the cause of action." CR 3 states that a civil action "is commenced by the filing of a complaint with the court and the issuance of a summons or warning order thereon in good faith." Accordingly, the "action" contemplated by the statutes of limitations involves judicial proceedings.

Even though general statutes of limitation for judicial proceedings do not apply directly to administrative proceedings, they may be relevant in interpreting legislative silence regarding limitations of actions in administrative proceedings. The presumption that legislative silence regarding limitation of action in a particular administrative proceeding was intentional can be defeated if the gist of the administrative proceeding is asserting a claim that could have been asserted in a civil proceeding. The reasoning, and justification for inferring legislative intent to apply civil limitations to a particular administrative proceeding by analogy is that the legislature would not intend that a litigant be able to accomplish administratively what is time-barred judicially.

Natural Resources & Environmental Protection Cabinet v. Kentucky Ins. Guar. Ass'n, 972 S.W.2d 276 (Ky. App. 1997) (hereinafter, "KIGA") imposed a time limitation on an administrative proceeding by analogy to a statute of limitation. *KIGA* does not hold that all administrative proceedings are court proceedings to which statutes of limitation apply. *KIGA* rejected the Circuit Court's reasoning that KRS 413.270 made statutes of limitation applicable to administrative proceedings. *KIGA,* at 280, carefully cites:

> We are unwilling to take this first very significant step of extending the reach of potentially all statutes of limitation to any body [including an

> administrative proceeding] fitting within the expanded definition of "court" in KRS 413.270. However, there are other compelling grounds for concluding that although KRS 413.220(3) is not literally applicable it should and must be applied by analogy [in this case].

The basis for the analogy is an inference that the legislature would not intend to permit a common law action that is time-barred to be pursued in administrative proceedings. *KIGA* cites *Scott Tobacco Co. v. Cooper,* 258 Ky. 795, 81 S.W.2d 588, 590 (1934), in which the court concluded that actions before the former Workmen's Compensation Board must be brought within one year, the "limitation statute with reference to court actions for the recovery of negligently inflicted injuries." because the workers compensation statute, which did not have a statute of limitations at the time, replaced the common law action against an employer for personal injuries with an administrative proceeding. Similarly, *KIGA* itself involved an administrative proceeding with a common law counterpart: *KIGA*, at 281, cites:

> [T]he administrative action at issue here, a bond forfeiture proceeding before a hearing officer of the Cabinet, has no express statutory limitations period. However, a reclamation bond forfeiture proceeding is simply an administrative counterpart to a common law contract action against a surety, a proceeding plainly addressed by KRS 413.220(3). Although not literally applicable, the seven-year period in KRS 413.220(3) applies by analogy.

The rule enunciated in *KIGA,* and before it in *Scott Tobacco Co.,* is if a claim in an administrative proceeding has a common law predecessor or counterpart, and the legislature is silent regarding limitations of action, a court will infer legislative intent to time-bar administrative proceedings if they would be barred for the common law predecessor or counterpart. *KIGA,* at 281, states that a court may infer legislative intent and apply "by analogy the statute of limitation applicable to the common law predecessor to, or counterpart of, the administrative action." The justification for inferring such legislative intent is that the legislature would not want a party to accomplish by administrative proceedings what would be time-barred

in civil court. A prerequisite to the inference of legislative intent in *KIGA*, as well as in authority it cites, is that the administrative proceeding at issue constitutes a replacement or counterpart of a pre-existing common law action. Ethics prosecutions under Chapter 11A have no common law counterpart. Therefore, the legal fiction of inferring legislative intent by analogy to a common-law counterpart in judicial proceedings does not apply to proceedings under Chapter 11A.

These proceedings constitute the Executive Branch policing itself. The proceedings are similar in tenor only to other ethics and disciplinary administrative proceedings. Kentucky courts have declined to apply statutes of limitation by analogy to administrative proceedings involving ethical violations. In *Kentucky Bar Association v. Signer,* 558 S.W.2d 582 (Ky.1977), an attorney disciplined for ethical violations unsuccessfully argued KRS 413.120 barred prosecution for ethical violations. Similarly, *Vance v. Kentucky Office of Insurance,* 240 S.W.3d 675 (Ky App. 2007) involved disciplinary proceedings revoking the license of an insurance agent, who pleaded such action was barred by the statute of limitations in KRS 413.120. The court declined to apply the statute of limitations to those proceedings. Additionally, courts have held, without exception, that statutes of limitation do not apply to disciplinary proceedings against doctors because the state is acting on behalf of the public good. Noralyn O. Harlow, *Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine,* 51 A.L.R.4th 1147 (1987).

Prosecution of violations of KRS 11A.020 are not time-barred.

II. PERSONAL INFORMATION, SUCH AS ADDRESSES AND PHONE NUMBERS, MUST BE REDACTED FROM RESPONSES TO OPEN RECORDS REQUESTS

Respondent contends she distributed the voting lists in response to an Open Records Request, citing as authority a 2020 Franklin Circuit Court opinion issued years after the events in this case that broadly states voting records are public and can be shared via the Open Records

Act. However, under the Open Records Act, not all public records are available for inspection by the public.

If an Open Records Act request is made, a determination must be made whether any of the statutory exemptions to public inspection apply. The statute has an express exemption for information of a personal nature. The Supreme Court of Kentucky, upholding redaction of private information in response to Open Records requests, recognized that "private citizens retain a more than *de minimus* interest in the confidentiality of the personally identifiable information collected from them by the state." *Kentucky New Era, Inc. v. Hopkinsville,* 415 S.W.3d 76, 85 (Ky. 2013). An Open Records Decision of the Kentucky Attorney General, 19-ORD-087, May 10, 2019, cited by Respondent, upholds categorical redaction of identifying information of private individuals, including telephone numbers and addresses, citing 15-ORD-093 and 16-ORD-188. Voter lists contain personal information which "goes above and beyond the information that would normally be granted through an Open Records request" that "the Board [of Elections] is duty bound to guard." Page 4, 07-ORD-155 (July 24, 2007). Therefore, such information would be exempt from public inspection were it requested in an Open Records request.

III. VOTER LISTS MAY NOT BE ACCESSED VIA OPEN RECORDS REQUESTS BECAUSE OF STATUTORY RESTRICTIONS

OAG 88-16 held that the State Board of Elections properly denied a request for copies of precinct lists where the requesting party did not meet the criteria required by KRS 117.025(3)(h). In that opinion, citing what is now KRS 61.878(1)(l) and KRS 117.025(3)(h), the Office of the Attorney General recognized the statutory restriction on the use of precinct lists, stating:

> Under the Open Records Act all public records are subject to public inspection unless those records are excepted from inspection by a statutory enactment. KRS 117.025(3)[h] requires the State Board of elections make available to duly qualified candidates, political party committees and their officials and others the lists of registered voters by precincts with a specific restriction concerning the use of those lists.

An Open Records Decision delivered to the State Board of Elections in 2007 also confirms that distribution of voter lists has been expressly restricted by the legislature and may not be acquired via the Open Records Act – compliance with KRS 117.025 is required. Such statutory restriction is an exemption to inspection by the public under the Open Records Act under KRS 61.878(1)(l). Voter lists contain personal information of an entire precinct or county with the name, address, age code, party, gender, zip code, and a five-year voting history of every voter in the precinct including demographics of the precinct. Page 4 of 07-ORD-155 (July 24, 2007), written by then-Attorney General Greg Stumbo, states;

> Within the exercise of the Board's discretion granted by KRS 117.025(3)(h), the Board is duty bound to guard this information which would provide the requestor with such personal information of an entire precinct or county with the name, address, age code, party, gender, zip code, and a five-year voting history of every voter in the precinct including demographics of the precinct. **This information goes above and beyond the information that would normally be granted through an Open Records Request or a request pursuant to KRS 116.095.**

(emphasis added). Attorney General Stumbo's decision advised that KRS 61.878(l) applied because KRS 117.025 setting forth the process for obtaining voter lists constitutes a statutory restriction by the legislature on the dissemination of those lists. The legislature has created a process specifically governing access to voter lists and distributing them without following that process is prohibited. Distributing voter lists in response to an Open Records request would violate that statutory prohibition and would render meaningless the specific restrictions,

prohibitions, and requirements of KRS 117.025 and deprive the Commonwealth of the mandatory fees prescribed by the legislature.

The requirements of KRS 117.025, and the regulations that implement it, are simple and clear. The individual requesting voter lists must (1) either be a person listed in the statute as qualified or expressly permitted by the Board of Elections in exercise of its discretion to receive the lists; (2) request the lists with a completed and sworn form SBE-84; and (3) pay the fees established in form SBE-84. Specifically, KRS 117.025(3)(i) states that the State Board of Elections *shall*

> Furnish at **a reasonable price** any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question. The State Board of Elections may also furnish the precinct lists to other persons at the board's discretion, **at a reasonable price** to be determined by the board.

(emphasis added). The procedure for requesting lists is set forth in section 5 of 31 KAR 3:010:

> Requests for Voter Registration Lists. A request for voter registration lists **shall be made by submitting a completed Request for Voter Registration Data, form SBE-84,** to the State Board of Elections **with payment of fees established in form SBE-84**.

(emphasis added). By law, form SBE-84 and payment of fees is mandatory. The amount of the fee is set forth in SBE-84. At the time of the events in this case, the fee was $450.00.

IV. PROCESSING AN INFORMATION REQUEST IS NOT, PER SE, TO "APPEAR" BEFORE A STATE AGENCY

The initiating order alleges a violation of KRS 11A.020(2), which only applies when "a public servant appears before a state agency." Courts interpret "appears before a state agency" to mean appear in a representative, advocacy or other capacity before an agency, such as in informal or formal administrative proceedings. *McCulloch v. New York State Ethics Comm'n,* 285 A.D.2d 236, 728 N.Y.S.2d 850 (2001). A request for voter lists would constitute an informal

proceeding but processing the request, by itself, is not enough to constitute appearing as a representative of or advocate for the applicant.

V. RESPONDENT'S SUBJECTIVE IGNORANCE OF THE LAW WOULD NOT MAKE VIOLATION OF IT UNKNOWING

Respondent argues that the Commission has not established that Respondent "knowingly" violated KRS 11A.020 because she believed she was acting legally. This argument has been made before and has been rejected. As stated in *Flint v. Executive Branch Ethics Comm'n*, however, "[i]t is well established that all persons are charged with knowledge of the laws pertaining to their conduct." *Flint v. Exec. Branch Ethics Comm'n*, 981 S.W.2d 132, 134 (Ky. App. 1998), citing *Barker v. Stearns Coal & Lumber*, 291 Ky. 184, 163 S.W.2d 466 (1942). Subjective knowledge or understanding of the law is not required for the violation to be "knowing".

FINDINGS OF FACT

The affirmative findings below are proved by clear and convincing evidence. They are based upon Respondent's admissions, documents tendered by Respondent in her motion for summary judgment, official SBE-84 forms, and facts the parties do not dispute.

1. **Respondent was a public servant at the time of the actions alleged to be ethical violations**. This is undisputed.

2. **Respondent "asked state workers to download information from the Voter Registration System onto flash drives for her use."** Respondent admits this in her Verified Answer to the Initiating Order and Formal Complaint.

3. **Respondent asked state workers to download lists of newly registered voters and the**

purpose of downloading the information was to distribute voter lists to selected Democratic Party candidates. This is undisputed.

4. **Respondent downloaded the lists for this purpose without requiring a Form SBE-84 or fees from any person.** This is undisputed.

5. **Respondent directed creation of the lists and requested that such lists be provided electronically to certain candidates at no cost.** Respondent admits this in her Verified Answer to the Initiating Order and Formal Complaint.

6. **Directing the download and distribution of the voter lists by state workers constitutes use of Respondent's position and influence.** This is indisputable.

7. **Any person requesting voter lists must state under oath on Form SBE-84 the legal basis under which he or she qualifies to have access to them**. This is indisputable. The regulations are clear. The form speaks for itself, is referenced in the regulations, and is set forth in Exhibits A and B, attached to EBEC's summary judgment motion.

8. **Respondent downloaded and caused to be distributed voter lists without requiring such a sworn statement from anyone on form SBE-84 or on any other form.** This is undisputed.

9. **Respondent in the past, as a candidate, paid the required minimum fee (at that time $450.00) to obtain statewide voter lists**. This is undisputed. See Exhibit I, attached to EBEC's summary judgment motion, as well as admissions in Respondent's brief.

10. **No evidence was presented that the Secretary of State's office has ever in the past distributed voter lists pursuant to an Open Records request.** Respondent submitted excerpts of interviews in Exhibits R, S and T with various persons who reported responding to specific requests regarding voting records, such as identifying the precinct in which someone was

registered or verifying that an identified person was a registered voter. However, there is no evidence that voter distribution lists have ever been released pursuant to an Open Records request.

11. **Information downloaded and shared at the direction of Respondent in the present case included personal information protected from disclosure under the Open Records Act, such as addresses and phone numbers.** See Respondent's Exhibit Q. This is not disputed.

12. **The voter lists were downloaded and distributed without following any governmental process.** Based upon records submitted by Respondent in her motion for summary judgment, customized voter lists were sent to eighteen different individuals, but there is no evidence, other than Respondent's assertion in her answer to the Initiating Order, that the lists were requested pursuant to **any** governmental process. Respondent tendered Exhibit Q as proof that an Open Records request was made. Exhibit Q merely shows excerpts from email exchanges between Democratic officials and Secretary of State employees discussing lists they wanted and to whom the lists should be sent. None of those emails identify any legal basis—Open Records, KRS 117.025, or any other authority – under which the lists are requested. There is no evidence that voter lists have ever been released in response to an Open Records request in the past. The only evidence in the record of how voter lists have been lawfully accessed in the past is Respondent's own experience as a candidate, when she paid for voter lists in compliance with KRS 117.025. It is undisputed that voter lists in the present case were distributed without requiring such compliance.

There is no evidence that the requests were processed in conformity with **any** governmental process. There are no Open Records request forms. There also are no SBE-84 forms. There is no evidence documenting receipt of an Open Records request. There is no record

of screening an Open Records request for exemptions such personal information or statutory restrictions. Emails back and forth asking for and routing voting lists utilize personal emails rather than state email.

The manner in which the voter lists were distributed circumvented *any* potentially applicable governmental process. The voter lists Respondent directed to be emailed out included personal information, such as addresses and phone numbers, that must be redacted under the Open Records Act. Form SBE-84 and payment of fees were not required, even though the Board of Elections had been given an Open Records Decision in 2007 that directly explained voter lists could not be obtained through an Open Records Request and that compliance with KRS 117.025 was required. Respondent's Exhibit P contains an excerpt of testimony from Steve Spisak, who manipulated the data into a form useful to the recipients, evidencing awareness that fees should have been paid for the information: "[T]he whole fact that the data was – it just boiled down to the fact that they didn't pay for it."

The evidence also must be weighed in the context of the law, which is clear. Voting lists cannot be released without compliance with KRS 117.025. The Board of Elections was on notice that such was the case by the ORD from 2007 and the plain language of KRS 117.025. Even if the evidence is construed most favorably to Respondent, it remains incredible and implausible that Respondent was processing an Open Records request. Merely asserting after the fact that it was is insufficient to make it a genuine issue of fact that survives summary judgment. And had it been an Open Records request, it was processed contrary to law because personal information was released. There also was no attempt to comply with KRS 117.025. No form SBE-84 was filed nor were any fees paid. The information in this case was released without attempting to follow *any* governmental process.

13. **Respondent conferred a benefit or advantage to which the recipients were not entitled under the proper processes of government.** Recipients of the voter lists received personal information not obtainable under the Open Records Act and only obtainable under KRS 117.025 by submitting forms they did not submit and paying fees they did not pay.

14. **Respondent conferred that benefit knowingly.** She admits she directed release of voter lists without collecting mandatory fees and requiring completed forms SBE-84. The lists also contained personal information not subject to inspection under the Open Records Act. As explained elsewhere hereinabove, her actions violated the law. Ignorance of the law is not an excuse. Per *Flint v. Exec. Branch Ethics Comm'n*, 981 S.W.2d 132, 134 (Ky. App. 1998), all persons are charged with knowledge of the law that applies to their conduct.

15. **Respondent was not laboring under a good faith misunderstanding of the law.** The language of KRS 117.025 and section 5 of 31 KAR 3:010 is unambiguous and can be applied ministerially without exercise of judgment or discretion. Voter lists can only be obtained by submitting an SBE-84 and paying the mandatory fees. The Open Records Decision delivered to the Board of Elections in 2007 also is clear that voting lists cannot be obtained through an Open Records request. As Secretary of State, Respondent would know the requirements of the law she administered. It would be disingenuous and incredible to suggest that she did not. She also knew the requirements of the law from personal experience because she, as a candidate requested voter lists from the Secretary of State's Office and paid the required fees. She also would know that Open Records requests require redaction of personal information. Whether in violation of Open Records or in violation of KRS 117.025 and 31 KAR 3:010, Respondent had to know she was providing information to which the recipients were not entitled.

Respondent cannot claim language in a 2020 Franklin Circuit Court case opinion misled her to think she could distribute voter lists in response to an Open Records Act request because events of the present case took place in 2015-2018. Additionally, the 2020 opinion to which she refers states that KRS 117.025 does not prevent the Secretary of State from *accessing* the VRS to respond to Open Records requests or inquiries about voting records. Access to records by state officials and distribution to the public are two different things. Voting rolls are public records, but some records are statutorily exempt from inspection by the public. Part of responding to Open Records requests is determining the applicability of those exemptions. No court before or after the events of this case has held that the personal information exemption does not apply to voting lists or that KRS 117.025 is not a statutory prohibition exempting voting lists from release under the Open Records Act. The law as described in Attorney General Stumbo's Open Records Decision of 2007 has not changed.

Respondent was not laboring under a good faith misunderstanding of the law when she downloaded and distributed the voting lists. There is not sufficient objective evidence to the contrary to create an issue of fact on this point.

16. **The public has an interest in seeing that public officials collect fees due the Commonwealth and that processes of government be applied equally to all as written.** This is self-evident.

17. **The Commission did not prove on summary judgment that Respondent was "appearing before an agency" within the meaning of KRS 11A.020(2).** Respondent admits directing the download and distribution of voter lists, but admissions and reviewable documents presented with the motions for summary judgment are insufficient to establish by clear and

convincing evidence whether Respondent did so as a representative of or advocate for another person.

CONCLUSIONS OF LAW

1. **The violations alleged in the Initiating Order are not time-barred.**

2. **EBEC did not prove violation of KRS 11A.020(1)(c) or KRS 11A.020(2) by clear and convincing evidence.**

3. **EBEC proved by clear and convincing evidence that Respondent violated KRS 11A.020(1)(a) and (d) as alleged in Counts I and II.**

Count I

Respondent is a public servant that used her position and influence to download voter lists for a personal purpose without following the processes of government. Doing so conflicted with and was in derogation of the public interest which mandates that officials apply the processes of government as they are prescribed by the legislature and collect fees due the Commonwealth under the laws of Kentucky. Respondent's actions involved a substantial conflict between her personal interest and her duties in the public interest. Respondent acted knowingly because she directed the actions that violated the law, and she is charged with knowledge of the law. Additionally, her culpability is not negated, nor the blameworthiness of her actions mitigated, by any good faith misunderstanding of the law.

Count II

Respondent is a public servant that used her position and influence to improperly download and distribute voter lists without following the processes of government. She did so in order to confer a benefit and advantage to others, to wit, access to information to which they were not entitled

without submitting the requisite forms and paying the mandatory fees. Conferring that benefit and advantage to others by circumventing the processes of government accomplished her own private interest rather than the interest of the public. Doing so conflicted with and was in derogation of the public interest which mandates that officials apply the processes of government as they are prescribed by the legislature and collect fees due the Commonwealth under the laws of Kentucky. Respondent acted knowingly because she directed the actions that violated the law, and she is charged with knowledge of the law. Additionally, her culpability is not negated, nor the blameworthiness of her actions mitigated, by any good faith misunderstanding of the law.

Therefore, based on the foregoing Findings of Fact and Conclusions of Law, the Executive Branch Ethics Commission finds that Respondent Alison Lundergan Grimes violated two counts of KRS 11A.020(1)(a) and (d).

IT IS HEREBY ORDERED that:

Respondent pay a fine in the amount of FIVE THOUSAND DOLLARS ($5,000) for the violation of KRS 11A.020(1)(a) and (d) contained in Count I, and

Respondent pay a fine in the amount of FIVE THOUSAND DOLLARS ($5,000) for the violation of KRS 11A.020(1)(a) and (d) contained in Count 2,

For a total payment of TEN THOUSAND DOLLARS ($10,000) to be paid to the Executive Branch Ethics Commission.

This is a final and appealable order.

NOTICE OF APPEAL RIGHTS

You have a right to appeal the Final Order of the agency pursuant to KRS 13B.140, which reads in part:

> (1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court. The Court of Appeals has suggested that an appeal to circuit court is commenced upon the filing of the appeal petition and the issuance of a summons within the 30-day time period for filing an appeal.

SO ORDERED this 19th day of May, 2023.

Executive Branch Ethics Commission

JUDGE ROGER L. CRITTENDEN (RET.), CHAIR
SEN. DAVID K. KAREM (RET.)
CRIT LUALLEN
JUSTICE DANIEL J. VENTERS (RET.)
DAVID SAMFORD

The foregoing was mailed and emailed on May 19, 2023 to the following:

mikewilsonattorney@earthlink.net
Mike Wilson, Hearing Officer
P.O. Box 4275
Lexington, KY 40544-4275

COUNSEL FOR COMPLAINANT:
meena.mohanty@ky.gov
Meena Mohanty, counsel for EBEC
Capital Complex East
1025 Capital Center Drive, Suite 104
Frankfort, Kentucky 40601

StevenT.Pulliam@ky.gov
Steven T. Pulliam, counsel for EBEC
Capital Complex East
1025 Capital Center Drive, Suite 104
Frankfort, Kentucky 40601

COUNSEL FOR RESPONDENT:
jon.salomon@dentons.com
Jon Salomon
Dentons Bingham Greenebaum LLP
3500 PNC Tower
101 South Fifth Street
Louisville, KY 40202-3120

gtrue@truelawky.com
J. Guthrie True
True Guarnieri Ayer LLP
124 W. Clinton St.
Frankfort, KY 40601

Kent@WickerBrammell.com
Kent Wicker
Wicker/Brammell PLLC
323 W. Main Street, Suite 1100
Louisville, KY 40202