IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, Plaintiff, v. MAGGIE TOULOUSE OLIVER, in her official capacity as Secretary of State of New Mexico, Defendant.	No. 1:25-cv-01193-LF-JFR

UNOPPOSED MOTION OF COMMON CAUSE, CLAUDIA MEDINA, AND JUSTIN ALLEN TO INTERVENE AS DEFENDANTS

Common Cause, Claudia Medina, and Justin Allen (collectively, "Proposed Intervenors") respectfully move to intervene as Defendants pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, in the alternative, pursuant to Rule 24(b), and set forth the legal argument necessary to support their motion below. *See* L.R. Civ. P. 7.1(a). Proposed Intervenors append as Exhibit 1 to this motion a proposed motion to dismiss by way of a response to the United States' Complaint, while reserving the right to supplement their response to the Complaint within the time allowed for response by Rule 12 after intervention is granted. *See* Fed. R. Civ. P. 24(c).

INTRODUCTION

The United States seeks to force New Mexico to turn over voters' sensitive personal information and data. It has been widely reported that the United States will use this data to build an unauthorized national voter database and to target voters for potential challenges and disenfranchisement. These efforts are being driven by self-styled "election-integrity" advocates who have previously used ill-conceived database-matching and database-analysis methods to mass-challenge voters and deny the results of elections, and who now serve in or advise the present Administration.

Proposed Intervenors are Common Cause, a nonpartisan, good-government organization dedicated to grassroots voter engagement in New Mexico, whose members and whose own work are at risk by the relief sought by the United States in this case, as well as individual voters who are directly threatened. Proposed Intervenors have an extremely strong interest in preventing the United States' requests for unfettered and total access to the most sensitive aspects of New Mexico's non-public voter data from being used to harass and potentially disenfranchise voters. Common Cause works to expand access to the ballot and civic engagement, as well as to protect civil liberties, and thus has an interest in protecting the voting and privacy rights of its members and all New Mexico voters. Its grassroots work engaging voters is threatened by the United States' request for sensitive, non-public voter data, which risks discouraging New Mexicans from registering to vote. And the privacy and voting-rights interests of Common Cause's members and of the individual voter intervenors are also directly at stake here. Proposed Intervenors include members of some of those groups who are under particular threat from the United States' requested form of relief, such as voters who are naturalized citizens, voters who have a felony conviction, voters who have previously been registered to vote in another state, voters who registered to vote by mail, and voters whose personal information is especially sensitive and who thus have heightened privacy interests.

Proposed Intervenors are entitled to intervene as of right under Rule 24 because this motion is timely, because both their rights and interests are at stake, and because those rights and interests are not adequately represented by the existing Defendant, who unlike Proposed Intervenors, is a state actor, subject to broader public policy and political considerations external to the legal issues presented in this case. Their unique interests in this case, their unique perspective, and their unique motivation to interrogate the purpose of the United States' sweeping request for non-public New Mexico voter data will ensure the full development of the record here and

aid the Court in its resolution of this case. Intervention as of right pursuant to Rule 24(a), or in the alternative permissive intervention pursuant to Rule 24(b), should be granted.

BACKGROUND

A. DOJ's Efforts to Obtain Private Voter Information

Beginning in May 2025, Plaintiff United States, through its Department of Justice ("DOJ"), began sending letters to election officials in at least forty states, making escalating demands for the production of voter registration databases, with plans to gather data from all fifty states. *See* Kaylie Martinez-Ochoa, Eileen O'Connor & Patrick Berry, Brennan Ctr. for Just., *Tracker of Justice Department Requests for Voter Information* (updated Dec. 12, 2025), https://perma.cc/MC3M-VS33.

On September 8, 2025, DOJ sent a letter to the New Mexico Secretary of State ("the Secretary") demanding an electronic copy of New Mexico's entire statewide voter registration database. Compl. ¶¶ 18–20; Letter of Harmeet K. Dhillon to Maggie Toulouse Oliver (Sept. 8, 2025), ECF No. 2-3 ("DOJ Ltr.").[1] DOJ specifically requested private voter information, including registrants' full name, date of birth, address, driver's license number, and the last four digits of the registrant's social security number ("SSN4"). Compl. ¶ 20; DOJ Ltr. 2. DOJ requested that this full and unredacted copy of New Mexico's state voter registration list be provided within fourteen days. DOJ Ltr. 3–4.

Secretary Toulouse Oliver responded on September 22, 2025. Compl. ¶ 25; Letter of Maggie Toulouse Oliver to Harmeet K. Dhillon (Sept. 22, 2025), ECF No. 2-4 ("NM SOS Ltr."). Her letter offered to provide DOJ access to the publicly available, redacted voter registration list, but declined to provide a version containing uniquely

[1] All page cites to documents filed by the United States in this case use the ECF-generated page numbers, located at the top right of each document.

sensitive personally identifiable information absent further information and assurances from DOJ. NM SOS Ltr. 2.

The United States responded by filing this lawsuit, which is one of at least twenty-two that DOJ has initiated recently against states and election officials, seeking to compel them to hand over this sensitive voter data.[2]

Notably, according to public reporting, DOJ's requests for private, sensitive voter data appears to be in connection with novel efforts by the United States to construct a national voter database, and to otherwise use untested forms of database matching in order to scrutinize state voter rolls. According to this reporting, DOJ employees "have been clear that they are interested in a central, federal database of voter information." Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. TIMES, Sept. 9, 2025, https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html. DOJ is coordinating in these novel efforts with the federal Department of Homeland Security ("DHS"), according to reported statements from DOJ and DHS. *Id.*; *see also, e.g.*, Jonathan Shorman, *DOJ is Sharing State Voter Roll Lists with Homeland Security*, STATELINE, Sept. 12, 2025, https://stateline.org/2025/09/12/doj-is-sharing-state-voter-roll-lists-with-homeland-security; Sarah Lynch, *US Justice Dept*

[2] *See* Press Release, U.S. Dep't of Just., *Justice Department Sues Four States for Failure to Produce Voter Rolls* (Dec. 18, 2025), https://perma.cc/HHJ7-JWQQ; Press Release, U.S. Dep't of Just., *Justice Department Sues Four Additional States and One Locality for Failure to Comply with Federal Elections Laws* (Dec. 12, 2025), https://perma.cc/TQ5T-FB2A; Press Release, U.S. Dep't of Just., *Justice Department Sues Six Additional States for Failure to Provide Voter Registration Rolls* (Dec. 2, 2025), https://perma.cc/F5MD-NWHD; Press Release, U.S. Dep't of Just., *Justice Department Sues Six States for Failure to Provide Voter Registration Rolls* (Sept. 25, 2025), https://perma.cc/7J99-WGBA; Press Release, U.S. Dep't of Just., *Justice Department Sues Oregon and Maine for Failure to Provide Voter Registration Rolls* (Sept. 16, 2025), https://perma.cc/M69P-YCVC; *see also* Kaylie Martinez-Ochoa, Eileen O'Connor & Patrick Berry, Brennan Ctr. for Just., *Tracker of Justice Department Requests for Voter Information* (updated Dec. 12, 2025), https://perma.cc/MC3M-VS33.

Considers Handing over Voter Roll Data for Criminal Probes, Documents Show, REUTERS, Sept. 9, 2025, https://www.reuters.com/legal/government/us-justice-dept-considers-handing-over-voter-roll-data-criminal-probes-documents-2025-09-09. One recent article extensively quoted a lawyer who recently departed from DOJ's Civil Rights Division, describing DOJ's aims in this case and others like it:

> "We were tasked with obtaining states' voter rolls, by suing them if necessary. Leadership said they had a DOGE person who could go through all the data and compare it to the Department of Homeland Security data and Social Security data. . . . I had never before told an opposing party, Hey, I want this information and I'm saying I want it for this reason, but I actually know it's going to be used for these other reasons. That was dishonest. It felt like a perversion of the role of the Civil Rights Division."

Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. TIMES MAG. (Nov. 16, 2025), https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html.

According to additional public reporting, these efforts are being conducted with the involvement of self-proclaimed "election integrity" advocates within and outside the government who have previously sought to disenfranchise voters and overturn elections. Those advocates include Heather Honey, who sought to overturn the result of the 2020 presidential election in multiple states and now serves as DHS's "deputy assistant secretary for election integrity."[3] Also involved is Cleta Mitchell, a private attorney and leader of a national group called the "Election Integrity Network," who

[3] *See* Alexandra Berzon & Nick Corasaniti, *Trump Empowers Election Deniers, Still Fixated on 2020 Grievances*, N.Y. TIMES, Oct. 22, 2025, https://www.nytimes.com/2025/10/22/us/politics/trump-election-deniers-voting-security.html (documenting "ascent" of election denier Honey); Jen Fifield, *Pa.'s Heather Honey, Who Questioned the 2020 Election, Is Appointed to Federal Election Post*, PA. CAPITAL-STAR (Aug. 27, 2025), https://penncapital-star.com/election-2025/pa-s-heather-honey-who-questioned-the-2020-election-is-appointed-to-federal-election-post/; Doug Bock Clark, *She Pushed to Overturn Trump's Loss in the 2020 Election. Now She'll Help Oversee U.S. Election Security*, PROPUBLICA, Aug. 26, 2025, https://www.propublica.org/article/heather-honey-dhs-election-security.

has promoted the use of artificial intelligence to challenge registered voters.[4] These actors, including some associated with Ms. Honey, have previously sought to compel states to engage in aggressive purges of registered voters, and have abused voter data to mass challenge and attempt to disenfranchise voters in other states. *See, e.g.*, *PA Fair Elections v. Pa. Dep't of State*, 337 A.3d 598, 600 n.1 (Pa. Commw. Ct. 2025) (determining that complaint brought by group affiliated with current DHS official Honey, challenging Pennsylvania's voter roll maintenance practices pursuant to the HAVA, was meritless).[5]

DOJ's actions also indicate that it may focus on or target specific groups of voters in its use of the requested data. In letters to other states requesting the same private voter data, DOJ also requested information about how election officials,

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[4] *See, e.g.*, Matt Cohen, *DHS Said to Brief Cleta Mitchell's Group on Citizenship Checks for Voting*, DEMOCRACY DOCKET, June 12, 2025, https://www.democracydocket.com/news-alerts/dhs-said-to-brief-cleta-mitchells-anti-voting-group-on-checking-citizenship-for-voters/; *see also* Jude Joffe-Block & Miles Parks, *The Trump Administration Is Building a National Citizenship Data System*, NPR, June 29, 2025, https://www.npr.org/2025/06/29/nx-s1-5409608/citizenship-trump-privacy-voting-database (reporting that Mitchell had received a "full briefing" from federal officials); *see also* Andy Kroll & Nick Surgey, *Inside Ziklag, the Secret Organization of Wealthy Christians Trying to Sway the Election and Change the Country*, PROPUBLICA, July 13, 2024, https://www.propublica.org/article/inside-ziklag-secret-christian-charity-2024-election ("Mitchell is promoting a tool called EagleAI, which has claimed to use artificial intelligence to automate and speed up the process of challenging ineligible voters.").

[5] *See* Carter Walker, *Efforts to Challenge Pennsylvania Voters' Mail Ballot Applications Fizzle*, SPOTLIGHT PA, Nov. 8, 2024, https://www.spotlightpa.org/news/2024/11/mail-ballot-application-challenges-pennsylvania-fair-elections/ (describing mass-challenges and noting connection to Honey and her organization "PA Fair Elections"); *see also* Jeremy Roebuck & Katie Bernard, *'I Can't Think of Anything Less American': Right-Wing Activists' Effort to Nullify Hundreds of Pa. Votes Met with Skepticism*, PHILA. INQUIRER, Nov. 1, 2024, https://www.inquirer.com/politics/election/heather-honey-pa-fair-elections-vote-challenges-pennsylvania-20241101.html (noting sworn testimony regarding PA Fair Elections' involvement in the challenges); Hansi Lo Wang, *Thousands of Pennsylvania Voters Have Had Their Mail Ballot Applications Challenged*, NPR, Nov. 5, 2024, https://www.npr.org/2024/11/04/nx-s1-5178714/pennsylvania-mail-ballot-voter-challenges-trump (same).

among other things, process applications to vote by mail; identify and remove duplicate registrations; and verify that registered voters are not ineligible to vote, such as due to a felony conviction or lack of citizenship.[6] The Administration has also confirmed that it was sharing the requested information with the DHS, which will use the data to "scrub aliens from voter rolls." *See* Jonathan Shorman, *DOJ is Sharing State Voter Roll Lists with Homeland Security*, STATELINE, Sept. 12, 2025, https://stateline.org/2025/09/12/doj-is-sharing-state-voter-roll-lists-with-homeland-security.

B. Proposed Intervenors

Proposed Intervenor Common Cause is a nonpartisan organization committed to, *inter alia*, ensuring that all eligible New Mexico voters register to vote and exercise their right of suffrage at each election. *See* Ex. 2, Decl. of Common Cause New Mexico State Director Molly Swank ("Swank Decl.") ¶¶ 3, 5–7, 9–10. Common Cause expends significant resources conducting on-the-ground voter engagement and assistance efforts, including registering qualified individuals to vote, helping voters navigate the vote-by-mail process, encouraging voters to participate, and assisting voters when they experience problems in trying to vote. *See* Swank Decl. ¶¶ 9–10, 13. The success of these efforts, especially with respect to voter registration, depends on voters' trust that, when they provide personal information to the State as part of the registration

[6] *See, e.g.*, Br. in Supp. of Mot. to Intervene as Defs., Exhibit No. 1, Letter from Maureen Riordan to Sec'y of State Al Schmidt (June 23, 2025), *United States v. Pennsylvania*, No. 25-cv-01481 (W.D. Pa. Oct. 9, 2025), Dkt. No. 37-1 (Pennsylvania); Mot. for Leave to File Mot. to Dismiss, Exhibit A, Letter from Michael E. Gates to Sec'y of State Jocelyn Benson (July 21, 2025), *United States v. Benson*, No. 25-cv-01148 (W.D. Mich. Nov. 25, 2025), Dkt. No. 34-3 (Michigan); Decl. of Thomas H. Castelli in Supp. of State Defs.' Mot. to Dismiss, Exhibit No. 1, Letter from Michael E. Gates to Sec'y of State Tobias Read (July 16, 2025), *United States v. Oregon*, No. 25-cv-01666 (D. Or. Nov. 17, 2025), Dkt. No. 33-1 (Oregon); Decl. of Malcolm A. Brudigam in Supp. of Defs.' Mot. to Dismiss, Exhibit No. 1, Letter from Michael E. Gates to Sec'y of State Shirley Weber (July 10, 2025), *United States v. Weber*, No. 25-cv-09149 (C.D. Cal. Nov. 7, 2025), Dkt. No. 37-2 (California).

process, that information will not be abused, their privacy will be respected, and their right to participate will be honored. *See* Swank Decl. ¶¶ 10–12.

Common Cause also has more than nine thousand members and supporters in New Mexico. *See* Swank Decl. ¶ 4. Those members include New Mexico voters whose personal data will be provided to the federal government if DOJ prevails in this lawsuit. *See* Swank Decl. ¶ 6. Common Cause's members in New Mexico and the individual voters who seek to intervene in this case include voters who are at particular risk of being caught up in DOJ's efforts to remove voters from voter rolls, whether because they have a supposed "duplicate" record in the system, registered to vote by mail, have a felony conviction, and/or are naturalized citizens. *See* Swank Decl. ¶¶ 4, 6, 11–12; Ex. 3, Decl. of Claudia Medina ("Medina Decl.") ¶¶ 3–4 (New Mexico voter who is a naturalized citizen); Ex. 4, Decl. of Justin Allen ("Allen Decl.") ¶¶ 3–6 (New Mexico voter whose voting rights have been restored following felony conviction). They also may include voters whose identifying information is particularly important to keep private, for example due to their particular status as victims of domestic violence. *See* Swank Decl. ¶¶ 8, 11; *see also* N.M. Stat. §§ 40-13B-1 *et seq*. (creating substitute-address program to provide process for victims of domestic violence to protect the confidentiality of their personal information in public records); N.M. Stat. §§ 1-6C-1 *et seq*. (enabling participants in the substitute-address program to participate in elections without compromising their personal information).

Proposed Intervenor Claudia Medina is a registered New Mexico voter who has been a resident of the state for more than three decades. Medina Decl. ¶¶ 2–3. She was born in Colombia, moved to the United States to attend graduate school, and became a naturalized U.S. citizen in 1995. *Id.* The same day she was naturalized, she enthusiastically registered to vote, and she has voted regularly in local, state, and federal elections ever since. *Id.* ¶¶ 4, 7. Voting is "extremely important" to Ms.

Medina. *Id.* ¶ 5. But she is concerned about how DOJ might use her sensitive voter data, particularly in light of widely reported recent examples of the federal government's provision of data to unvetted members of the Department of Government Efficiency ("DOGE") without adequate guardrails or privacy protections. *Id.* ¶ 9. She fears that the federal government's efforts to gain voters' sensitive information will make eligible voters—especially naturalized citizens like herself—"less likely to register to vote or even just to vote." *Id.* ¶¶ 5, 8–9.

Proposed Intervenor Justin Allen is a registered New Mexico voter and lifelong New Mexico resident. Allen Decl. ¶ 2. As a young gay man, Mr. Allen's family did not accept his homosexuality, which led him to engage in "self-defeating behaviors such as substance abuse," resulting in criminal felony convictions and his incarceration. *Id.* ¶ 3. While incarcerated, he came to understand the importance of using his voice and exercising his rights, and after his release, he registered to vote when he became eligible to have his rights restored. *Id.* ¶¶ 4–6. To Mr. Allen, "the ability to vote symbolizes being a full citizen with a voice." *Id.* ¶ 9. He was a leading advocate for New Mexico's Voting Rights Act, including the provision focusing on restoration of formerly incarcerated people's right to vote. *Id.* ¶ 7. But he does not feel safe "knowing that there is a chance that the Trump Administration will have my data and the data of every other registered New Mexican voter," and he believes that formerly incarcerated people, "despite their voting rights having been restored, will either not register to vote or not vote if the Trump Administration has access to their voter registration information." *Id.* ¶ 10.

ARGUMENT

I. MOVANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

In the Tenth Circuit, a party is entitled to intervene as of right under Fed. R. Civ. P. 24(a) upon establishing:

> (1) the application is timely;
>
> (2) the applicant[s] claim[ ] an interest relating to the property or transaction which is the subject of the action;
>
> (3) the applicant[s'] interest may as a practical matter be impaired or impeded; and
>
> (4) the applicant[s'] interest is [not] adequately represented by existing parties.

United States v. Albert Inv. Co., 585 F.3d 1386, 1391 (10th Cir. 2009) (quotation marks and citation omitted). The Tenth Circuit has historically taken a "liberal" approach to allowing intervention, *see, e.g.*, *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996) (quotation marks and citation omitted), and "the requirements for intervention may be relaxed in cases raising significant public interests." *Kane Cnty. v. United States*, 928 F.3d 877, 890 (10th Cir. 2019) ("*Kane Cnty. II*") (citations omitted). As the Tenth Circuit has summarized, "[f]ederal courts should allow intervention where no one would be hurt and greater justice could be attained." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (cleaned up). "The central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention." *Barnes v. Sec. Life of Denv. Ins. Co.*, 945 F.3d 1112, 1121 (10th Cir. 2019) (citation omitted). Because Proposed Intervenors easily meet Rule 24(a)'s requirements, the Court should grant their intervention as a matter of right.

A. The Motion to Intervene Is Timely.

Timeliness is determined "in light of all of the circumstances." *Okla. ex rel. Edmondson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1232 (10th Cir. 2010) (quotation marks and citation omitted). Three non-exhaustive factors are "particularly important: (1) the length of time since the movants knew of their interests in the case; (2) prejudice to the existing parties; and (3) prejudice to the movants." *Id.* (cleaned up). *See also Clinton*, 255 F.3d at 1251 (considering "the relatively early stage of the

litigation and the lack of prejudice to plaintiffs flowing from the length of time between the initiation of the proceedings and the motion to intervene").

This motion is indisputably timely. The United States filed this suit on December 2, 2025, and, upon receiving notice of the suit, Proposed Intervenors promptly prepared this motion. *Cf. W. Energy All. v. Zinke*, 877 F.3d 1157, 1164–65 (10th Cir. 2017) (timeliness satisfied when "conservation groups moved to intervene just over two months" after the complaint was filed, resulting in a "lack of prejudice" to plaintiff); *Clinton*, 255 F.3d at 1251 (timelines satisfied even when intervenor moved to intervene three years after the start of the litigation, considering "the relatively early stage of the litigation and the lack of prejudice to plaintiffs"). Defendant Secretary Toulouse Oliver has not yet filed an answer or a motion to dismiss (and indeed, as of the date of this motion, has not yet been served), meaning that this litigation is at its earliest stages and the existing partes would not be prejudiced by intervention. *See also Clinton*, 255 F.3d at 1251 (considering "the relatively early stage of the litigation and the lack of prejudice to plaintiffs flowing from the length of time between the initiation of the proceedings and the motion to intervene"). In contrast, Proposed Intervenors will be substantially prejudiced absent intervention, given the serious threats that the United States' lawsuit poses to Proposed Intervenors' fundamental rights.

B. Proposed Intervenors Have Concrete Interests in the Underlying Litigation.

Proposed Intervenors have a "sufficient"—*i.e.*, a "significantly protectable"—interest in the litigation. *E.g.*, *Donaldson v. United States*, 400 U.S. 517, 531 (1971). A protectable interest is one that "would be 'impeded by the disposition of th[e] action.'" *San Juan Cnty. v. United States*, 503 F.3d 1163, 1203 (10th Cir. 2007) (en banc), *abrogated on other grounds by Hollingsworth v. Perry*, 570 U.S. 693 (2013) (*quoting Allard v. Frizzell*, 536 F.2d 1332, 1334 (10th Cir. 1976) (per curiam)). Here,

Proposed Intervenors have multiple, independently sufficient interests that support intervention as of right.

First, Proposed Intervenors have a right to privacy in the sensitive voter data the United States seeks. The DOJ Letter demanded that Secretary Toulouse Oliver turn over voters' full name, date of birth, residential address, and driver's license number or SSN4. DOJ Ltr. 2. This type of sensitive personal information is protected from disclosure by New Mexico law. *See* N.M. Stat. § 1-4-5.5(B) (2015); N.M. Stat. § 1-4-50 (2011); N.M. Stat § 66-2-7.1 (2025); N.M. Stat. §§ 1-6C-1, 1-6C-2, 1-6C-4 (2023); N.M. Stat. §§ 40-13B-1, 40-13B-2, 40-13B-8 (2024); N.M. Stat § 1-1-27.1 (2023). It is also protected by federal law, which prohibits the creation of a national voter database of the type that the United States is reportedly seeking to assemble with the data it seeks. *See* 5 U.S.C. § 552a(e)(7) (provision of the federal Privacy Act prohibiting the creation or maintenance of any database "describing how any individual exercises rights guaranteed by the First Amendment," which necessarily includes exercising the right to vote). These privacy interests are significant and inure to each of the individual voter Proposed Intervenors as well as to Common Cause's members who are New Mexico voters. Swank Decl. ¶¶ 10–13; Medina Decl. ¶¶ 8–9; Allen Decl. ¶ 10. Other voters have additional privacy interests in preventing the disclosure of their personal information because of their status as crime victims or some other sensitive designation. *See, e.g.*, Swank Decl. ¶¶ 8, 11.

Second, and based on DOJ's similar data requests to other States, the data DOJ seeks is likely to be used to challenge the voter registration of certain New Mexicans, including voters with felony convictions; voters who have moved within New Mexico or left the state and then returned to New Mexico (but might be deemed "duplicate" voters or "out-of-state" voters due to a shoddy matching system); voters who are naturalized citizens (who may have indicated they were not a citizen on a government form prior to naturalization); and voters who vote by mail. *See supra* 6–

7 & n.6. A number of the individual voter Proposed Intervenors as well as numerous Common Cause members fall within those categories. *E.g.*, Swank Decl. ¶¶ 11–12. For example, Proposed Intervenor Claudia Medina is concerned that the federal government will misuse data about naturalized citizens like herself to curtail their rights. Medina Decl. ¶¶ 8–9. *Cf. Selcuk v. Pate*, No. 4:24-cv-00390-SHL-HCA, 2024 WL 5054961, at *8–9 (S.D. Iowa Nov. 3, 2024) (noting a state purge program, based on database-matching, which purportedly targeted alleged noncitizens that flagged 2,176 voters, of whom at least 88% were citizens eligible to vote, many of them naturalized citizens). Proposed Intervenor Justin Allen likewise fears that formerly incarcerated people like himself are more at risk of being targeted by this Administration. Allen Decl. ¶ 10. Proposed Intervenors, especially those most likely to be targeted using the information DOJ seeks in this lawsuit, have a concrete interest in not being disenfranchised.

Third, Common Cause as an organization has a protectable interest at stake because its core mission as an organization will be harmed if the relief sought is granted. Common Cause's voter registration activities will be harmed because voters will be chilled from registering and participating if they believe their sensitive personal data will be provided to the federal government (and ingested into an unauthorized and illegal national database). *See, e.g.*, Swank Decl. ¶¶ 9–14. Moreover, Common Cause will be further harmed if and when the sensitive voter data sought by the United States is then used to engage in mass challenges of registered voters by "election integrity" activists wielding the power of the federal government. Such mass challenges will force Common Cause to redirect resources to educating the public about threats to voting rights and mitigating the disenfranchisement of existing voters, and away from their core activities of registering voters and engaging new voters in the democratic process. *Id.* ¶ 12. Courts routinely find that nonpartisan public interest organizations should be granted

intervention in election-related cases, demonstrating the significantly protectable interests such organizations have in safeguarding the electoral process. *See, e.g.*, *Texas v. United States*, 798 F. 3d 1108, 1111–12 (D.C. Cir. 2015); *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-cv-2078, 2020 WL 8262029, at *1 (M.D. Pa. Nov. 12, 2020); *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799–800 (E.D. Mich. 2020); *Kobach v U.S. Election Assistance Comm'n*, No. 13-cv-04095, 2013 WL 6511874, at *1–2 (D. Kan. Dec. 12, 2013); *LaRoque v. Holder*, 755 F. Supp. 2d 156, 162 n.3 (D.D.C. 2010), *rev'd in part on unrelated grounds*, 650 F.3d 777 (D.C. Cir. 2011). This case is no exception. Indeed, in a similar case brought by the Department of Justice challenging California's refusal to turn over sensitive voter information, such organizations were granted intervention. *See* Order, *United States v. Weber*, No. 25-cv-09149, (C.D. Cal. Nov. 19, 2025), Dkt. No. 70; *see also* Op. & Order, *United States v. Oregon*, No. 25-cv-01666, (D. Or. Dec. 5, 2025), Dkt. No. 52.

C. Disposition of this Case May Impair the Interests of Proposed Intervenors.

Not only does this lawsuit relate to Proposed Intervenors' interests, but those interests would be impaired or impeded if the United States succeeds in obtaining its requested remedies. This third element "presents a minimal burden," requiring movants to show only that "it is 'possible' that the interests they identify will be impaired." *W. Energy All.*, 877 F.3d at 1167 (quoting *WildEarth Guardians v. Nat'l Park Serv.,* 604 F.3d 1192, 1199 (10th Cir. 2010)); *Clinton*, 255 F.3d at 1253. "[W]here a proposed intervenor's interest will be prejudiced if it does not participate in the main action, the mere availability of alternative forums is not sufficient to justify denial of a motion to intervene." *Clinton*, 255 F.3d at 1254 (citation omitted).

Here, the threat of impairment is significant. The United States proposes to summarily dispose of voters' interests by obtaining an immediate order compelling the disclosure of private voter data, bypassing the normal civil litigation process and

any discovery into "the basis and the purpose" of their request, 52 U.S.C. § 20703. *See* U.S. Mot. to Compel Prod. of Records, ECF No. 2. This attempt—at the very beginning of the case—to secure the irrevocable disclosure of private voter data to actors who may misuse it in any number of ways, including by mass-challenging or otherwise attacking New Mexicans' right to vote, militates strongly in favor of allowing Proposed Intervenors into the case to represent voters' interests now.

Finally, the Tenth Circuit has recognized that "the *stare decisis* effect of the district court's judgment is sufficient impairment for intervention under Rule 24(a)(2)." *Clinton*, 255 F.3d at 1254. For example, in *Clinton*, a judgment in favor of plaintiffs challenging the designation of a national monument would have "impair[ed] the intervenor[] [environmental groups'] interests in promoting their environmental protection goals by seeking presidential designation of other national monuments in the future." *Id.* Common Cause maintains an active and ongoing interest in protecting the privacy of voters' sensitive personal data. Accordingly, a judgment in favor of the United States—endorsing their legal theories and granting their requested relief—would have a *stare decisis* effect that could harm Common Cause's ability to oppose litigation or other efforts in the future that undermine voters' privacy interests.

D. Secretary Toulouse Oliver's Interests Are Different from Those of Proposed Intervenors.

Proposed Intervenors' burden to show that "existing parties may not adequately represent its interest" is "minimal, and it is enough to show that the representation may be inadequate." *Kane Cnty. II*, 928 F.3d at 892 (cleaned up). Proposed Intervenors meet this minimal burden here.

As the Tenth Circuit has emphasized, "the possibility of divergence of interest need not be great, and this showing is easily made when the representative party is the government." *Id.* at 894 (cleaned up). "[T]he government's representation of the

public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation. In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor. . . . This potential conflict exists even when the government is called upon to defend against a claim which the would-be intervenor also wishes to contest." *Clinton*, 255 F.3d at 1255–56.[7]

This litigation fits these circumstances precisely. As a government official, Secretary Toulouse Oliver has a generalized interest in carrying out her office's legal obligations under federal and state laws, and in minimizing burdens on governmental employees and resources. She also must consider broader public policy concerns, in particular the need to maintain working relationships with federal officials. In contrast, Proposed Intervenors bring a distinct, particular interest to this litigation, making the existing representation inadequate: the perspective of civil rights groups whose sole commitment is to ensuring access to the ballot and individual voters whose own rights are at risk. *T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33, 40 (1st Cir. 2020). There may be arguments and issues that Defendant Secretary Toulouse Oliver may not raise that are critical to the individual voters or organizations like Common Cause. *See, e.g.*, Allen Decl. ¶ 7. As one example, courts have found a risk that political considerations external to the legal issues presented by a case like this can motivate elections officials to pursue a settlement that could

[7] *See also, e.g.*, *Kane Cnty. II*, 928 F.3d at 892–96 (interests of environmental group not adequately represented by United States); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996–97 (10th Cir. 2009) (interests of coal company not adequately represented by United States); *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 307–09 (2022) (interests of political committees not adequately represented by governments defending election law); *Kobach*, 2013 WL 6511874, at *4 (voting rights organization could reasonably diverge interests from those of government defendants).

jeopardize the private information of Proposed Intervenors or of their members. *See Judicial Watch, Inc. v. Ill. State Bd. of Elections*, No. 24-cv-1867, 2024 WL 3454706, at *5 (N.D. Ill. July 18, 2024) (allowing intervention in NVRA case and observing that "potential intervenors can cite potential conflicts of interests in future settlement negotiations to establish that their interests are not identical with those of a named party"); *cf. Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 198 (2022) (reversing denial of motion to intervene where North Carolina Board of Elections was "represented by an attorney general who, though no doubt a vigorous advocate for his clients' interests, is also an elected official who may feel allegiance to the voting public or share the Board's administrative concerns").

These diverging perspectives—between the government's general need to balance various considerations and Proposed Intervenors' personal and particular interest in the privacy of their own data—present a classic scenario supporting intervention. *See, e.g.*, *Am. Farm Bureau Fed'n v. EPA*, 278 F.R.D. 98, 110–11 (M.D. Pa. 2011) (allowing public interest groups to intervene, "[b]ecause the EPA represents the broad public interest . . . not only the interests of the public interest groups" and similar stakeholders); *Kobach*, 2013 WL 6511874, at *4 (finding that applicants who had interests in protecting voter rights, particularly in minority and underprivileged communities, may have private interests that diverge from the public interest of an elections agency).

Proposed Intervenors also bring a different set of perspectives and interests than the other intervenors in this case. Proposed Intervenors here include specific New Mexico voters—Claudia Medina and Justin Allen—who have unique experiences not reflected by the other proposed intervenors, including falling within several categories of particularly vulnerable voters identified in DOJ's requests, such as naturalized citizens, *see* Medina Decl. ¶¶ 3–4, and voters with felony convictions,

see Allen Decl. ¶¶ 3–6. These perspectives are essential to this litigation and vindicating the rights of Proposed Intervenors.

Moreover, the United States requests the data at issue pursuant to purported public disclosure provisions in the Civil Rights Act of 1960, but any requests pursuant to those provisions must come with "a statement of the basis and the purpose therefor." 52 U.S.C. § 20703. The motivations and purposes for DOJ's requests, including whether they will be used to create an unauthorized national database as has been reported, and whether they are a prelude to mass challenges based on faulty data-matching techniques, are highly relevant and potentially dispositive here. Proposed Intervenors' unique interest in pursuing this highly relevant line of factual inquiry and argument, as a good-government, pro-democracy organization and individual New Mexicans whose own rights are at stake, is further strong grounds to support intervention.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION

Should the Court decline to grant intervention as of right, the Court should nevertheless use its broad discretion to grant permissive intervention. *See Kane Cnty. v. United States*, 597 F.3d 1129, 1135 (10th Cir. 2010) ("*Kane Cnty. I*") (citing *City of Stilwell v. Ozarks Rural Elec. Coop.*, 79 F.3d 1038, 1043 (10th Cir. 1996)). Under Rule 24, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). In exercising its discretion to grant permissive intervention, the district court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). The court may also consider "whether the would-be intervenor's input adds value to the existing litigation," "whether the petitioner's interests are adequately represented by the existing parties," and "the availability of an adequate remedy in another action."

Lower Ark. Valley Water Conservancy Dist. v. United States, 252 F.R.D. 687, 691 (D. Colo. 2008) (citation omitted).

For the reasons discussed *supra*, Proposed Intervenors' motion is timely, there will be no delay or prejudice to the adjudication of the existing parties' rights, and Proposed Intervenors' interests are not adequately represented by any of the existing parties. Moreover, Proposed Intervenors' defense goes directly to the issues already presented in this lawsuit, such as (1) whether federal law permits the United States to force New Mexico to give it the personal information sought; (2) whether federal and state legal protections for individual privacy prohibit the disclosure of that information; and (3) whether the United States' motivations and its potential uses for the data sought are permissible. Proposed Intervenors' distinct perspective on the legal and factual issues before the Court will thus complement or amplify Defendant's arguments and sharpen the issues and the quality of the record, aiding the Court in resolving the issues before it.

Because of this unique perspective, district courts routinely grant permissive intervention to advocacy organizations, even when a government party defends a challenged action. *See, e.g.*, *Republican Nat'l Comm. v. Aguilar*, 2024 WL 3409860, at *1–3 (D. Nev. July 12, 2024) (permitting intervention by voter advocacy group as defendant in litigation seeking purge of voter rolls); *Tirrell v. Edelblut*, No. 24-cv-251, 2025 WL 1939965, at *3–4 (D.N.H. July 15, 2025) (allowing "a membership-based organization that represents cisgender athletes" to intervene as a defendant in a suit challenging state restrictions on transgender athletes); Order at 3, *Judicial Watch, Inc. v. Pennsylvania*, Case No. 20-cv-708 (M.D. Pa. Nov. 19, 2020), Dkt. No. 50 (granting permissive intervention in NVRA case to Common Cause and LWV-PA upon finding that "the presence of the intervenors may serve to clarify issues and thereby serve judicial economy" (internal quotation marks, citation, and footnote omitted)); *Donald J. Trump for President, Inc.*, 2020 WL 8262029, at *1 (granting

Rule 24(b) motion where voters and organizations "have an interest in the constitutionality of Pennsylvania's voting procedures, which goes to the heart of Plaintiffs' action" (internal quotation marks and citation omitted)). This Court should do the same here.

CONCLUSION

For the reasons stated above, the Court should grant the Motion to Intervene as Defendants as of right, or in the alternative, via permissive intervention.

Dated: December 18, 2025

Respectfully submitted,

/s Maria Martinez Sanchez

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CERTIFICATE OF CONFERRAL

I hereby certify, pursuant to Local Rule 7.1(a), that counsel for Common Cause, Claudia Medina, and Justin Allen sought the concurrence of Plaintiff United States. Counsel for United States informed counsel for Proposed Intervenors that the United States takes no position on this Motion. As of the filing of this motion, Defendant New Mexico Secretary of State has not yet been served or appeared in the case.

/s Maria Martinez Sanchez
Maria Martinez Sanchez

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2025, a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record who have consented to electronic service. All other counsel will be served in accordance with Federal Rule of Civil Procedure 5(a).

/s Maria Martinez Sanchez
Maria Martinez Sanchez

Exhibit 1

Civil Action No. 1:25-cv-01193-LF-JFR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, Plaintiff, v. MAGGIE TOULOUSE OLIVER, in her official capacity as Secretary of State of New Mexico, Defendant.	No. 1:25-cv-01193-LF-JFR

[PROPOSED] MOTION TO DISMISS OF INTERVENOR-DEFENDANTS COMMON CAUSE, CLAUDIA MEDINA, AND JUSTIN ALLEN

In this action, the United States seeks to compel the disclosure of sensitive personal voter data to which it is not entitled, using the civil rights laws as a pretext. Because the United States failed to disclose the basis and purpose of its request for the data, dismissal should be granted, and its attempt to summarily dispose of this case via an improper motion to compel should be rejected.

The right to vote "'is of the most fundamental significance under our constitutional structure.'" *Ayers-Schaffner v. DiStefano*, 37 F.3d 726, 727 (1st Cir. 1994) (quoting *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)). It is "preservative of all rights" because it serves as a check against tyrannical rule while simultaneously ensuring the competition of ideas amongst our elected officials. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

Congress has repeatedly legislated to protect the franchise, including through Title III of the Civil Rights Act of 1960 ("CRA"), 52 U.S.C. § 20701 *et seq*., as well as the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 *et seq*., and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 *et seq*. These statutes were enacted for the purpose of ensuring that all eligible Americans—especially racial minorities

and voters with disabilities—have the opportunity to participate in free, fair, and secure elections. As the U.S. Department of Justice has itself explained, Title III of the CRA, the election-records provision invoked in the Complaint here, was designed to "secure a more effective protection of the right to vote." U.S. Dep't of Just., Civ. Rts. Div., *Federal Law Constraints on Post-Election "Audits"* (Jul. 28, 2021), https://perma.cc/74CP-58EH (citing *State of Alabama ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 853 (M.D. Ala. 1960) and H.R. Rep. No. 86-956, at 7 (1959)).

The federal government's demand for New Mexico's unredacted voter file—which contains sensitive personal information such as full birth dates, driver's license numbers, and Social Security numbers from every voter in the state—undermines these statutes' core purposes and is contrary to law. The public disclosure of state voting records is important to ensure transparency and the accuracy of the voter rolls, especially by ensuring that citizens are not erroneously removed from the voter records. But releasing the State's voter records *without redaction* and for purposes far afield from protecting voter access would only deter voter participation and undermine the right to vote. That is especially so here where the United States has failed to fully and accurately set forth "the basis and the purpose" for their request for this data, as required by the very statute that it purports to invoke. 52 U.S.C. § 20703. Because the United States has failed to establish its entitlement to a complete, unredacted New Mexico voter file, the Court should dismiss this action.

BACKGROUND

Beginning in May 2025, Plaintiff United States, through its Department of Justice ("DOJ"), began sending letters to election officials in at least forty states, making escalating demands for the production of statewide voter registration databases, with plans to gather data from all fifty states. *See* Kaylie Martinez-Ochoa, Eileen O'Connor & Patrick Berry, Brennan Ctr. for Just., *Tracker of Justice*

Department Requests for Voter Information (updated Dec. 12, 2025), https://perma.cc/MC3M-VS33.

On September 8, 2025, DOJ sent a letter to the New Mexico Secretary of State ("the Secretary") demanding an electronic copy of New Mexico's entire statewide voter registration database. Compl. ¶¶ 18–20; Letter of Harmeet K. Dhillon to Maggie Toulouse Oliver (Sept. 8, 2025), ECF No. 2-3 ("DOJ Ltr.").[1] DOJ specifically requested an unredacted copy of the statewide voter registration list that "contain[s] *all fields*," including "full name, date of birth, residential address, his or her state driver's license number or the last four digits of the registrant's social security number." Compl. ¶ 20; DOJ Ltr. 2. DOJ cited the NVRA, HAVA, and Title III of the CRA for authority for its records request, and stated that "[t]he purpose of this request is to ascertain New Mexico's compliance with the list maintenance requirements of the NVRA and HAVA," but did not elaborate further in this regard or refer to any compliance deficiencies by New Mexico with respect to those statutes' voter list maintenance requirements. Compl. ¶¶ 19–20; DOJ Ltr. 2–3. DOJ requested that this full and unredacted copy of New Mexico's state voter registration list be provided within fourteen days. DOJ Ltr. 3–4.

On September 22, 2025, the Secretary agreed to provide a redacted copy of New Mexico's requested state voter registration list. Letter of Maggie Toulouse Oliver to Harmeet K. Dhillon at 2 (Sept. 22, 2025), ECF No. 2-4 ("NM SOS Ltr."). She also emphasized that New Mexico "fully complies with all requirements of the" NVRA, HAVA, and CRA, and that it "respects the Attorney General's authority to enforce the 'uniform and nondiscriminatory election technology and administration requirements' set out in HAVA and to request information necessary to ascertain New Mexico's compliance with list maintenance requirements in the NVRA." *Id.* at

[1] All page cites to documents filed by the United States in this case use the ECF-generated page numbers, located at the top right of each document.

2. But the Secretary explained that, before she could "provide an unredacted electronic copy of voter records and information in additional fields," she was "obligated by law to request further information, communication, and assurances of privacy protection from DOJ." *Id.* at 2.

First, the Secretary explained that, "[u]nder New Mexico law," she must "redact certain information from the voter registration list before it is made available for inspection, including social security numbers, full dates of birth, driver's license numbers, and contact information of participants in the confidential address programs such as victims of domestic violence and public officials." NM SOS Ltr. 2 (citing N.M. Stat. § 1-4-5.5 (2015); N.M. Stat § 66-2-7.1 (2025); N.M. Stat. §§ 1-6C-2, 1-6C-4 (2023); N.M. Stat. § 40-13B-1 (2024); N.M. Stat § 1-1-27.1 (2023); N.M. Stat. § 1-4-18.1 (2015)).

Second, the Secretary addressed DOJ's claimed sources of authority—the NVRA, HAVA, and the CRA—and why they did not authorize the demand for a full and unredacted copy of New Mexico's state voter registration list. *Id.* at 2. Particularly relevant here, the Secretary took the position that "the CRA requires a statement of the basis and purpose of accessing a full electronic list of sensitive and confidential personal data," and that DOJ had "made no attempt to explain why" evaluating New Mexico's compliance with list maintenance requirements in the NVRA "would require the inspection of unredacted private voter information that is otherwise protected by New Mexico law." *Id.* at 2. The Secretary also expressed concerns "about whether DOJ's request complies with the requirements of the Privacy Act of 1974," and requested further information about "DOJ's purpose for creating this system of records, why 'all fields' are necessary to fulfill this purpose, and how DOJ intends to protect this information against any further dissemination disallowed by the Privacy Act." *Id.* at 3.

Neither the Complaint, nor the documents the United States incorporates by reference or any documents in the public record, indicate that DOJ ever responded to the Secretary's September 22 letter or provided any additional legal arguments to support its position or address the Secretary's objections and concerns. Instead, months later on December 11, 2025, the United States sued Secretary Toulouse Oliver, in a legal challenge extremely similar to suits DOJ has now brought in 21 states and the District of Columbia.[2]

Notably, according to public reporting, DOJ's requests for private, sensitive voter data from New Mexico and other states do not appear to relate to list maintenance under the NVRA and HAVA. Rather, they appear to be in connection with unprecedented efforts by the United States to construct a national voter database, and to otherwise use untested forms of database matching to scrutinize state voter rolls. According to this reporting, DOJ employees "have been clear that they are interested in a central, federal database of voter information." Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. TIMES, Sept. 9, 2025, https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html. DOJ is coordinating in these novel efforts with the federal Department of Homeland Security ("DHS"), according to reported statements from DOJ and DHS. *Id.*; *see also, e.g.*, Jonathan Shorman, *DOJ is Sharing State Voter*

[2] *See* Press Release, U.S. Dep't of Just., *Justice Department Sues Four States for Failure to Produce Voter Rolls* (Dec. 18, 2025), https://perma.cc/HHJ7-JWQQ; Press Release, U.S. Dep't of Just., *Justice Department Sues Four Additional States and One Locality for Failure to Comply with Federal Elections Laws* (Dec. 12, 2025), https://perma.cc/TQ5T-FB2A; Press Release, U.S. Dep't of Just., *Justice Department Sues Six Additional States for Failure to Provide Voter Registration Rolls* (Dec. 2, 2025), https://perma.cc/F5MD-NWHD; Press Release, U.S. Dep't of Just., *Justice Department Sues Six States for Failure to Provide Voter Registration Rolls* (Sept. 25, 2025), https://perma.cc/7J99-WGBA; Press Release, U.S. Dep't of Just., *Justice Department Sues Oregon and Maine for Failure to Provide Voter Registration Rolls* (Sept. 16, 2025), https://perma.cc/M69P-YCVC; *see also* Kaylie Martinez-Ochoa, Eileen O'Connor & Patrick Berry, Brennan Ctr. for Just., *Tracker of Justice Department Requests for Voter Information* (updated Dec. 12, 2025), https://perma.cc/MC3M-VS33.

Roll Lists with Homeland Security, STATELINE, Sept. 12, 2025, https://stateline.org/2025/09/12/doj-is-sharing-state-voter-roll-lists-with-homeland-security; Sarah Lynch, *US Justice Dept Considers Handing over Voter Roll Data for Criminal Probes, Documents Show*, REUTERS, Sept. 9, 2025, https://www.reuters.com/legal/government/us-justice-dept-considers-handing-over-voter-roll-data-criminal-probes-documents-2025-09-09. One recent article extensively quoted a lawyer who recently departed from DOJ's Civil Rights Division, describing DOJ's aims in this case and others like it:

> "We were tasked with obtaining states' voter rolls, by suing them if necessary. Leadership said they had a DOGE person who could go through all the data and compare it to the Department of Homeland Security data and Social Security data. . . . I had never before told an opposing party, Hey, I want this information and I'm saying I want it for this reason, but I actually know it's going to be used for these other reasons. That was dishonest. It felt like a perversion of the role of the Civil Rights Division."

Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. TIMES MAGAZINE, Nov. 16, 2025, https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html.

According to additional public reporting, these efforts are being conducted with the involvement of self-proclaimed "election integrity" advocates within and outside the government who have previously sought to disenfranchise voters and overturn elections. Those advocates include Heather Honey, who sought to overturn the result of the 2020 presidential election in multiple states and now serves as DHS's "deputy assistant secretary for election integrity."[3] Also involved is Cleta Mitchell, a private

[3] *See* Alexandra Berzon & Nick Corasaniti, *Trump Empowers Election Deniers, Still Fixated on 2020 Grievances*, N.Y. TIMES, Oct. 22, 2025, https://www.nytimes.com/2025/10/22/us/politics/trump-election-deniers-voting-security.html (documenting "ascent" of election denier Honey); Jen Fifield, *Pa.'s Heather Honey, Who Questioned the 2020 Election, Is Appointed to Federal Election Post*, PA. CAPITAL-STAR, Aug. 27, 2025, https://penncapital-star.com/election-2025/pa-s-heather-honey-who-questioned-the-2020-election-is-appointed-to-federal-election-post; Doug Bock Clark, *She Pushed to Overturn Trump's Loss in the 2020 Election.*

attorney and leader of a national group called the "Election Integrity Network," who has promoted the use of artificial intelligence to challenge registered voters.[4] These actors, including some associated with Honey, have previously sought to compel states to engage in aggressive purges of registered voters, and have abused voter data to make mass challenges to disenfranchise voters in other states. *See, e.g.*, *PA Fair Elections v. Pa. Dep't of State*, 337 A.3d 598, 600 n.1 (Pa. Commw. Ct. 2025) (determining that complaint brought by group affiliated with current DHS official Honey challenging Pennsylvania's voter roll maintenance practices pursuant to HAVA, was meritless).[5]

DOJ's actions also indicate that it may focus on or target specific groups of voters in its use of the requested data. In letters to other states requesting the same

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Now She'll Help Oversee U.S. Election Security, PROPUBLICA, Aug. 26, 2025, https://www.propublica.org/article/heather-honey-dhs-election-security.

[4] *See, e.g.*, Matt Cohen, *DHS Said to Brief Cleta Mitchell's Group on Citizenship Checks for Voting*, DEMOCRACY DOCKET, June 12, 2025, https://www.democracydocket.com/news-alerts/dhs-said-to-brief-cleta-mitchells-anti-voting-group-on-checking-citizenship-for-voters; *see also* Jude Joffe-Block & Miles Parks, *The Trump Administration Is Building a National Citizenship Data System*, NPR, June 29, 2025, https://www.npr.org/2025/06/29/nx-s1-5409608/citizenship-trump-privacy-voting-database (reporting that Mitchell had received a "full briefing" from federal officials); *see also* Andy Kroll & Nick Surgey, *Inside Ziklag, the Secret Organization of Wealthy Christians Trying to Sway the Election and Change the Country*, PROPUBLICA, July 13, 2024, https://www.propublica.org/article/inside-ziklag-secret-christian-charity-2024-election ("Mitchell is promoting a tool called EagleAI, which has claimed to use artificial intelligence to automate and speed up the process of challenging ineligible voters.").

[5] *See* Carter Walker, *Efforts to Challenge Pennsylvania Voters' Mail Ballot Applications Fizzle*, SPOTLIGHT PA, Nov. 8, 2024, https://www.spotlightpa.org/news/2024/11/mail-ballot-application-challenges-pennsylvania-fair-elections/ (describing mass-challenges and noting connection to Honey and her organization "PA Fair Elections"); *see also* Jeremy Roebuck and Katie Bernard, *'I Can't Think of Anything Less American': Right-Wing Activists' Effort to Nullify Hundreds of Pa. Votes Met with Skepticism*, PHILA. INQUIRER, Nov. 1, 2024, https://www.inquirer.com/politics/election/heather-honey-pa-fair-elections-vote-challenges-pennsylvania-20241101.html (noting sworn testimony regarding PA Fair Elections' involvement in the challenges); Hansi Lo Wang, *Thousands of Pennsylvania Voters Have Had Their Mail Ballot Applications Challenged*, NPR, Nov. 5, 2024, https://www.npr.org/2024/11/04/nx-s1-5178714/pennsylvania-mail-ballot-voter-challenges-trump (same).

private voter data, DOJ also requested information about how elections officials, among other things, process applications to vote by mail; identify and remove duplicate registrations; and verify that registered voters are not ineligible to vote, such as due to a felony conviction or citizenship status.[6]

LEGAL STANDARD

A court must dismiss a complaint if, accepting all well-pleaded factual allegations as true, it does not "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering a motion to dismiss, a court need not accept the complaint's legal conclusions. *Iqbal*, 556 U.S. at 678. Nor can "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," survive a motion to dismiss. *Id.* at 678–79.

To survive a motion to dismiss, a plaintiff's complaint must contain sufficient facts that, if true, state a claim to relief that is plausible on its face. *Hakeem v. Lamar*, 493 F. Supp. 3d 1038, 1043 (D.N.M. 2020) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Mink v. Knox*, 613 F.3d 995, 1000 (10th Cir. 2010)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly,* 550 U.S. at 556). "Thus, the mere metaphysical possibility that some plaintiff could prove some set of facts in support of the pleaded claims is insufficient; the complaint must give the court reason to believe that this

[6] *See also* Br. in Supp. of Mot. to Intervene as Defs., Exhibit No. 1, Letter from Maureen Riordan to Sec'y of State Al Schmidt (June 23, 2025), *United States v. Pennsylvania*, No. 25-cv-01481 (W.D. Pa. Oct. 9, 2025), Dkt. No. 37-1 (Pennsylvania); Mot. for Leave to File Mot. to Dismiss, Exhibit A, Letter from Michael E. Gates to Sec'y of State Jocelyn Benson (July 21, 2025), *United States v. Benson*, No. 25-cv-01148 (W.D. Mich. Nov. 25, 2025), Dkt. No. 34-3 (Michigan); Decl. of Thomas H. Castelli in Supp. of State Defs.' Mot. to Dismiss, Exhibit No. 1, Letter from Michael E. Gates to Sec'y of State Tobias Read (July 16, 2025), *United States v. Oregon*, No. 25-cv-01666 (D. Or. Nov. 17, 2025), Dkt. No. 33-1 (Oregon); Decl. of Malcolm A. Brudigam in Supp. of Defs.' Mot. to Dismiss, Exhibit No. 1, Letter from Michael E. Gates to Sec'y of State Shirley Weber (July 10, 2025), *United States v. Weber*, No. 25-cv-09149 (C.D. Cal. Nov. 7, 2025), Dkt. No. 37-2 (California).

plaintiff has a reasonable likelihood of mustering factual support for these claims." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (emphasis omitted). Moreover, "'plausibility' in this context must refer to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (citations omitted). "The allegations must be enough that, if assumed to be true, the plaintiff plausibly (not just speculatively) has a claim for relief." *Id.*

To perform this review, courts can consider "[f]acts subject to judicial notice" and "documents to which the complaint refers if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity," in addition to the information within the four corners of the complaint. *Duprey v. Twelfth Jud. Dist. Ct.*, 760 F. Supp. 2d 1180, 1193 (D.N.M. 2009).

ARGUMENT

I. THE UNITED STATES' DEMANDS EXCEED THE STATUTORY AUTHORITY OF THE CRA AND ARE CONTRARY TO LAW.

The United States' demand for New Mexico's full and unredacted electronic voter file exceeds its statutory authority under the CRA. Against the backdrop of the turmoil of the Jim Crow era, Congress enacted the CRA, including the public records provisions in Title III, to facilitate investigations of civil rights violations preventing eligible citizens from voting due to discrimination. H.R. Rep. No. 86-956 at 7 (1959) (indicating the purpose of Title III "is to provide a more effective protection of the right of all qualified citizens to vote without discrimination on account of race"). But the Attorney General's access to these records is not unbounded. If the Attorney General makes a demand for records, she must provide "a statement of the basis and the purpose therefor." 52 U.S.C. § 20703.

The United States' records request here is contrary to the CRA for at least two distinct reasons. *First*, in making this sweeping demand for New Mexico's full and unredacted state voter registration list, the United States fails to offer a statutorily sufficient statement of "the basis and the purpose" in support of its records requests. *Second*, to the extent the United States may be entitled to any records under the CRA, those records should be redacted to vindicate the privacy and constitutional rights of New Mexican voters. Nothing in the CRA prevents the appropriate redaction of the sensitive personal information of voters.

A. The United States' Demand for Records Fails to Meet the Requisite Statutory Requirements of the CRA.

Title III of the CRA sets out requirements regarding federal election records, including a requirement in Section 301 for officers of elections to "retain and preserve, for a period of twenty-two months from the date of any" federal election, "all records and papers which come into [their] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election," with certain exceptions regarding delivery and designation of custodians. 52 U.S.C. § 20701. Section 303 requires that "[a]ny record or paper" retained and preserved under Section 301 "shall, upon demand in writing by the Attorney General or [her] representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or [her] representative." *Id.* § 20703. "This demand *shall* contain a statement of *the basis and the purpose* therefor." *Id.* (emphases added).

The federal government's requests to New Mexico fail to provide "a statement of the basis and the purpose" sufficient to support disclosure of the unredacted voter file. *Id*. Contemporaneous case law immediately following the enactment of Title III of the CRA shows that the "basis" is the statement for why the Attorney General

believes there is a violation of federal civil rights law and the "purpose" explains how the requested records would help determine if there is a violation of the law. *Kennedy v. Lynd*, 306 F.2d 222, 229 n.6 (5th Cir. 1962). Indeed, "basis" and "purpose" under Title III of the CRA have consistently been treated as distinct concepts. *See id.*; *In re Coleman*, 208 F. Supp. 199, 199–200 (S.D. Miss. 1962), *aff'd sub nom.*, *Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963). As set forth below, the United States' failure to articulate both a sufficient "basis" and "purpose" underlying its request for the unredacted voter file warrants dismissal of the CRA claim.

The United States alleges that the "purpose" of its request seeking "an electronic copy of New Mexico's complete and current [voter registration list]" was "to ascertain New Mexico's compliance with the list maintenance requirements of the NVRA and HAVA." Compl. ¶ 20; DOJ Ltr. 2. But neither the Complaint nor the DOJ Letter that invoked the CRA supplies a "basis" for why the United States believes New Mexico's list maintenance procedures might violate the NVRA or HAVA in the first place. And neither the Complaint nor the DOJ Letter alleges any evidence of anomalies or anything inconsistent with reasonable list maintenance efforts in the data New Mexico reported to the U.S. Election Assistance Commission. *See* Compl. ¶¶ 17–18; DOJ Ltr.

Moreover, even if the United States had provided a proper "basis" for its demand—and it did not—it fails to explain any connection between its purported "purpose" and the vast scope of its records request here, seeking the full and unredacted New Mexico statewide voter file. It does not attempt to explain why *unredacted* voter files are necessary to determine whether New Mexico has "conduct[ed] a general program that makes a reasonable effort to remove the names of ineligible voters" by virtue of "death" or "a change in the residence of the registrant," 52 U.S.C. § 20507; Compl. ¶ 12. And in fact, such unredacted files are not necessary: A single snapshot of a state's voter list does not and could not provide the

information needed to determine if the state has made a "reasonable effort" to remove ineligible voters under Section 8 of the NVRA. Compl. ¶ 12; 52 U.S.C. § 20507(a)(4)(A)–(B). The NVRA and HAVA both leave the mechanisms for conducting list maintenance within the discretion of the State. *See* 52 U.S.C. § 20507(a)(4), (c)(1); *id.* § 21083(a)(2)(A); *id.* § 21085. The *procedures* carried out by a state or locality establish its compliance; the unredacted voter file does not. Even were the United States to use voter file data to identify voters who had moved or died on New Mexico's voter list at a single point in time, that would not amount to New Mexico failing to comply with the "reasonable effort" required by the NVRA or HAVA. *See, e.g.*, *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 624–27 (6th Cir. 2025) (describing a "reasonable effort" as "a serious attempt that is rational and sensible" and rejecting any "quantifiable, objective standard" in this context).[7] For these reasons, the United States' demand failed on its face to meet the basis and purpose requirements of the CRA.

The basis and purpose requirements under the CRA are critical safeguards. They prevent the statute from being used as a fishing expedition to obtain records for reasons that are speculative, unrelated to the CRA's aims, or otherwise impermissible or contrary to law. The statutory basis and purpose requirements are not perfunctory but require a specific statement as to the reason for requesting the information and how that information will aid in the investigatory analysis. In the context of administrative subpoenas, and specifically in assessing an analogous power by which federal agencies obtain records in service of investigations, courts have found that

[7] Indeed, the inclusion at any particular point in time on New Mexico's voter registration list of some voters who may have potentially moved out of state is to be expected, since Section 8(d) of the NVRA explicitly sets out a specific set of rules and requirements for removals from the voter rolls based on changes of residence, whereby states "shall not remove" voters on these grounds unless these voters directly confirm their change of residence in writing, or unless states first provide notice and then abide by a statutory waiting period until the second general federal election after providing notice. 52 U.S.C. § 20507(d).

the test of judicial enforcement of such subpoenas includes an evaluation of whether the investigation is "conducted pursuant to a legitimate purpose," *United States v. Powell*, 379 U.S. 48, 57 (1964), and that such subpoenas "may not be so broad so as to be in the nature of a 'fishing expedition,'" *Peters v. United States*, 853 F.2d 692, 700 (9th Cir. 1988). Indeed, courts have explained that such a purpose requirement ensures that the information sought is relevant to the inquiry and not unduly burdensome. *See, e.g.*, *F.D.I.C. v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995) (reciting requirements for investigation pursuant to an administrative subpoena).

As such, even if some portion of the voter file were necessary to investigate "New Mexico's compliance with the list maintenance requirements of the NVRA and HAVA," Compl. ¶ 20; DOJ Ltr. 2, the United States has not provided any justification for why the full *unredacted* voter file is necessary to carry out this purported purpose. It is telling that, for decades, DOJ has neither sought nor required a full and unredacted voter file in its investigations regarding compliance with the NVRA. *See, e.g.*, Press Release, U.S. Dep't of Just., *United States Announces Settlement with Kentucky Ensuring Compliance with Voter Registration List Maintenance Requirements* (July 5, 2018), https://perma.cc/G2EZUUA5 (describing letters to all 44 states covered by the NVRA with requests for list maintenance information, but without demanding voter files). The United States' failure to articulate the basis and the purpose for its demand for the full and unredacted voter file in particular is another ground to hold its demand insufficient as a matter of law.

Title III's basis and purpose requirement is moreover especially important here, where massive amounts of public reporting and public, judicially noticeable documents show that DOJ in fact did not disclose the main basis and purpose for its demand for New Mexico's full and unredacted voter file: building an unprecedented national voter file for its own use, to be shared with other agencies like DHS for unlawful purposes. *See supra* 5–8 & nn.2–4 (describing this reporting in detail). The

creation of such a database has never been authorized by Congress, and indeed likely violates the federal Privacy Act. *See* 5 U.S.C. § 552a (e)(7) (provision of the federal Privacy Act prohibiting the creation or maintenance of any database "describing how any individual exercises rights guaranteed by the First Amendment," which necessarily includes exercising the right to vote).

DOJ's failure to fully and accurately provide this information is fatal to its Complaint. Section 303 of the CRA requires a statement of "*the* basis and *the* purpose" of a records request. 52 U.S.C. § 20703 (emphases added). By twice using the definite article here, the statute requires not just *a* basis or purpose among many, but *the* complete basis and purpose underlying the request. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165–66 (2021); *see also, e.g.*, *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 817 (2024) (emphasizing distinction between the definite and the indefinite article). This is yet another ground for dismissal.

Moreover, and even setting aside this fatal deficiency, compliance with the NVRA and HAVA also cannot be the true basis and purpose for the data requests at issue here based on the United States' own more recent statements to states in connection with the requests. In particular, the United States has represented in court that it intended for a number of states to sign a memorandum of understanding ("MOU") as to its requests for state voter files. Hr'g Tr. at 72:21–73:8, *United States v. Weber*, No. 25-cv-09149 (C.D. Cal. Dec. 4, 2025). And far from ensuring compliance with the NVRA and HAVA, the MOU that the United States has asked states to enter into *runs afoul* of those statutes. *See* Mot. to Intervene, Ex. 5, U.S. Dep't of Just., Civ. Div., Confidential Mem. of Understanding ("MOU").

As noted, the NVRA and HAVA require a state to conduct a "reasonable effort" to remove ineligible voters from the rolls, 52 U.S.C. §§ 20507(a)(4), 21083(a)(4)(A), and indeed the NVRA itself is structured so that potentially ineligible voters *must* necessarily stay on the rolls for two election cycles so as to limit the likelihood of a

state removing eligible voters by mistake, *id.* § 20507(d)(1)(B). But the MOU indicates multiple contemplated violations of those statutory requirements. First, the United States seeks to place authority to identify supposed ineligible voters in the hands of the federal government, directly contrary to statutory text, *id.* § 21085 (methods of complying with HAVA "left to the discretion of the State"). MOU at 2, 5. Second, its substantive terms seek to compel states to remove supposedly ineligible voters "within forty-five (45) days," MOU at 5, in a manner that would violate multiple protections of the NVRA, 52 U.S.C. § 20507. This MOU demonstrates that the United States' supposed purpose is not in compliance with federal law but aggrandizing authority to a federal agency that is contrary to federal law.[8]

Under the circumstances here, the United States' invocation of Title III of the CRA fails in myriad ways to provide a sufficient "statement of the basis and the purpose" for its demand, and accordingly does not comply with the CRA. Dismissal is proper.

B. Any Records Disclosed Under the CRA Should Be Redacted to Protect the Constitutional Rights of the Voter.

Even had the United States provided a valid basis and purpose sufficient to support its demands—which it did not—any sensitive personal voter information would still be subject to redaction. The text of Title III of the CRA does not prohibit redactions to protect voter privacy and ensure compliance with federal and state law and the Constitution. Indeed, courts have found that redaction may be required to prevent the disclosure of sensitive personal information that would create an intolerable burden on the constitutional right to vote.

As noted, to justify its demand for data under Title III of the CRA, the United States claims it is investigating New Mexico's compliance with federal election laws,

[8] Dismissal on the grounds set forth above would also be proper under Federal Rule of Civil Procedure 12(c) or after discovery regarding the United States' purported basis and purpose for its requests pursuant to Federal Rule of Civil Procedure 56.

including the NVRA and HAVA. Compl. ¶¶ 18, 20. The United States also discusses additional requirements of the NVRA and HAVA, including the NVRA's requirement in Section 8(i) to maintain "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" upon request. 52 U.S.C. § 20507(i); Compl. ¶¶ 10–15. Anyone—including individual voters, groups that protect the right to vote, and government officials—has the same right to records under the NVRA. Voting rights advocates have consistently relied on the NVRA to investigate infringements on the right to vote, including whether election officials have improperly denied or cancelled voter registrations. *See, e.g., Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 333 (4th Cir. 2012) (nonprofit investigating improper rejection of voter registrations submitted by students at historically Black university).

While the United States does not rely on Section 8(i) of the NVRA for its demand for data in this lawsuit, the cases interpreting this provision are instructive, as courts have consistently found that the information required to be disclosed under the NVRA has limits. These courts have consistently permitted—and in some instances required—states to redact sensitive personal data of voters when disclosing information under the NVRA. Failure to do so can violate the fundamental right to vote protected by the Constitution.

Like the CRA, the NVRA is silent as to how sensitive personal information should be treated during disclosure. *See* 52 U.S.C. § 20703; § 20507(i)(1). Courts must interpret the disclosure provisions in these statutes in a manner that does not unconstitutionally burden the right to vote. *See Olmos v. Holder*, 780 F.3d 1313, 1320–21 (10th Cir. 2015) ("the canon of constitutional avoidance . . . provides that when a particular construction would raise serious constitutional problems, the court will avoid that construction" (citation omitted)). Federal courts throughout the country have consistently struck this balance, interpreting the "all records

concerning" language in Section 8(i) to permit—and even in some cases require—redaction and the protection of confidential materials. As the First Circuit has noted, "nothing in the text of the NVRA prohibits the appropriate redaction of uniquely or highly sensitive personal information in the Voter File," and as such, "the proper redaction of certain personal information in the Voter File can further assuage the potential privacy risks implicated by the public release of the Voter File." *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024); *see also Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 266–68 (4th Cir. 2021) (holding that the potential connection to ongoing criminal investigations and the possibility of erroneously labeling a voter as a noncitizen and subjecting them to public harassment warrants maintaining confidentiality of records). Other courts have consistently recognized that the NVRA disclosure provisions do not compel the release of sensitive information that is otherwise protected by federal or state laws. *See, e.g.*, *N.C. State Bd. of Elections*, 996 F.3d at 264; *Pub. Int. Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1015–16 (D. Alaska 2023); *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 942 (C.D. Ill. 2022), *clarified on denial of reconsideration*, No. 20-CV-3190, 2022 WL 1174099 (C.D. Ill. Apr. 20, 2022); *Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 561–63 (M.D. Pa. 2019). In New Mexico, for example, state election law includes express protections from disclosure for social security numbers, day and month of birth, driver's license numbers, and contact information of participants in the confidential address programs such as victims of domestic violence and public officials. *See* N.M. Stat. § 1-4-5.5(B) (2015); N.M. Stat. § 1-4-50 (2011); N.M. Stat § 66-2-7.1 (2025); N.M. Stat. §§ 1-6C-1, 1-6C-2, 1-6C-4 (2023); N.M. Stat. §§ 40-13B-1, 40-13B-2, 40-13B-8 (2024); N.M. Stat § 1-1-27.1 (2023).

Redaction may also be affirmatively required to the extent the disclosure of such sensitive material would "create[] an intolerable burden on [the constitutional

right to vote] as protected by the First and Fourteenth Amendments." *Long*, 682 F.3d at 339 (quotation marks and citation omitted). The Fourth Circuit in *Long*, even while granting access to a state's voter registration applications for inspection and photocopying, ensured the redaction of Social Security numbers, which are "uniquely sensitive and vulnerable to abuse."[9] *Id.* In coming to this conclusion, the court emphasized that the NVRA reflected Congress's view that the right to vote was "fundamental," and that the unredacted release of records risked deterring citizens from registering to vote and thus created an "intolerable burden" on this fundamental right. *Id.* at 334, 339; *cf. In re Coleman*, 208 F. Supp. 199, 200 (S.D. Miss. 1962) (noting, in the context of a records request under Title III of the CRA, multiple considerations not at issue in that case but which could be "[s]ignificant," including that "[i]t is not claimed that these official records are privileged, or exempt from discovery for any sound reason of public policy," or "that an inspection of these records would be oppressive, or any unlawful invasion of any personal constitutional right"). As such, public disclosure provisions such as those in the NVRA and Title III of the CRA must be interpreted to avoid this unconstitutional burden. *See id.*; *Bellows*, 92 F.4th at 56. The danger of imposing those burdens on New Mexico voters and good-government civic groups like Common Cause is present here. *See* Mot. to Intervene, Ex. 2, Decl. of Molly Swank ¶¶ 11–14; Ex. 3, Decl. of Claudia Medina ¶¶ 8–10; Ex. 4, Decl. of Justin Allen ¶¶ 9–10.

[9] The United States itself has explained—on multiple occasions—that the NVRA does not prohibit the States from redacting "uniquely sensitive information" when disclosing voting records. *See, e.g.*, Br. for the United States as Amicus Curiae, *Pub. Int. Legal Found., Inc. v. Bellows*, No. 23-1361 (1st Cir. July 25, 2024), 2023 WL 4882397 at *27–28; Br. for the United States as Amicus Curiae, *Pub. Int. Legal Found. v. Schmidt*, No. 23-1590 (3d Cir. Nov. 6, 2023), https://perma.cc/3BQ9-36UJ ("States may redact certain information before disclosing Section 8(i) records."); Br. for the United States as Amicus Curiae at 11, 25–26, *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012) (No. 11-1809), 2011 WL 4947283, at *11, *25–26.

As with any requester of records, the United States would be afforded access to voting records under Section 8(i) of the NVRA. But federal court precedent is clear that this access is not unfettered and instead must always be balanced against privacy protections that are vital to ensuring citizens retain their fundamental right to vote. The same privacy and constitutional concerns that federal courts have found warrant redactions under NVRA records requests apply equally to requests for the same records under the CRA. *Cf. Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 281–82 (2024) (Gorsuch, J., concurring) ("[O]ur Constitution deals in substance, not form. However the government chooses to act, . . . it must follow the same constitutional rules."). Indeed, the limited case law considering records requests under the CRA expressly acknowledged that courts retain the "power and duty to issue protective orders," *Lynd*, 306 F.2d at 230, such as the redaction of sensitive fields that courts have consistently determined are entitled to protection from disclosure.

Thus, even were the United States entitled to records under Title III after having provided a valid statement of the basis and the purpose therefor (which it failed to do here), sensitive personal identifying information, including Social Security numbers and driver's license numbers, should similarly be redacted. No matter the statutory mechanism, conditioning the right to vote on the release of voters' sensitive private information "creates an intolerable burden on that right." *Long*, 682 F.3d at 339 (citation omitted).

II. THE UNITED STATES IS NOT ENTITLED TO SUMMARY DISPOSITION OF ITS CRA CLAIM.

The United States makes expansive claims that Title III of the CRA universally "displaces the Federal Rules of Civil Procedure," instead "creating a 'special statutory proceeding'" where "'[a]ll that is required is a simple statement by the Attorney General'" that "a written demand for Federal election records and papers covered by the statute" was made, "explaining that the person against whom

an order is sought has failed or refused to make the requested records" available. Mem. in Supp. of U.S. Mot. to Compel Prod. of Records, ECF No. 2-2 ("Mot. to Compel") at 4–5; *see also* Compl. ¶¶ 1–4. This argument rests entirely on a single set of non-binding cases decided more than sixty years ago, in the early 1960s, in a different circuit and a drastically different historical context, including primarily *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962). *See* Mot. to Compel; *see also* Compl. ¶¶ 1–4.

The United States briefly acknowledges that "[c]aselaw addressing the CRA in any depth is confined to courts within the Fifth Circuit in the early years following the CRA's enactment. Since then, courts have not had occasion to revisit the issue." Mot. to Compel at 4 n.1. But the United States does not provide key historical context that could help explain why this provision of the CRA would have been addressed primarily in the Fifth Circuit—which at the time those cases were decided, during the Jim Crow era, included the southern states of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.[10] In these states, it was widely known that many election officials were recalcitrant in their refusal to register Black voters.[11] It was against this particular backdrop that the Fifth Circuit in *Kennedy v. Lynd* fashioned an expedited, summary procedure for enforcing CRA records requests in those early 1960s cases. In the face of Jim Crow regimes that were using every possible means to block Black Americans from registering to vote, including resistance from judges, the Fifth Circuit in *Lynd* noted that "the factual foundation for, or the sufficiency of, the Attorney General's 'statement of the basis and the purpose' contained in the written demand is not open to judicial review or ascertainment." *Lynd*, 306 F.2d at

[10] "Federal Judicial Circuits: Fifth Circuit," FEDERAL JUDICIAL CENTER, https://perma.cc/9MSD-EFRB (last visited Dec. 9, 2025).

[11] *See generally*, *e.g.*, Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (1976).

226. In that context, "the factual foundation for" the basis and purpose of the Attorney General's request was utterly self-evident, and thus plenary consideration was not required. *See id.* The Fifth Circuit's treatment of Section 303 of the CRA cannot be divorced from that context.[12]

By contrast, here, more than sixty years later, the context of *this* records request could not be more different. The United States has invoked the CRA for unprecedented purposes, to make sweeping demands for extensive voter data with no showing or claim of legal deficiencies or violations of rights, while making unprecedented demands for sensitive, non-public personal identifying information. Even more alarming, there is extensive reporting that the purported basis and purpose of DOJ's request are likely pretextual, and that the data at issue is in fact being sought for unlawful ends.[13]

Nothing in the text of Title III of the CRA insulates the sufficiency of the requirement for a "statement of the basis and the purpose" of a demand from standard judicial review—especially not in the circumstances presented here. *See* 52 U.S.C. § 20703. Indeed, in the more than sixty years since *Kennedy v. Lynd*, the Supreme Court has reaffirmed that "the Federal Rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings." *Becker v. United States*, 451 U.S. 1306, 1307–08 (1981)

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[12] *See also In re Coleman*, 208 F. Supp. 199, 201 (S.D. Miss. 1962) (acknowledging in the context of Title III of the CRA that while "[t]he right of free examination of official records is the rule," there could be "exception[s]" where "the purpose is speculative, or from idle curiosity").

[13] *See supra* 4–7 & nn.2–4 (citing, *inter alias*, Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. TIMES, Sept. 9, 2025, https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html; Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. TIMES MAGAZINE, Nov. 16, 2025, https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html).

(citation and quotation marks omitted); *see also, e.g.*, *Powell*, 379 U.S. at 57–58 (holding that IRS Commissioner bears the burden to establish statutory requirements before enforcement of a tax subpoena); *Sugarloaf Funding, LLC v. U.S. Dep't of Treasury*, 584 F.3d 340, 347–50 (1st Cir. 2009) (allowing summons recipient opportunity to rebut government's prima facie case). *Powell* is especially on point. There, just two years after *Lynd*, the Court held that proceedings to enforce a statute providing the United States with the power to request records in terms that are materially identical to the CRA were governed by the Federal Rules. *Powell*, 379 U.S. at 57–58 & n.18 (citing 26 U.S.C. § 7604(a)); *compare* 26 U.S.C. § 7604(a) ("[T]he United States district court for the district in which such person resides or is found *shall have jurisdiction by appropriate process* to compel such attendance, testimony, or production of books, papers, records, or other data[.]" (emphasis added)), *with* 52 U.S.C. § 20705 ("The United States district court for the district in which a demand is made . . . or in which a record or paper so demanded is located, *shall have jurisdiction by appropriate process* to compel the production of such record or paper." (emphasis added)). The United States' demand for a summary resolution to this case, with no discovery into whether it has a proper statutory basis for its demand, flies in the face of a half-century of precedent as well as the Federal Rules.

Furthermore, even in *Kennedy v. Lynd*, the court in explaining its findings noted that "we are not discussing confidential, private papers and effects. We are, rather dealing with public records which ought ordinarily to be open to legitimate reasonable inspection and which by nature relate directly to the most vital of all public functions—the franchise of the citizen." 306 F.2d at 231. The court also noted that Section 305 of the CRA authorizes only jurisdiction by "appropriate process" to compel document production, which the court had "no doubt" would "include the power and duty to issue protective orders"—such as orders protecting and redacting sensitive information such as that at issue in this case. 52 U.S.C. § 20705; *Lynd*, 306

F.2d at 230. Thus, even in the 1960s, before sensitive personal identifying information such as Social Security Numbers or driver's license numbers were widely collected as part of the voter registration record, and before federal laws had been passed to protect and constrain access to personal information,[14] the court recognized the distinction between the disclosure of "confidential, private" information and "public records" that would already "ordinarily [] be open to legitimate reasonable inspection," *Lynd*, 306 F.2d at 231, and anticipated the possibility that the "duty to issue protective orders" would arise for certain records requests under the CRA, *id.* at 230.

Here, the Secretary has already agreed to provide the *public* records requested by the United States, but has simply declined to provide the "confidential, private" personal identifying information of New Mexico voters that would *not* ordinarily be open to reasonable inspection. *Id.* at 231. To argue that the United States is entitled to summary relief and the forced provision of an unprecedented trove of "confidential, private" information, without *any* review of its statutorily required statement of the basis and the purpose for its demand, would go even further than *Lynd* did in the context of the 1960's Jim Crow South, where, very much unlike here, the federal basis and purpose for the requested voter data were inarguably clear and not apparently pretextual or unlawful. The United States' attempt to end-run the Federal Rules and the CRA's requirements must be rejected.

As the court presiding over the federal government's similar action in California has already recognized, the United States' motion to compel seeks "to reach the ultimate question in this case regarding the production of records," and

[14] *E.g.*, Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (1974); Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994), codified at 18 U.S.C. § 2721 *et seq.*; E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (2002); Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 128 Stat. 3073 (2014), codified at 44 U.S.C. §§ 3351 *et seq.* (2014).

"thousands of voters' lives will be impacted by this case." Hr'g Tr. at 5:3–9, *United States v. Weber*, No. 25-cv-09149 (C.D. Cal. Dec. 4, 2025). That court continued: "And the Court will not be setting the matter on any legal -- I don't want to say gamesmanship, but therefore, the motion for order to produce records pursuant to 52 U.S.C. 20701 is denied." *Id.* This Court should follow suit.

CONCLUSION

The United States' request for New Mexico's full and unredacted electronic voter file should be denied and the Complaint dismissed.

Dated: December 18, 2025

Respectfully submitted,

/s Maria Martinez Sanchez

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Exhibit 2

Civil Action No. 1:25-cv-01193-LF-JFR

DECLARATION OF MOLLY R. SWANK

Pursuant to 28 U.S.C. § 1746, I, Molly Swank, declare as follows:

1. I am over 18 years old and am otherwise competent to testify. I have personal knowledge of the matters in this declaration, and I would testify thereto if I were called as a witness in Court.

2. I live in New Mexico, and I am an eligible registered voter. Voting is the most fundamental form of democratic participation, and I am proud to be a New Mexico voter. I am the New Mexico State Director of Common Cause. I am also a member of Common Cause. I serve as the primary spokesperson and lobbyist for Common Cause in New Mexico, working to protect voting rights, promote ethical government, and to hold power accountable. In my role as New Mexico State Director, I work with multiple coalitions to advance pro-voter reforms and increase civic engagement including through events such as National Voter Registration Day.

3. Common Cause is a nonprofit, nonpartisan membership organization incorporated under the laws of the District of Columbia and registered to do business in New Mexico. Pursuant to its bylaws, Common Cause is organized and operated as a membership organization and brings this action on behalf of itself and in a representative capacity on behalf of its members.

4. Pursuant to its bylaws, Common Cause has defined who qualifies as a member. Under its definition, a “member” of Common Cause is any individual who, within the past two years, (a) made a financial contribution to the organization; or (b) has taken meaningful action in support of Common Cause’s advocacy work. Such meaningful action includes, but is not limited to, signing petitions directed to government officials; participating in letter-writing or phone-banking campaigns; attending town halls, workshops, or rallies organized by Common Cause; or otherwise engaging in activities designed to advance the organization’s mission. There are more than 9,900 Common Cause New Mexico members.

5. Common Cause’s mission is to uphold the core values of American democracy by creating an open, honest, and accountable government that serves the public interest, promotes equal rights, opportunity, and representation for all, and empowers people to make their voices heard in the political process.

6. In New Mexico, Common Cause ensures that New Mexican voices are heard in the political process. Common Cause’s New Mexico members live throughout the state and

include registered voters whose personal information is maintained in the statewide voter registration database held by the New Mexico Secretary of State. If the Secretary discloses the unredacted voter registration file to DOJ, these members' sensitive personal information—including driver's license numbers, and portions of social security numbers—would be unlawfully released, causing an invasion of privacy, chilling participation in the electoral process, and undermining confidence in the integrity of New Mexico elections.

7. Common Cause believes the right to vote is the cornerstone of a functioning democracy. We are committed to ensuring that every eligible New Mexican can register and cast their ballot. Through our advocacy, in the last two decades New Mexico has adopted a number of pro-voter reforms, including same-day voter registration, automatic voter registration, and semi-open primaries. Our advocacy has also resulted in a number of reforms, including post-election audits, that seek to ensure the security and accuracy of our elections. These efforts are not just about increasing participation—they are about ensuring that every voice is heard, and every vote is protected.

8. Common Cause has a history of fighting to protect voter privacy in New Mexico. In 2017, Common Cause supported the establishment of New Mexico's Safe at Home Program (previously the Confidential Address Program), which allows survivors of domestic violence, sexual assaults, or stalking to receive mail using the Secretary of State's address as a substitute for their own, while keeping their actual address confidential.

9. As a nonpartisan democracy reform organization, Common Cause, our volunteers, and coalition allies, regularly assist eligible New Mexicans in registering to vote through community education and outreach. The voters we help are now part of the state's official voter file, and we consider it our duty to safeguard the trust they place in us and in the democratic process.

10. At public engagement events, we invite New Mexicans not only to register but also to verify and update their voter information. As a result, many voters we assist become part of the official statewide voter file. We have a vested interest in protecting the integrity and privacy of that data. Any threat to the security of the voter file, especially one that could result in the misuse of personal information, directly undermines our work, damages public trust, and risks chilling voter participation. We also run targeted communications campaigns, including through social media, to keep New Mexicans informed about key election deadlines and updates. These efforts amplify official messages from the Office of the Secretary of State and other election officials, helping

ensure voters have accurate, timely information to participate confidently in our democracy.

11. Disclosure of the entire, unredacted New Mexico voter file would undermine Common Cause's work and risk harm to our members. We rely on public confidence in the security and integrity of voter data to encourage participation. If voters fear their personal information, like a partial Social Security number or driver's license number, could be misused or exposed, they may avoid registering to vote, decline to update their current voter registration record, or withdraw from civic engagement activities altogether. Such results undermine Common Cause's mission to expand access and participation, especially among historically marginalized communities. Knowing that their personal data could be weaponized to question their eligibility to vote would chill engagement with the democratic process. This is especially true for voters in marginalized communities who already face systemic barriers and distrust government surveillance. Common Cause expends significant resources conducting on-the-ground voter engagement and assistance efforts seeking to register voters and engage voters in the democratic process.

12. Disclosure of the full New Mexico voter file would facilitate unsubstantiated voter challenges, a concern especially for vulnerable communities. Improper and flawed mass challenge programs disproportionately target voters without stable housing or traditional addresses. Common Cause actively works to register and protect these very same disenfranchised New Mexicans. Mass challenges, often filed in bulk by activists, can overwhelm local election officials, divert resources from voter outreach and education, delay or obstruct legitimate registrations and ballot processing. This undermines the infrastructure that Common Cause and our partners rely upon to ensure smooth, inclusive elections. Diverting resources to address these improper activities weakens our capacity to run voter registration drives, educate voters, and mobilize communities. These sorts of challenges also work to revive historical tactics of voter suppression. Private voter challenges have roots in post-Reconstruction laws used to disenfranchise Black voters. Today, they are increasingly used to target voters of color, Indigenous Peoples, young voters, and those who are unhoused or in transient living situations; all of whom Common Cause prioritizes in our voter registration work and lobbying/advocacy supporting the inclusion of their voting rights. If voters' sensitive data is turned over to the federal government and used to promote mass disenfranchisement, Common Cause will be forced to redirect resources to mitigating the disenfranchisement of existing voters and away from its core activities of registering voters and engaging new voters in the democratic process.

13. Common Cause also runs a nonpartisan Election Protection program in New Mexico, which provides critical information and assistance to voters around primary and general elections. These include helping voters navigate the vote-by-mail process, encouraging voters to participate, and assisting voters when they experience problems in trying to vote. It is one of the largest nonpartisan voter protection efforts in the state. The success of this program and our ability to effectively identify and respond to issues that hinder voters depend on voters' trust in the election system. When voters fear their personal information could be misused for partisan or punitive reasons, especially under a federal administration known for voter suppression rhetoric and tactics, they may hesitate to accept help from volunteers, avoid reporting issues at the polls, and disengage from the voting process altogether.

14. If New Mexico discloses the unredacted voter file, this will work to normalize federal overreach into state-run elections, weakening local control and opening the door to future demands for even more intrusive data. It poses a grave threat to voter privacy and public confidence. This threatens the decentralized structure of U.S. elections, which Common Cause defends as a safeguard against authoritarianism.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the 16th day of December, 2025, in Albuquerque, New Mexico.

Molly Swank
New Mexico State Director of Common Cause

Exhibit 3

Civil Action No. 1:25-cv-01193-LF-JFR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

v. Case No. 1:25-cv-01193-LF-JFR

MAGGIE TOULOUSE OLIVER, in her official Capacity as Secretary of State of the State of New Mexico,

Defendant.

DECLARATION OF CLAUDIA MEDINA

Pursuant to 28 U.S.C. § 1746, I, Claudia Medina, declare as follows:

1) I am over 18 years of age and am competent to testify. I submit this declaration in support of a Motion to Intervene in *United States v. Maggie Toulouse Oliver*; 1:25-cv-01193-LF-JFR.

2) I was born in Colombia and came to the United States in 1989 to attend graduate school at the University of New Mexico in Albuquerque, New Mexico. I obtained my Master's Degree in Community and Regional Planning. During school, I met the person who I would eventually marry and have a child with. After graduating, my entire professional life centered around working with immigrants to ensure that their rights are protected. I am now retired.

3) I became a naturalized citizen in 1995 and have lived in Albuquerque since I arrived to the United States.

4) The day I became a citizen is the same day that I registered to vote in Bernalillo County. The naturalization ceremony took place at the convention center in Albuquerque. There was a voter registration booth outside the ballroom where the ceremony took place and I remember being very excited to register to vote.

5) Voting has always been extremely important to me because I see it as an extension of my voice. I have always believed that if you want to see your values reflected in your community, you have to use your voice and voting is one way of doing that.

6) When I lived in Columbia, there was a lot of corruption. Politicians used the people as puppets and I did not trust them. When I came to the United States, I remember thinking that I did not want this country's government to become like Columbia's with respect to the corruption I saw when I was young.

7) Since I became a citizen I have voted in almost every single election – local, state and national. I also regularly talk to my family and friends about the importance of voting and encourage them to get to the polls whenever there is an election.

8) I am concerned about the federal government obtaining access to my and others' voter information because I am afraid about what they will do with the data. As a naturalized citizen who has watched the actions of the first and second Trump Administrations, I know that they are not kind towards immigrants. I fear that they will use the data of naturalized citizens to curtail our rights and to potentially denaturalize us.

9) I also worry that the federal government having access to all of our data will make people less likely to register to vote or even just to vote. A lot of people distrust the government and I think they will be less likely to engage in voting or registering to vote if they do not know what the federal government is going to do with their data. You only have to look at what the

Department of Government Efficiency (DOGE) did to validate those fears. DOGE was created and, soon after, the agency and its unvetted employees had unfettered access to both federal employee data as well as the data of most or all Americans. From what I understand, that data may have been shared with private corporations and other outside parties without any guardrails or privacy protections and we do not know the full extent or for what purpose the data has been used. It is extremely concerning.

10) I love this country very much, despite its imperfections. The rights we enjoy here are worth protecting. It is an honor to be a citizen and to be able to vote and I want to do everything I can to protect that right. I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed December 18, 2025 in Albuquerque, New Mexico

Claudia Medina

Claudia Medina

Exhibit 4

Civil Action No. 1:25-cv-01193-LF-JFR

DECLARATION OF JUSTIN ALLEN

Pursuant to 28 U.S.C. § 1746, I, Justin Allen, declare as follows:

1. I am over 18 years of age and am competent to testify. I submit this declaration in support of a Motion to Intervene in *United States v. Maggie Toulouse Oliver*; 1:25-cv-01193-LF-JFR.

2. I was born and raised in Albuquerque, New Mexico and have been a resident of the state for my entire life.

3. I had a difficult childhood because I am gay and I grew up in a household where you were not allowed to be gay. For a large portion of my life, I did not have a voice nor did I think that my voice mattered. The lack of a sense of belonging even within my own family led me to a place where I engaged in self-defeating behaviors such as substance abuse, which eventually led to criminal felony convictions and incarceration.

4. In prison, I found my voice and learned to advocate for myself and others. I witnessed and endured many abuses during my time in prison. I regularly stood up for myself and other incarcerated people. It was in prison that I learned the importance of using my voice and exercising my rights. I carried that into my life after I was released.

5. I was released from prison in 2015. Before the passage of the New Mexico Voting Rights Act, someone who had been in prison could register to vote after they completed their probation and/or parole. Upon completion of my probation, I attempted to register to vote two times but was denied. In 2018, I tried to register to vote for a third time. The person at the County Clerk's office tried to deny me the right to vote again but I was accompanied by a fellow

activist who began to livestream the encounter. At that point, the County Clerk employee finally agreed that I was eligible to vote and registered me. The difficulty I had registering to vote is what propelled me to start to participate in advocacy around restoring voting rights for formerly incarcerated people.

6. Since 2018, I have remained a registered voter in Bernalillo County.

7. In 2019, I started working with America Votes as a lobbyist in an effort to pass a law that would restore formerly incarcerated peoples' rights to vote. I worked with that organization for two years and then moved to another non-profit organization called Olé. There, I led the efforts to get the New Mexico Voting Rights Act passed. This law included a provision that would allow people who were released from prison but still on probation or parole to register to vote. The law eventually passed and was signed into law. After its passage, I worked to ensure that it was properly enforced. When I had concerns that the Secretary of State's Office was not doing enough to enforce the portion of the NMVRA that granted voting rights to formerly incarcerated people, I did the best I could to push the Secretary of State's Office to fully implement the law.

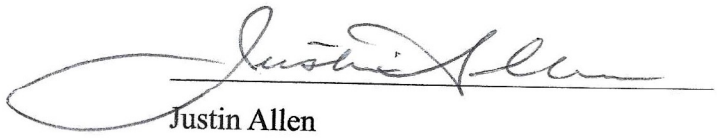
8. I currently work with Dream.org, a non-profit organization with the mission to end mass incarceration in the United States.

9. The right to vote is extremely important to me because I view it as an extension of my voice – something I lacked for a large portion of my life. I do not have allegiance to either of the two political parties and I, frankly, think that both have done immense harm to incarcerated and formerly incarcerated people. For me, voting is not about a political party. It is one of many forms of civic engagement and, for me, civic engagement means advocating for the things that I care about. To me, the ability to vote symbolizes being a full citizen with a voice.

10. I do not believe the federal government should have access to my private voting registration information. I do not feel safe knowing that there is a chance that the Trump Administration will have my data and the data of every other registered New Mexican voter. However, I believe formerly incarcerated people are more at risk of being targeted by this Administration. I know that there are formerly incarcerated people who, despite their voting rights having been restored, will either not register to vote or not vote if the Trump Administration has access to their voter registration information. I don't think anything good will come from this Administration having that level of access.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed December 17, 2025 in Albuquerque, New Mexico.



Justin Allen

Exhibit 5

Civil Action No. 1:25-cv-01193-LF-JFR

U.S. Department of Justice

Civil Rights Division

CONFIDENTIAL MEMORANDUM OF UNDERSTANDING

I. PARTIES & POINTS OF CONTACT.

Requester
Federal Agency Name: Civil Rights Division, U.S. Department of Justice
VRL/Data User:
Title:
Address:
Phone:

VRL/Data Provider
State Agency Name:
Custodian:
Title:
Address:
Phone:

The parties to this Memorandum of Understanding ("MOU" or "Agreement") are the Department of Justice, Civil Rights Division ("Justice Department" or "Department"), and the State of Colorado ("You" or "your state").

II. AUTHORITY.

By this Agreement, the State of Colorado ("You" or "your state") has agreed to, and will, provide an electronic copy of your state's complete statewide Voter Registration List ("VRL" or "VRL/Data") to the Civil Rights Division of the U.S. Department of Justice (at times referred to as the "Department"). The VRL/Data must include, among other fields of data, the voter registrant's full name, date of birth, residential address, his or her state driver's license number or

the last four digits of the registrant's social security number as required under the HAVA to register individuals for federal elections. *See* 52 U.S.C. § 21083(a)(5)(A).

The authorities by which this information is requested by the Department of Justice are:

- National Voter Registration Act of 1993, 52 U.S.C. § 20501, *et seq*.
- Attorney General's authority under Section 11 of the NVRA to bring enforcement actions. See 52 U.S.C. § 20501(a).
- Help America Vote Act of 2002, 52 U.S.C. § 20901, *et seq.*
- Attorney General's authority to enforce the Help America Vote Act under 53 U.S.C. § 21111.
- Attorney General authority to request records pursuant to Title III of the Civil Rights Act of 1960 ("CRA"), codified at 52 U.S.C. § 20701, *et seq*.
- The Privacy Act of 1974, 5 U.S.C. § 552a, as amended.

III. PURPOSE.

A VRL is a Voter Registration List pursuant to the NVRA and HAVA, commonly referred to as "voter roll," compiled by a state – often from information submitted by counties – containing a list of all the state's *eligible* voters. Regardless of the basis for ineligibility, ineligible voters do not appear on a state's VRL when proper list maintenance is performed by states. The Justice Department is requesting your state's VRL to test, analyze, and assess states' VRLs for proper list maintenance and compliance with federal law. In the event the Justice Department's analysis of a VRL results in list maintenance issues, insufficiency, inadequacy, anomalies, or concerns, the Justice Department will notify your state's point of contact of the issues to assist your state with curing.

The purpose of this MOU is to establish the parties' understanding as to the security protections for data transfer and data access by the Department of Justice of the electronic copy of the statewide voter registration list, including all fields requested by the Department of Justice.

IV. TIMING OF AGREEMENT – TIME IS OF ESSENCE.

Although the Justice Department is under no such obligation as a matter of law, because this Agreement is proposed, made, and to be entered into at your state's request as part of your state's transmission of its VRL to the Justice Department, this Agreement is to be fully executed within seven (7) days of the Justice Department presenting this Agreement to you. Both parties agree that no part of this Agreement or execution is intended to, or will, cause delay of the transmission of your state's VRL to the Justice Department for analysis.

V. TIMING OF VRL/DATA TRANSFER.

You agree to transfer an electronic copy of your state's complete statewide VRL/Data to the Civil Rights Division of the U.S. Department of Justice as described in Section III of this Agreement no later than five (5) business days from the execution of this Agreement, which is counted from the last day of the last signatory.

VI. METHOD OF VRL/DATA ACCESS OR TRANSFER.

The VRL will be submitted by your state via the Department of Justice's secure file-sharing system, i.e., Justice Enterprise File Sharing (JEFS"). A separate application to use JEFS must be completed and submitted by your state through the Civil Rights Help Desk. JEFS implements strict access controls to ensure that each user can only access their own files. All files and folders are tied to a specific user, and each user has defined permissions that govern how they may interact with those files (e.g., read, write, or read-only).

Whenever a user attempts to access a file or folder, JEFS validates the request against the assigned permissions to confirm that the user is explicitly authorized. This process guarantees that users can only access files and folders only where they have permission. Users are also limited to the authorized type of interaction with each file or folder. Within the Department of Justice, access to JEFS is restricted to specific roles: Litigation Support, IT staff, and Civil Rights Division staff.

VII. LOCATION OF DATA AND CUSTODIAL RESPONSIBILITY.

The parties mutually agree that the Civil Rights Division (also "Department") will be designated as "Custodian" of the file(s) and will be responsible for the observance of all conditions for use and for establishment and maintenance of security agreements as specified in this agreement to prevent unauthorized use. The information that the Department is collecting will be maintained consistent with the Privacy Act of 1974, 5 U.S.C. § 552a. The full list of routine uses for this collection of information can be found in the Systems of Record Notice ("SORN") titled, JUSTICE/CRT – 001, "Central Civil Rights Division Index File and Associated Records," 68 Fed. Reg. 47610-01, 611 (August 11, 2003); 70 Fed. Reg. 43904-01 (July 29, 2005); and 82 Fed. Reg. 24147-01 (May 25, 2017). It should be noted that the statutes cited for routine use include NVRA, HAVA, and the Civil Rights Act of 1960, and the Justice Department is making our request pursuant to those statutes. The records in the system of records are kept under the authority of 44 U.S.C. § 3101 and in the ordinary course of fulfilling the responsibility assigned to the Civil Rights Division under the provisions of 28 C.F.R. §§ 0.50, 0.51.

VRL/Data storage is similar to the restricted access provided on JEFS and complies with the SORN: Information in computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer to access

the stored information. However, a section may decide to allow its employees access to the system in order to perform their official duties.

All systems storing the VRL data will comply with all security requirements applicable to Justice Department systems, including but not limited to all Executive Branch system security requirements (e.g., requirements imposed by the Office of Management and Budget [OMB] and National Institute of Standards and Technology [NIST]), Department of Justice IT Security Standards, and Department of Justice Order 2640.2F.

VIII. NVRA/HAVA COMPLIANT VOTER REGISTRATION LIST.

After analysis and assessment of your state's VRL, the Justice Department will securely notify you or your state of any voter list maintenance issues, insufficiencies, inadequacies, deficiencies, anomalies, or concerns, the Justice Department found when testing, assessing, and analyzing your state's VRL for NVRA and HAVA compliance, i.e., that your state's VRL only includes eligible voters.

You agree therefore that within forty-five (45) days of receiving that notice from the Justice Department of any issues, insufficiencies, inadequacies, deficiencies, anomalies, or concerns, your state will clean its VRL/Data by removing ineligible voters and resubmit the updated VRL/Data to the Civil Rights Division of the Justice Department to verify proper list maintenance has occurred by your state pursuant to the NVRA and HAVA.

IX. CONFIDENTIALITY & DEPARTMENT SAFEGUARDS.

Any member of the Justice Department in possession of a VRL/Data will employ reasonable administrative, technical, and physical safeguards designed to protect the security and confidentiality of such data. Compliance with these safeguards will include secure user authentication protocols deploying either: (i) Two-Factor Authentication ("2FA"), which requires users to go through two layers of security before access is granted to the system; or (ii) the

assignment of unique user identifications to each person with computer access plus unique complex passwords, which are not vendor supplied default passwords.

The Department will activate audit logging for the records, files, and data containing the state's VRL/Data in order to identify abnormal use, as well as to track access control, on computers, servers and/or Devices containing the VRL/Data.

For all devices storing records, files, and data containing the VRL/Data: there is (i) up-to-date versions of system security agent software that includes endpoint protection and malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis; and (ii) up-to-date operating system security patches designed to maintain the integrity of the personal information.

For all devices storing records, files, and data containing the VRL/Data: there is (i) controlled and locked physical access for the Device; and (ii) the prohibition of the connection of the Device to public or insecure home networks.

There will be no copying of records, files, or data containing the VRL/Data to unencrypted USB drives, CDs, or external storage. In addition, the use of devices outside of moving the records, files, or data to the final stored device location shall be limited.

Any notes, lists, memoranda, indices, compilations prepared or based on an examination of VRL/Data or any other form of information (including electronic forms), that quote from, paraphrase, copy, or disclose the VRL/Data with such specificity that the VRL/Data can be identified, or by reasonable logical extension can be identified will not be shared by the Department. Any summary results, however, may be shared by the Department.

In addition to the Department's enforcement efforts, the Justice Department may use the information you provide for certain routine, or pre-litigation or litigation purposes including:

present VRL/Data to a court, magistrate, or administrative tribunal; a contractor with the Department of Justice who needs access to the VRL/Data information in order to perform duties related to the Department's list maintenance verification procedures. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. § 552a(m).

X. LOSS OR BREACH OF DATA.

If a receiving party discovers any loss of VRL/Data, or a breach of security, including any actual or suspected unauthorized access, relating to VRL/Data, the receiving party shall, at its own expense immediately provide written notice to the producing party of such breach; investigate and make reasonable and timely efforts to remediate the effects of the breach, and provide the producing party with assurances reasonably satisfactory to the producing party that such breach shall not recur; and provide sufficient information about the breach that the producing party can reasonably ascertain the size and scope of the breach. The receiving party agrees to cooperate with the producing party or law enforcement in investigating any such security incident. In any event, the receiving party shall promptly take all necessary and appropriate corrective action to terminate unauthorized access.

XI. DESTRUCTION OF DATA.

The Department will destroy all VRL/Data associated with actual records as soon as the purposes of the list maintenance project have been accomplished and the time required for records retention pursuant to applicable law has passed. When the project is complete and such retention requirements by law expires, the Justice Department will:

1. Destroy all hard copies containing confidential data (e.g., shredding);
2. Archive and store electronic data containing confidential information offline in a secure location; and

3. All other data will be erased or maintained in a secured area.

XII. OTHER PROVISIONS.

A. Conflicts. This MOU constitutes the full MOU on this subject between the Department and your state. Any inconsistency or conflict between or among the provisions of this MOU, will be resolved in the following order of precedence: (1) this MOU and (2) other documents incorporated by reference in this MOU (e.g., transaction charges).

B. Severability. Nothing in this MOU is intended to conflict with current law or regulation or the directives of Department, or the your state. If a term of this MOU is inconsistent with such authority, then that term shall be invalid but, to the extent allowable, the remaining terms and conditions of this MOU shall remain in full force and effect.

C. Assignment. Your state may not assign this MOU, nor may it assign any of its rights or obligations under this MOU. To the extent allowable by law, this MOU shall inure to the benefit of, and be binding upon, any successors to the Justice Department and your state without restriction.

D. Waiver. No waiver by either party of any breach of any provision of this MOU shall constitute a waiver of any other breach. Failure of either party to enforce at any time, or from time to time, any provision of this MOU shall not be construed to be a waiver thereof.

E. Compliance with Other Laws. Nothing in this MOU is intended or should be construed to limit or affect the duties, responsibilities, and rights of the User Agency under the National Voter Registration Act, 52 U.S.C. § 20501 *et seq*., as amended; the Help America Vote Act, 52 U.S.C. § 20901 *et seq*., as amended; the Voting Rights Act, 52 U.S.C. § *10301 et seq.*, as amended; and the Civil Rights Act, 52 U.S.C. § 10101 et seq., as amended.

F. Confidentiality of MOU. To the extent allowed by applicable law, this MOU, its contents, and the drafts and communications leading up to the execution of this MOU are deemed

by the parties as "confidential." Any disclosures therefore could be made, if at all, pursuant to applicable laws or court orders requiring such disclosures.

SIGNATURES

VRL/Data Provider
State Agency Name:
Signature: _____ Date of Execution:_____

Authorized Signatory Name Printed:_____

Title: _____

Requester
Federal Agency Name: Civil Rights Division, U.S. Department of Justice

Signature: _____ Date of Execution:_____

Authorized Signatory Name Printed:_____

Title: _____