**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her official capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**MOTION OF COMMON CAUSE, RUTH GOLDMAN, AND CHRIS MELODY FIELDS TO INTERVENE AS DEFENDANTS**

Common Cause, Ruth Goldman, and Chris Melody Fields (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). The grounds for this Motion are fully set forth in the accompanying Memorandum in Support, and a Proposed Order is attached. Proposed Intervenors append to this motion as Exhibit 1 a proposed motion to dismiss by way of a response to the United States' Complaint. *See* Fed. R. Civ. P. 24(c).

**STATEMENT PURSUANT TO LOCAL CIVIL RULE 7(m)**

Local Rule 7(m) provides that, "[b]efore filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement."

Proposed Intervenors have conferred with Plaintiff regarding this Motion, and Plaintiff takes no position. Defendants have not yet appeared in this case, and Proposed Intervenors

therefore do not have Defendants' position. Proposed Intervenors will promptly update the Court once Defendants appear.

Dated: December 26, 2025

Respectfully submitted,

*/s/ Megan C. Keenan*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on December 26, 2025, and will be served on Defendants in accordance with Federal Rule of Civil Procedure 5(a).

*/s/ Megan C. Keenan*
Megan C. Keenan

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| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her official capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**MEMORANDUM IN SUPPORT OF MOTION OF COMMON CAUSE, RUTH GOLDMAN, AND CHRIS MELODY FIELDS TO INTERVENE AS DEFENDANTS**

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## INTRODUCTION

The United States seeks to force the District of Columbia ("D.C.") to turn over voters' sensitive personal information and data. It has been widely reported that the United States intends to use this data to build an unauthorized national voter database and to target voters for potential challenges and disenfranchisement.

Proposed Intervenors are Common Cause, a non-partisan organization dedicated to grassroots voter engagement in D.C. whose members and whose own work are at risk by the relief the federal government seeks in this case, and D.C. voters who are directly threatened. Proposed Intervenors have a strong interest in preventing the disclosure of D.C.'s most sensitive non-public voter data. Common Cause has an interest in protecting the voting and privacy rights of its members and all D.C. voters. The relief the federal government seeks risks discouraging D.C. residents from registering to vote, undermining its work. And the privacy and voting-rights interests of Common Cause's members and of the individual voter Proposed Intervenors are also directly at stake. Proposed Intervenors include a naturalized citizen—a type of voter under particular threat from the United States' requested relief.

Proposed Intervenors are entitled to intervene as of right under Rule 24 as this motion is timely, their rights and interests are at stake, and those rights and interests are not adequately represented by Defendants, who unlike Proposed Intervenors, are state actors, subject to broader considerations external to the legal issues presented in this case. Proposed Intervenors' unique interests, perspective, and motivation to interrogate the purpose of the sweeping request for non-public voter data will ensure full development of the record 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

### I. 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 and the District of Columbia. *See* Kaylie Martinez-Ochoa, Eileen O'Connor, & Patrick Berry, Tracker of Justice Department Requests for Voter Information, Brennan Ctr. for Just. (updated Dec. 19, 2025), https://perma.cc/A4A4-737Z.

On July 11, 2025, DOJ sent a letter to the Executive Director of the District of Columbia Board of Elections, Monica H. Evans ("Director Evans"), demanding an electronic copy of D.C.'s entire statewide voter registration list, including "all fields." Compl. ¶ 23; Pl.'s Mot. for Order to Compel, Ex. 1, Ltr. from Michael E. Gates to Monica Evans dated July 11, 2025 ("July 11 Letter"), Dkt. No. 2-3 at 2. The July 11 Letter propounded several questions regarding D.C.'s voter registration and list maintenance procedures and requested that D.C. provide information about purported "registered voters identified as ineligible to vote" due to being non-citizens or due to a felony conviction. *Id.* at 2–3. DOJ asked D.C. to respond within 14 days. *Id.* at 4.

On August 6, Director Evans provided DOJ a redacted version of the registration list. Compl. ¶ 24; Pl.'s Mot. for Order to Compel, Ex. 2, Ltr. from Monica Evans to Michael E. Gates dated August 6, 2025 ("August 6 Letter"), Dkt. No. 2-4 at 3. Director Evans also confirmed that "no voters were identified or removed due to non-citizenship, felony conviction, or adjudicated mental incompetence." August 6 Ltr. at 6.

On August 14, DOJ sent another letter, reiterating its demand for the full electronic voter file. Compl. ¶ 25; Pl.'s Mot. for Order to Compel, Ex. 3, Ltr. from Harmeet K. Dhillon to Monica Evans dated August 14, 2025 ("August 14 Letter"), Dkt. No. 2-5 at 2. DOJ again stated that the production "must contain *all fields*, including the 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." August 14 Ltr. at 2. This time, DOJ also cited the Civil Rights Act of 1960 ("CRA") as authority for its request, and it noted that the "purpose of the request is to ascertain District of Columbia's compliance with the list maintenance requirements of the [National Voter Registration Act ("NVRA")] and [Help America Vote Act ("HAVA")]." *Id.* at 3.

On September 4, 2025, Director Evans sent a letter to DOJ refusing to provide an

unredacted voter registration list. Compl. ¶ 29; Pl.'s Mot. for Order to Compel, Ex. 4, Ltr. from Monica Evans to Harmeet K. Dhillon dated September 4, 2025 ("September 4 Letter"), Dkt. No. 2-6 at 2. The United States responded by filing this lawsuit, which is one of at least twenty-two similar suits seeking disclosure of sensitive voter data.[1]

DOJ's requests for private, sensitive voter data appears to be in connection with never-before-seen efforts by the United States to construct a national voter database, and to otherwise use untested forms of database matching to scrutinize voter rolls. According to 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 unprecedented efforts with the federal Department of Homeland Security ("DHS"), according to reported statements from both agencies. *Id.* A recent article extensively quoted a lawyer who recently left DOJ's Civil Rights Division, describing the government'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.

[1] *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.

According to additional reporting, these efforts are being conducted with the involvement of self-proclaimed "election integrity" advocates within and outside government who have previously sought to disenfranchise voters and overturn elections.[2] Such actors have previously sought to compel states to engage in aggressive purges of registered voters and have abused voter data to mass challenge 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 Heather Honey, challenging Pennsylvania's list maintenance practices, was meritless).[3]

DOJ's actions also indicate that it may target specific groups of voters in its use of the requested data. In its letters to the Board and other states, DOJ requested information focusing on vote by mail, history of felony convictions, and citizenship status.[4] The Administration has also confirmed that it was sharing the requested information with DHS. 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.

## II. Proposed Intervenors

Proposed Intervenor Common Cause is a nonpartisan organization committed to, *inter alia*,

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[2] *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); 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/; 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).

[3] *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").

[4] *See, e.g.*, Br. in Supp. of Mot. to Intervene as Defs., Ex. 1, Ltr. 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, Ex. A, Ltr. 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).

ensuring that all eligible D.C. voters register to vote and exercise their right to vote at each election. *See* Ex. 2, Decl. of Suzanne Almeida ("Almeida Decl.") ¶¶ 8–9. Common Cause expends significant resources conducting voter engagement and assistance efforts, including registering qualified people to vote, encouraging participation, and providing on-the-ground voter engagement. *See id.* ¶ 13. The success of these efforts, especially with respect to voter registration, depend on voters' trust that, when they provide personal information to the State as part of the registration process, that information will not be abused, their privacy will be respected, and their right to participate will be honored. *See id.* ¶¶ 9, 13.

Common Cause has over 3,000 members in D.C. *See id.* ¶ 5. Those members include D.C. voters, whose personal data will be provided to DOJ if the United States prevails in this lawsuit. *See id.* ¶¶ 7, 9. Even as compared to voters in other states, these members face particularly heightened risks from the disclosure of their data because D.C. voters do not have full representation in Congress and are uniquely subject to federal oversight. *Id.* ¶ 12.

Proposed Intervenor Ruth Goldman has been a D.C. resident and D.C. registered voter since 1968. *See* Ex. 3, Decl. of Ruth Goldman ("Goldman Decl.") ¶ 5. Ms. Goldman was born in Palestine in 1936 to German Jewish parents, and the family emigrated to the United States by ship two years later. *Id.* ¶¶ 2–3. When they initially settled in the United States, because her parents were German-born, Ms. Goldman and her family were deemed enemy aliens and denied certain civil rights and liberties—despite the fact that they were Jewish. *Id.* ¶ 3. Ms. Goldman became a naturalized citizen around 1948, at the age of 12. *Id.* ¶ 4. The right to vote is extremely important to Ms. Goldman, who regularly votes in elections. *Id.* ¶ 5. Ms. Goldman is alarmed and outraged that her sensitive voter data might be turned over to DOJ, particularly when she does not know what DOJ intends to do with it. *Id.* ¶ 6. Ms. Goldman is especially concerned because naturalized citizens like her are extremely vulnerable at this moment in time; as such, she remains concerned not just about the privacy of her own personal data, but that of other naturalized citizens in D.C. *Id.* ¶ 7.

Proposed Intervenor Chris Melody Fields is a registered D.C. voter, executive director of

the Ballot Initiative Strategy Center ("BISC"), and Common Cause National Governing Board member. *See* Ex. 4, Decl. of Chris Melody Fields ("Fields Decl.") ¶¶ 2–3. Ms. Fields has been involved with civic engagement issues in D.C. for nearly two full decades, and she believes that the right to vote is preservative of all other rights. *Id.* ¶¶ 2, 5. DOJ's demand for D.C.'s unredacted voter file has made Ms. Fields concerned both about the privacy of her own personal data and also the security of D.C.'s voting system. *Id.* ¶ 8. Ms. Fields believes that DOJ's demand for unredacted voter information will chill political participation in D.C. and be used to disenfranchise otherwise eligible voters, who already lack full political representation. *Id.* ¶¶ 7, 9.

## ARGUMENT

### I. Movants Are Entitled To Intervene as a Matter of Right.

In the D.C. Circuit, a party is entitled to intervene as of right under Fed. R. Civ. P. 24(a) upon establishing: "1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor's interest." *Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 320 (D.C. Cir. 2015) (quotation marks and citation omitted).[5]

[5] The D.C. Circuit previously "require[ed] an intervenor to demonstrate Article III standing even if pursuing the same relief as an existing party," but it more recently recognized that "intervenors that seek the same relief sought by at least one existing party need not" establish standing. *Inst'l Shareholder Servs. v. SEC*, 142 F.4th 757, 764 n.3 (D.C. Cir. 2025) (citing *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020)). Nevertheless, to the extent Proposed Intervenors need to establish standing, they easily demonstrate the requisite "injury in fact, causation, and redressability." *Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015) (citing *Deutsche Bank Nat'l. Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013)). If the United States succeeds in this action, the personal identifying information of individual Proposed Defendant-Intervenors and members of Common Cause will be disclosed in a way contrary to law, and to privacy and voting rights. Disclosure of such protected information is a straightforward Article III injury. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). In addition, Proposed Intervenors have standing because the United States' requested voter data is likely to be used to challenge the registration of D.C. voters—including naturalized citizens like Ms. Goldman—subjecting them to concrete risk of disenfranchisement, and because granting the requested relief would harm Common Cause by chilling voter participation and forcing the organization to divert resources away from its core civic-engagement mission to counter federally enabled mass voter challenges. *See infra* pp. 12–13. And because the Plaintiff prevailing in this action will force Defendants "to cause the alleged

**A. The Motion To Intervene Is Timely.**

Timeliness is determined in light "of all the circumstances." *Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008). Relevant factors include the "time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Id.*

This motion is timely. The suit was filed on December 18, 2025, and, upon learning of it, Proposed Intervenors promptly prepared this motion. *Cf. id.* (timeliness satisfied when "less than one month elapsed between [plaintiff's] filing of his petition in the district court and the . . . motion to intervene," in part because the motion was filed "before the district court took any action . . . and thus did not act so late as to prejudice proceedings"); *Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) (holding intervention motion timely when movant "sought to intervene a few weeks after [plaintiff] initiated its action, and before the district court ruled on the preliminary injunction"); *Friends of Earth v. Haaland*, No. 21-cv-2317, 2021 WL 8323607, at *2 (D.D.C. Sept. 22, 2021) (intervention motion "filed only two weeks after Plaintiffs brought suit . . . is unquestionably timely"). Defendants have not yet filed their response, meaning that the case is at its earliest stages and the existing partes would not be prejudiced. In contrast, Proposed Intervenors will be substantially prejudiced absent intervention, given the serious threats that the relief sought poses to Proposed Intervenors' fundamental rights.

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

Proposed Intervenors have a "sufficient"—*i.e.*, a "significantly protectable"—interest in the litigation. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Indeed, Proposed Intervenors offer multiple, independently sufficient interests.

*First*, Proposed Intervenors have a right to privacy in the sensitive data sought, *i.e.*, the

injury to the intervenor," Proposed Defendant-Intervenors here "satisf[y] the traceability requirement even though the defendant and the intervenor seek the same outcome in the case." *ACLU of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1093 (8th Cir. 2011).

entire unredacted voter file, "with all fields, including . . . state driver's license number, the last four digits of their Social Security number, or HAVA unique identifier." Compl. ¶ 32(B). Sensitive information like driver's license numbers and Social Security numbers are protected from disclosure by D.C. law. D.C. Code § 2534(a)(2). The data sought is also protected by federal law, which prohibits the creation of a national voter database of the type that the United States is reportedly assembling. *See* 5 U.S.C. § 552a(e)(7) (prohibiting the creation of any database "describing how any individual exercises rights guaranteed by the First Amendment," which includes exercising the right to vote). These privacy interests are significant—indeed, the Supreme Court has made clear that "disclosure of private information" is an injury "traditionally recognized as providing a basis for lawsuits in American courts" and sufficient to establish Article III standing, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021)—and they inure to each of the individual voter Proposed Intervenors and to Common Cause's members who are D.C. voters. *See* Goldman Decl. ¶¶ 5–6; Fields Decl. ¶¶ 5–9; Almeida Decl. ¶¶ 5, 7, 9, 12.

*Second*, and based on the United States' similar requests to other States, the data sought is likely to be used to challenge the registration of certain D.C. voters, including voters like Ms. Goldman who are naturalized citizens (who may have indicated they were not a citizen on a government form prior to naturalization). *See supra* pp. 6–8 & n.2; *see also* Goldman Decl. ¶¶ 4, 7; Almeida Decl. ¶¶ 13–14. This is particularly true given that Proposed Intervenors are D.C. residents, because D.C. voters lack full representation in Congress, are uniquely subject to federal oversight, and have faced considerable scrutiny from the federal government in recent months. *See* Almeida Decl. ¶ 12; Fields Decl. ¶ 7.

*Third*, Common Cause as an organization has a protectable interest at stake as their core mission will be harmed if the relief that the federal government seeks is granted. *See* Almeida Decl. ¶¶ 7, 9, 12–15. Common Cause's core civic participation and engagement activities will be harmed as voters will be chilled from registering if they believe their sensitive personal data will be provided to the federal government and potentially misused as part of a national database. *Id.* ¶¶ 7, 9, 13–14. Mass challenges by election integrity activists now wielding the power of the

federal government will force Common Cause to redirect resources to mitigating the attempted disenfranchisement of existing voters, away from core civic engagement. *Id.* ¶¶ 13–14. Courts routinely find that non-partisan organizations, like Common Cause, should be granted intervention in election-related cases, due to their significantly protectable interests related to voting. *See, e.g.*, *Texas v. United States*, 798 F. 3d 1108, 1111–12 (D.C. Cir. 2015); *Kobach v U.S. Election Assistance Comm'n*, No. 13-cv-04095, 2013 WL 6511874, at *1–2, *4 (D. Kan. Dec. 12, 2013). This case is no exception. Indeed, in similar cases brought over California's and New Mexico's refusal to turn over sensitive voter information, such organizations were granted intervention. *See* Minute Order, *United States v. Weber*, No. 25-cv-09149, (C.D. Cal. Nov. 19, 2025), Dkt. No. 70; Minute Order, *United States v. Oliver*, No. 25-cv-01193 (D.N.M. Dec. 19, 2025), Dkt. No. 25.

**C. Disposition of This Case May Impair Proposed Intervenors' Interests.**

Proposed Intervenors' interests would be impaired if Plaintiff succeeds in obtaining its requested relief. This third element looks to the "'practical consequences' of denying intervention," including whether it would be "difficult and burdensome" for the movant. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (quoting *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 907, 909–10 (D.C. Cir. 1977)).

Here, the threat of impairment is significant. Plaintiff 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* Pl.'s Mot. for Order to Compel Prod. of Recs., Dkt. No. 2. This attempt to secure the irrevocable disclosure of private voter data at the very beginning of the case militates strongly in favor of allowing Proposed Intervenors into the case to represent voters' interests.

Finally, the D.C. Circuit has recognized that the *stare decisis* effect of a district court's judgment is sufficient impairment for intervention under Rule 24(a)(2) because "the district court's ruling would have persuasive weight with a new court." *Crossroads*, 788 F.3d at 320 (citation omitted). Common Cause maintains an active and ongoing interest in protecting the privacy of

voters' sensitive personal data. *See* Almeida Decl. ¶¶ 7, 9. Accordingly, a judgment in favor of Plaintiff—endorsing its legal theories and granting the requested relief—would have a *stare decisis* effect that could harm Common Cause's ability to oppose future efforts that undermine voters' privacy interests.

**D. The Board of Elections' Interests Differ from Those of Proposed Intervenors.**

Proposed Intervenors' burden to show that existing parties may not adequately represent its interest is "not onerous"—indeed, it is "minimal." *Crossroads*, 788 F.3d at 321 (quoting *Fund For Animals*, 322 F.3d at 735, 736 n.7). A movant "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation." *Id.* (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)).

They meet this minimal burden here. Notably, the D.C. Circuit "look[s] skeptically on government entities serving as adequate advocates for private parties." *Id.* "[E]ven when the interest of a federal agency and potential intervenor can be expected to coincide, that does not necessarily mean adequacy of representation is ensured for purpose of Rule 24(a)(2)." *Id.* (citation modified). That is because the government's "obligation is to represent the interests of the American people," whereas an intervenor's concern may be more limited, and the government may not give the intervenor's arguments "the kind of primacy that the [intervenor] would give them. *Fund for Animals*, 322 F.3d at 736.

This litigation fits precisely these circumstances. As state actors, Defendants have a generalized interest in carrying their legal obligations and in minimizing burdens on governmental employees and resources. They also must consider broader public policy concerns, including 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. *See T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33, 40 (1st Cir. 2020). There may be arguments and issues that Defendant may not raise that are critical to organizations like Common Cause and individual voters like Ms.

Goldman and Ms. Fields. For example, individual voters have a more direct injury than states under the Privacy Act for misuse of their personal data, especially given that the Privacy Act grants individuals an express right to bring suit. See 5 U.S.C. § 552a(g)(1)(D) ("Whenever an agency fails to comply with any other provision of this section . . . in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency"). As another example, courts have found a risk that considerations external to the issues presented by a case like this can motivate officials to pursue a settlement that could 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").

**II. In the Alternative, This Court Should Grant Permissive Intervention.**

Should the Court decline to grant intervention as of right, the Court should use its broad discretion to grant permissive intervention. "On 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)(B); *see Massachusetts v. Microsoft Corp.*, 373 F.3d 1199,

1234 (D.C. Cir. 2004). In exercising its discretion, 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).

As discussed above, this motion is timely, there will be no delay or prejudice to the adjudication of the existing parties' rights, and their interests are not adequately represented by any of the existing parties. And Proposed Intervenors' defense goes directly to the matters at issue, such as (1) whether federal law permits Plaintiff to force D.C. to give it the personal information sought; (2) whether federal and state legal privacy protections prohibit disclosure of that information; and (3) whether the United States' motivations for the data sought are permissible. Proposed Intervenors' distinct perspective on the issues will 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). The Court should do the same here.

## CONCLUSION

For all these reasons, the Motion should be granted.

Dated: December 26, 2025

Respectfully submitted,

*/s/ Megan C. Keenan*

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her official capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**[PROPOSED] MOTION TO DISMISS OF COMMON CAUSE, RUTH GOLDMAN, AND CHRIS MELODY FIELDS**

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## INTRODUCTION

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 the United States' attempt to summarily dispose of this case via an improper motion to compel should be rejected.

Congress has repeatedly legislated to ensure that all eligible Americans can participate in free, fair, and secure elections. As the U.S. Department of Justice ("DOJ") has explained, Title III of the Civil Rights Act of 1960 ("Title III" or "CRA"), the provision invoked 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 *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 the District of Columbia ("D.C.")'s unredacted voter file—which contains sensitive personal information including driver's license numbers and/or Social Security numbers from millions of D.C. residents—undermines the CRA's core purposes and is contrary to law. Releasing 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 not fully and accurately set forth "the basis and the purpose" for its data request, as required by the very statute that it invokes. 52 U.S.C. § 20703. The Court should dismiss.

## 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 voter registration databases, with plans to gather data from all fifty states and the District of Columbia. *See* Kaylie Martinez-Ochoa, Eileen O'Connor, & Patrick Berry, Tracker of Justice Department Requests for Voter Information, Brennan Ctr. for Just. (updated Dec. 19, 2025), https://perma.cc/A4A4-737Z.

On July 11, 2025, DOJ sent a letter to the Executive Director of the District of Columbia Board of Elections, Monica H. Evans ("Director Evans"), demanding an electronic copy of D.C.'s entire statewide voter registration list, including "all fields." Compl. ¶ 23; Pl.'s Mot. for Order to Compel, Ex. 1, Ltr. from Michael E. Gates to Monica Evans dated July 11, 2025 ("July 11 Letter"), Dkt. No. 2-3 at 2. The July 11 Letter also propounded several questions regarding D.C.'s voter registration and list maintenance procedures, and it requested that D.C. provide information about purported "registered voters identified as ineligible to vote" due to being non-citizens or due to a felony conviction. *Id.* at 2–3. DOJ asked D.C. to respond within 14 days. *Id.* at 4.

On August 6, Director Evans provided DOJ a redacted version of the registration list. Compl. ¶ 24; Pl.'s Mot. for Order to Compel, Ex. 2, Ltr. from Monica Evans to Michael E. Gates dated August 6, 2025 ("August 6 Letter"), Dkt. No. 2-4 at 3. Director Evans also confirmed that "no voters were identified or removed due to non-citizenship, felony conviction, or adjudicated mental incompetence." August 6 Ltr. at 6.

On August 14, DOJ sent another letter, reiterating its demand for the full electronic voter file. Compl. ¶ 25; Pl.'s Mot. for Order to Compel, Ex. 3, Ltr. from Harmeet K. Dhillon to Monica Evans dated August 14, 2025 ("August 14 Letter"), Dkt. No. 2-5 at 2. DOJ again stated that the production "must contain *all fields*, including the 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." August 14 Ltr. at 2. This time, DOJ also cited the Civil Rights Act of 1960 ("CRA") as authority for its request, and it noted that the "purpose of the request is to ascertain District of Columbia's compliance with the list maintenance requirements of the [National Voter Registration Act ("NVRA")] and [Help America Vote Act ("HAVA")]." *Id.* at 3.

On September 4, 2025, Director Evans sent a letter to DOJ refusing to provide an unredacted voter registration list. Compl. ¶ 29; Pl.'s Mot. for Order to Compel, Ex. 4, Ltr. from Monica Evans to Harmeet K. Dhillon dated September 4, 2025 ("September 4 Letter"), Dkt. No. 2-6 at 2. The United States responded by filing this lawsuit, which is one of at least twenty-two

similar suits seeking disclosure of sensitive voter data.[1]

Notably, according to public reporting, DOJ's request does not appear to relate to voter roll list maintenance under the NVRA, 52 U.S.C. § 20507, the statute invoked in the July 11 Letter. Instead, federal 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. One recent article extensively quoted a lawyer who recently left DOJ's Civil Rights Division, describing the Administration's aims in these cases:

> 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. Additional reporting reveals self-proclaimed "election integrity" advocates who have previously sought to disenfranchise voters and overturn elections are involved in these efforts. *See* Mem. in Support of Mot. to Intervene as Defs. at 4 & nn.2–3. In its July 11 Letter, and its letters to other states, DOJ also requested information focusing on vote by mail, history of felony convictions, and citizenship status.[2] Because DOJ has not provided a statutorily

[1] *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.

[2] *See, e.g.*, Br. in Supp. of Mot. to Intervene as Defs., Ex. 1, Ltr. from Maureen Riordan to Sec'y of State Al Schmidt (June 23, 2025), *United States v. Pennsylvania*, No. 25-cv-01481 (W.D. Pa.

sufficient basis and purpose to support its request for D.C.'s unredacted voter file, the relief should be denied and the Complaint dismissed.

## 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). A court need not accept a complaint's legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 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. In assessing a complaint, courts can "take judicial notice of public records from other proceedings." *Youkelsone v. FDIC*, 910 F. Supp. 2d 213, 221 (D.D.C. 2012).

## ARGUMENT

### I. The United States' Demands Exceed the Statutory Authority of the CRA and Are Contrary to Law.

The United States' demand for D.C.'s full, unredacted 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.

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Oct. 9, 2025), Dkt. No. 37-1 (Pennsylvania); Mot. for Leave to File Mot. to Dismiss, Ex. A, Ltr. 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, Ex. 1, Ltr. 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, Ex. 1, Ltr. 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).

The records request here is contrary to the CRA for at least two distinct reasons. *First*, in making this sweeping demand for D.C.'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*, any records should be redacted to vindicate the privacy and constitutional rights of D.C. voters. Nothing in the CRA prevents the appropriate redaction of the sensitive personal information of voters. So the United States is not entitled to its requested relief.

**A. The United States' Demand Fails to Meet the CRA's Requirements.**

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*. (emphasis added). Here, DOJ failed to provide "a statement of the basis and the purpose" for the D.C. requests sufficient to support disclosure of the unredacted voter file. *Id*.; *see* Compl. ¶¶ 23–29.[3]

Consistent with the statutory text, contemporaneous case law immediately following the enactment of Title III of the CRA consistently treated "the basis" and "the purpose" as two related, but distinct, concepts. *See Kennedy v. Lynd*, 306 F.2d 222, 229 n.6 (5th Cir. 1962); *In re Coleman*, 208 F. Supp. 199, 199–200 (S.D. Miss. 1962), *aff'd sub nom.*, *Coleman v. Kennedy*, 313 F.2d 867

[3] Intervenors assume for purposes of this Motion that the statewide electronic voter file may constitute a "record" or "paper" "relating to any application, registration, payment of poll tax, or other act requisite to voting" that has "come into [the Board's] possession. 52 U.S.C. § 20701. However, no court has ever addressed the question.

(5th Cir. 1963). The "basis" is the statement of *why* the Attorney General believes there may be a violation of federal civil rights law in the first place, whereas the "purpose" explains *how* the requested records would help the Attorney General ultimately determine if there is, in fact, a violation of the law. *Kennedy*, 306 F.2d at 229 n.6.

The basis and purpose requirements under the CRA are critical safeguards. They prevent the statute from being used for 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 therefore 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. That is consistent with other federal statutes allowing federal agencies to obtain records in service of investigations, where courts have found that the test of whether federal demands for records are enforceable includes an evaluation of whether the underlying investigation is "conducted pursuant to a legitimate purpose." *United States v. Judicial Watch, Inc.*, 371 F.3d 824, 829 (D.C. Cir. 2004) (quoting *United States v. Powell*, 379 U.S. 48, 57 (1964); *see also, e.g.*, *FDIC v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995) (information sought pursuant to an administrative subpoena must be relevant to the inquiry and not unduly burdensome).

As set forth below, the United States failed to articulate in its demand and in the Complaint "the basis and the purpose" for its request for D.C. voters' sensitive voter information. The United States' demand fails to meet this requirement of the CRA for at least four distinct reasons. These failures warrant dismissal of the case.

*First*, the United States simply has not stated a "basis" for its demand. The United States alleges that the "purpose" of its request seeking "an electronic copy of District of Columbia's complete and current [voter registration list]" is "to ascertain District of Columbia's compliance with the list maintenance requirements of the NVRA and HAVA." August 14 Ltr. at 3; *see also* Compl. ¶ 23. But neither the Complaint nor the August 14 Letter that invoked the CRA supply a "basis" for why the United States believes D.C.'s list maintenance procedures might violate the NVRA or HAVA in the first place. Indeed, the Complaint does not contain any allegations

whatsoever regarding D.C.'s compliance with federal law. Nor does the August 14 Letter making DOJ's formal CRA demand and purporting to state the "purpose" of the demand. August 14 Ltr. at 2–4. And while DOJ's July 11 Letter did reference statistics reported by D.C. in the 2024 EAVS Report, *see* July 11 Ltr. at 3, neither that letter nor the Complaint alleges adequate evidence of anomalies or anything inconsistent with reasonable list maintenance efforts in that reported data. The failure to set forth *any* "basis" for the demand is sufficient grounds for dismissal of this action.

*Second*, even if the United States had identified some proper "basis" for its demand—and it did not—it also did not and has not explained any connection between its purported "purpose" and the vast scope of its records request here. The Complaint does not even attempt to explain why unredacted voter files are necessary to determine whether D.C. 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. ¶ 16. Nor could it, because such unredacted files would not assist the Attorney General to examine this question: A single snapshot of a state's voter list does not and could not provide enough information to determine if the state has made a "reasonable effort" to remove ineligible voters under Section 8 of the NVRA. Compl. ¶ 16; 52 U.S.C. § 20507 (a)(4)(A)–(B).

The NVRA and HAVA both leave the mechanisms for conducting list maintenance to the discretion of the States. *See* 52 U.S.C. § 20507(a)(4), (c)(1); *id.* § 21083(a)(2)(A); *id.* § 21085.[4] Even if the United States used voter file data to identify voters who had moved or died on D.C.'s voter list at a single point in time, that still would not amount to D.C. 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).[5]

[4] The term "State" is defined to include the District of Columbia. *See* 52 U.S.C. § 20502(4).

[5] What is more, the inclusion at any particular point in time on D.C.'s voter registration list of some voters who may have potentially moved out of state is not unusual, since Section 8(d) of the NVRA explicitly sets out a specific set of rules and requirements for removals from the voter rolls

Instead, it is the *procedures* carried out by a state or locality that establish its compliance; the unredacted voter file does not.

Moreover, even if some portion of the voter file were necessary to ascertain D.C.'s "compliance with federal election law," Compl. ¶ 23, the United States has not pleaded or otherwise pointed to 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). For this reason, too, the Complaint does not plausibly plead that DOJ has met the basis and purpose requirements of the CRA.

*Third*, the Complaint's purported NVRA-and-HAVA-compliance purposes are fatally undermined by the United States' own more recent statements to States in connection with its data requests. The United States has recently sought for a number of States to sign a now-public memorandum of understanding ("MOU") in connection with its requests for statewide voter files. *See* Ex. 5, U.S. Dep't of Just., Civ. Rts. Div., Confidential Mem. of Understanding ("MOU"); *see also* Ex. 6, Dec. 4 Hr'g Tr. from *United States v. Weber*, No. 25-cv-09149, at 72–74, 91 (DOJ attorney discussing MOU). Far from indicating a purpose of ensuring compliance with the NVRA and HAVA, this MOU runs directly afoul of those statutes.[6]

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).

[6] This Court can take judicial notice of the MOU as a government document produced by DOJ. *See Kaempe v. Myers*, 367 F.3d 958, 965 (D.C. Cir. 2004).

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). However, 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). That is consistent with Congress's core goals in the NVRA of protecting and expanding the right to register to vote and participate in democracy. *E.g.*, *id.* § 20501. But the MOU indicates multiple contemplated violations of those statutes' requirements. For example, the MOU seeks to place authority to identify supposed ineligible voters in the hands of the federal government, directly contrary to the statute's requirement that procedures for complying with HAVA be "left to the discretion of the State." *Compare id.* § 21085, *with* MOU at 2, 5. In addition, the MOU's 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, *e.g.*, 52 U.S.C. § 20507.[7] The MOU demonstrates that DOJ's claimed purpose of ensuring compliance with NVRA and HAVA, as stated in the Complaint, is not accurate or plausible—and that its actual purpose involves defying those statutes by aggrandizing election administration powers to DOJ.

*Fourth*, DOJ's failure to fully and accurately provide the actual basis and purpose for its D.C. request is independently fatal to its Complaint. Section 303 of the CRA requires a statement of "*the* basis and *the* purpose" of a records request. By twice using the definite article, 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). Yet here, public reporting and public, judicially noticeable documents demonstrate that DOJ apparently did not disclose the main basis and purpose

[7] *See also* Jonathan Shorman, *Trump's DOJ offers states 'confidential' deal to wipe voters flagged by feds as ineligible*, STATELINE, Dec. 18, 2025, https://stateline.org/2025/12/18/trumps-doj-offers-states-confidential-deal-to-wipe-voters-flagged-by-feds-as-ineligible/.

for its demand for D.C.'s full and unredacted voter file, which was and is to build an unprecedented national voter file for its own use, to be shared with other agencies like DHS for unlawful purposes. *See supra* 4–7 & nn.1–2 (describing 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). This is yet another ground for dismissal.

**B. Any Records Disclosed Under the CRA Should Be Redacted to Protect the Constitutional Rights of the Voter, so the Requested Relief Must Fail.**

Even if disclosure were appropriate, sensitive personal voter information would still be subject to redaction, which is not barred under Title III. 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. The cases interpreting Section 8(i) of the NVRA are instructive, as courts have consistently permitted—and sometimes required—redaction of voters' sensitive personal data before disclosure to protect voter privacy and ensure compliance with federal and state law and 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; *see also id.* § 20507(i)(1). Courts must interpret the disclosure provisions in a manner that does not unconstitutionally burden the right to vote. *See Judicial Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 226 (D.C. Cir. 2013) (noting that the constitutional avoidance canon "emphasize[s] the importance of interpreting statutes to avoid deciding difficult constitutional questions…") (quotation marks omitted).

Federal courts have consistently struck this balance, interpreting the "all records concerning" language in Section 8(i) to permit—and sometimes 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 such redaction "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). Other courts have consistently recognized that the NVRA does not compel the release of sensitive information 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). D.C. provides express protections from disclosure for social security numbers, driver's license numbers, and contact information of participants in the confidential address programs. D.C. Code § 2534(a)(2).

Redaction also may be affirmatively required if the disclosure would "create[] an intolerable burden on [the constitutional right to vote] as protected by the First and Fourteenth Amendments." *Project Vote/Voting for America, Inc. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012) (quotation marks and citation omitted). The Fourth Circuit, even while granting access to voter registration applications, affirmed the importance of redacting Social Security numbers, which are "uniquely sensitive and vulnerable to abuse." *Id.* 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. at 200 (noting, in the context of a Title III records request, multiple considerations which could be "[s]ignificant," including whether "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 must be interpreted to avoid this unconstitutional burden. See *Long*, 682 F.3d at 339; *Bellows*, 92 F.4th at 56. The danger of imposing those burdens on D.C. voters and

civic groups is present here. *See* Mot. to Intervene, Ex. 3, Decl. of Ruth Goldman ¶¶ 5–7; Ex. 4, Decl. of Chris Melody Fields ¶¶ 6–9; Ex. 2, Decl. of Suzanne Almeida ¶¶ 7, 9, 13.

The same privacy and constitutional concerns warranting redactions under the NVRA apply equally to requests 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."). And the limited case law considering CRA records requests acknowledge 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.

## II. The United States Is Not Entitled to Summary Disposition and Its Motion To Compel Should Be Denied.

The Federal Rules of Civil Procedure, with limited exception, "govern the procedure in *all* civil actions and proceedings in the United States district courts." Fed. R. Civ. P. 1 (emphasis added). The Rules contain limited and narrow carveouts to their own application, none of which include the claim under Title III here. *See* Fed. R. Civ. P. 81. Ignoring these standards, the United States makes expansive claims that Title III 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. Pl.'s Mem. in Supp. of Pl.'s Mot. for Order to Compel Prod. of Recs. ("Mot. to Compel Br."), Dkt. No. 2-1 at 5; *see also* Compl. ¶¶ 1–4. This is contrary to the Federal Rules, not contemplated by statute, and rests on misreading a single set of non-binding cases decided sixty plus years ago, in a different circuit and a drastically different context, including primarily *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962). *See generally* Mot. to Compel Br.; *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 Br. at 4 n.1. But the United States studiously ignores why that is the case. *Lynd* arose in a specific historical context: the Jim Crow-era Fifth Circuit—which then included Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.[8] In these states, election officials and others, including judges, notoriously used every possible means to block Black Americans from registering to vote.[9] It was against this backdrop that the Fifth Circuit 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 226. In that context, "the factual foundation for" the basis and the purpose of the Attorney General's request was self-evident, and plenary consideration thus not required. *See id.* That court's treatment of the CRA more than sixty years cannot be divorced from its context.[10]

By contrast, here, more than sixty years later, the context of *this* 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 personal information—amid both the United States' own MOU and extensive reporting suggesting that the stated basis and purpose are pretextual, and that the data at issue is in fact being sought for unlawful ends.[11]

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

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

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

[11] *See, e.g.*, 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 MAG. (Nov. 16, 2025), https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html.

Nothing in Title III insulates the sufficiency of the requirement for a "statement of the basis and the purpose" from standard judicial review. *See* 52 U.S.C. § 20703. Since *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) (citation and quotation marks omitted); *see also Powell*, 379 U.S. at 57–58 (holding that IRS Commissioner bears the burden to establish statutory requirements before enforcement of a tax subpoena). 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 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[.]"), *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.").

Even in *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." 306 F.2d at 231. The court also noted that the CRA authorizes jurisdiction by "appropriate process" to compel 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. 52 U.S.C. § 20705; *Lynd*, 306 F.2d at 230. Thus, even in the 1960s, before sensitive personal information such as Social Security Numbers or driver's license numbers were widely collected as part of the voter registration record, and

before any federal laws had been passed to protect and constrain access to personal information,[12] 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 that the "duty to issue protective orders" would arise for certain CRA records requests, *id.* at 230.

The unredacted voter file contains "confidential, private" personal identifying information of D.C. 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 stated basis and purpose, would go even further than *Lynd* did—in a context where, very much unlike there, the basis and purpose are not inarguably clear but appear pretextual. The court presiding over the federal government's similar action in California has already recognized that the United States' motion to compel seeks "to reach the ultimate question in this case regarding the production of records," and "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), Dkt. No. 100. It denied the United States' first motion to compel, *id*., and vacated briefing on one filed the following day, ordering that the motion deadlines would be reset "at a later date following a scheduling conference held pursuant to Federal Rule of Civil Procedure 16." Order, *United States v. Weber*, No. 25-cv-09149 (C.D. Cal. Dec. 15, 2025), Dkt. No. 114.

## CONCLUSION

The United States' Motion to Compel should be denied and the Complaint dismissed.

Dated: December 26, 2025

Respectfully submitted,

*/s/ Megan C. Keenan*

[12] *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).

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on December 26, 2025, and will be served on Defendants in accordance with Federal Rule of Civil Procedure 5(a).

*/s/ Megan C. Keenan*
Megan C. Keenan

# Exhibit 2

**DECLARATION OF SUZANNE ALMEIDA**

Pursuant to 28 U.S.C. § 1746, I, Suzanne Almeida, 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 am a member of Common Cause. As a full-time member of Common Cause's staff, I currently serve as a Vice President, States. I have served in this role and a substantially similar role since May 2022 and have been a member of Common Cause's staff since July 2018.

3. I directly oversee a number of states and support Common Cause work across the country, including in the District of Columbia, to protect voting rights, promote ethical government, and hold power accountable. In my role as Vice President, States, I also engage with Common Cause's policy, organizing, and external affairs staff to advance pro-voter, pro-democracy policy. I work with multiple coalitions to advance pro-voter reforms and increase civic engagement, including the national Election Protection Coalition.

4. Common Cause is a nonprofit, nonpartisan membership organization incorporated under the laws of the District of Columbia. Pursuant to its bylaws, Common Cause is organized and operated as a membership organization and intervenes in this action on behalf of itself and in a representative capacity on behalf of its members.

5. 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. As of this writing, there are approximately 3,000 members of Common Cause in the District of Columbia.

6. 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.

7. In the District of Columbia, Common Cause ensures that voters' voices are heard in the political process. Our members reside throughout the District and include registered voters whose personal information is maintained in the District of Columbia Board of Elections' voter registration database. If the Board discloses the unredacted voter registration file to the U.S. Department of Justice, 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 the District's elections.

8. Common Cause believes the right to vote is the cornerstone of a functioning democracy. We are committed to ensuring that every District voter can register and cast their ballot. Through our legislative advocacy, Common Cause has ensured that voting in the District has remained as secure as possible.

9. As a nonpartisan democracy reform and good government organization, Common Cause assists eligible District voters in registering to vote, verifying, and/or updating their voter registration through outreach to our members in the District. For example, on National Voter Registration Day, Common Cause members in the District received notices from us urging them to register to vote and/or to verify their registration status, and many did. As a result, voters we assist are added to the

official District of Columbia Board of Elections voter file, and we consider it our duty to safeguard the trust they place in us and in the democratic process. 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.

10. We also run targeted communications campaigns, including through social media, to keep our members in the District informed about key election deadlines and updates. These efforts amplify official messages from the District of Columbia Board of Elections, helping ensure voters have accurate, timely information to participate confidently in our democracy.

11. Common Cause and its members in the District have long advocated for federal legislation that would grant the District statehood, ensure full voting representation in Congress, and allow District residents to elect representatives who are accountable to them rather than to the federal government. This advocacy reflects our commitment to ensuring that District voters enjoy the same political rights, representation, and protection as voters in every other state.

12. Our advocacy for District statehood is closely connected to our broader efforts to protect the right to vote and the integrity of the democratic process for District voters. Because District voters lack full representation in Congress and are uniquely subject to federal oversight, they face heightened risks that federal actors may seek to influence, discourage, or interfere with their participation in elections. As such, we are concerned that the DOJ's request for the District's complete voter file, including highly sensitive personal information, could exacerbate these risks by enabling the federal government to scrutinize or target District voters in ways that voters in states do not face. Protecting the privacy and security of District voters'

personal information is therefore essential to ensuring that their right to vote is exercised freely, equally, and without fear of federal reprisal or misuse.

13. Disclosure of the entire, unredacted District of Columbia Board of Elections 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 used to challenge their eligibility to vote would chill participation in the democratic process. This is especially true for voters in marginalized communities who already face systemic barriers and distrust government surveillance. We are currently hiring a full-time senior organizing manager to engage our members in the District of Columbia region, and plan to expend significant resources on on-the-ground voter engagement and assistance efforts to register voters and involve them in the democratic process.

14. Additionally, disclosure of the complete District of Columbia Board of Elections voter file would facilitate unsubstantiated voter challenges, a concern especially for vulnerable communities. Improper and flawed mass-challenge programs disproportionately target voters who lack stable housing or traditional addresses. 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 disclosed to the federal government and used to promote mass disenfranchisement, Common Cause will be forced to redirect resources to mitigate disenfranchisement among existing voters and away from its core activities of voter registration and voter engagement in the democratic process.

15. If the District of Columbia Board of Elections 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.

Executed on the 25th day of December 2025, in Philadelphia, Pennsylvania.

Suzanne Almeida

Suzanne Almeida
Vice President, States of Common Cause

# Exhibit 3

| | |
|---|---|
| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br><br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her Official Capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**DECLARATION OF RUTH GOLDMAN**

Pursuant to 28 U.S.C. § 1746, I, Ruth Goldman, declare as follows:

1. I, Ruth Goldman, am over 18 years of age and am competent to testify. I provide this declaration in support of our Motion to Intervene in this case.

2. I was born in Palestine in 1936. My parents were Jews born in Breslau, which at the time was in Germany but is now in modern-day Poland.

3. In 1938, when I was around two years old, our family emigrated to the United States by ship. We initially settled in Connecticut. During this time, because my parents were German-born—even though we were a Jewish family—we were deemed enemy aliens and were denied certain civil rights and freedoms, like the freedom of movement.

4. In 1942, my family moved to New York, where I grew up. My parents became naturalized citizens in 1943. I became a naturalized citizen around 1948, at the age of 12.

5. I have been a resident of Washington, D.C. since 1968. I have been a registered voter in the District of Columbia for that entire time. The right to vote is extremely important to me, and I regularly vote in elections. I worked as a clinical social worker for decades, ultimately retiring in 2019.

6. I am outraged and alarmed at the prospect of my personal, sensitive information from the District of Columbia's voter rolls being turned over to the U.S. Department of Justice. I do not know where this information is going and what the Department of Justice intends to do with it, which is extremely concerning to me.

7. This is particularly true because I am a naturalized citizen. The naturalized citizen community is extremely vulnerable at this moment in time, so it is particularly alarming that the Department of Justice is seeking out our personal information. I care both about the privacy of my personal data and the personal data of other naturalized citizens, and I feel that naturalized citizens should be able to exercise their right to vote freely and without fear or intimidation.

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

Executed on December 24, 2025

Ruth Goldman

# Exhibit 4

**DECLARATION OF CHRIS MELODY FIELDS**

Pursuant to 28 U.S.C. § 1746, I, Chris Melody Fields, 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 Washington, District of Columbia, and I am an eligible registered voter. I have been deeply involved in civic engagement issues in the District of Columbia for 18 years.

3. I am the executive director of the Ballot Initiative Strategy Center (BISC), a former Common Cause staff member, and a current Common Cause National Governing Board member.

4. I have been involved with Common Cause and its non-partisan work to educate voters, register voters, and protect their right to vote since 2008.

5. I believe the right to vote is foundational to our democracy. Voting is the right upon which all others are based. Yet it can be challenging, as I have witnessed firsthand in my various roles.

6. I am concerned that the U.S. Department of Justice's request for the District of Columbia's voter file, including highly personal information, will be used to make voting harder for voters in the District.

7. I am worried that the manipulation of the voters' data will be used to intimidate or disenfranchise otherwise eligible voters. I believe that voters already face a variety of obstacles to exercising their fundamental right. This is especially true of voters in the District of Columbia, who lack full representation.

8. I care both about the privacy of my personal data and about the security of the voting system. I believe that every eligible voter should be able to exercise their right to cast a ballot without worrying that their highly personal information may be leaked or used for non-voting purposes.

9. I am concerned that the U.S. Department of Justice's request for voter file information will make people afraid to register to vote and may deter eligible registered voters from voting in elections.

10. I support the District of Columbia Board of Elections' decision to only share the publicly available portions of the District's voter list. I believe that the District of Columbia should be able to conduct its elections without interference from the federal government.

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

Signed on the 26 day of December, 2025, in Washington, District of Columbia.

Chris Melody Fields

# Exhibit 5

**U.S. Department of Justice**

Civil Rights Division

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# 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: _____

# Exhibit 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>SHIRLEY WEBER, ET AL,<br><br>Defendants. | CASE NO: 2:25-cv-09149-DOC-ADSx<br><br>CIVIL<br><br>Los Angeles, California<br><br>Thursday, December 4, 2025<br>( 7:38 a.m. to 9:09 a.m.)<br>(12:01 p.m. to 12:58 p.m.)<br>( 2:00 p.m. to 2:31 p.m.)<br>( 2:31 p.m. to 2:33 p.m.) |

HEARING RE:

MOTION TO DISMISS [DKT.NO.67];

PLAINTIFF'S REQUEST FOR ORDER TO PRODUCE RECORDS
(52 USC 20701)
[DKT.NOS.87,88,89]

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

Courtroom Deputy: Karlen Dubon

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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**Los Angeles, California; Thursday, December 4, 2025; 7:38 a.m.**

**(Call to Order)**

**THE COURT:** -- Shirley Weber.

**(Pause)**

**THE COURT:** And, counsel, as you're seated, let me take one more matter. Just remain seated for a moment.

**(Pause)**

**THE COURT:** All right. Thank you then. I think that resolves the rest of the morning calendar. So first of all, good morning.

**MR. NEFF:** Good morning, Your Honor.

**THE COURT:** This is the matter of United States v. Shirley Weber. It's case number 25-09149. And, counsel, you can just remain seated. You can pretend it's state court if you want to, but make your appearances.

**MR. NEFF:** Eric Neff on behalf of the United States. Good morning, Your Honor.

**THE COURT:** Thank you.

**MR. BRUDIGAM:** Deputy Attorney General Malcolm Brudigam on behalf of defendants Secretary of State Shirley Weber and the State of California.

**THE COURT:** Okay, thank you very much.

**MR. SETRAKIAN:** Deputy Attorney General Will Setrakian on behalf of defendants State of California and California Secretary of State Shirley Weber.

**THE COURT:** Thank you very much. I appreciate it.

**MR. DODGE:** Chris Dodge on behalf of Intervenors NAACP and Siren.

**MS. ZELPHIN:** Grace Zelphin on behalf of Intervenors League of Women Voters of California.

**THE COURT:** Is anybody here representing what I call the County case?

**MS. SHOAI:** Good morning, Your Honor.

**THE COURT:** Come on up. What we're doing here may be of interest to you. So we want your appearance.

**MS. SHOAI:** Thank you, Your Honor. Deputy County Counsel --

**THE COURT:** No, no, wait, wait till we get a good recording of you.

**MS. SHOAI:** Good morning, Your Honor. Deputy County Counsel Suzanne Schoai on behalf of --

**THE COURT:** I see. Why don't you have a seat? Do you have any other colleague with you today?

**MS. SHOAI:** No, Your Honor.

**THE COURT:** All right. So first, I'd like to address plaintiff's motion for order to produce records pursuant to 52 U.S.C. 20701 that was filed on Monday, set for hearing today. I appreciate the speed, but not at the expense of due process. And although I've encouraged us to move forward as quickly as possible concerning the substantive issues, this is

not the due process because there needs to be at least 28 days' notice before a date for hearing under CD California Rule 6-1.

The plaintiff is seeking to reach the ultimate question in this case regarding the production of records and thousands of voters' lives will be impacted by this case. 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.

Now, you can once again follow the process and procedure in terms of due process. We'll have time potentially, but this doesn't supply the due process needed.

Second, I'd like to hear arguments if there are any on two motions regarding amicus briefs. First, there was a motion for leave to file an amicus brief brought by 16 states. Those states are Arizona, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

The second request was to file an amicus brief and it was filed by the former secretaries of state and the proposed amicus briefs are allegedly from a bipartisan group of state secretaries for the states of Colorado, Connecticut, Minnesota, Nebraska, Oregon, Pennsylvania, and Washington.

Does any party have a statement to make regarding these amici briefs and any wisdom on your part that if I allow

these amici briefs, whether I should then extend for some period of time the opportunity for additional briefs from interested parties, because these are the parties that have directly contacted the Court, but there may be other parties that piecemeal choose to come in, and then I'm deciding that on an almost ex-parte basis, case by case as they come to me, unless you're flying out here for every single hearing for every requested amici brief.

So I was thinking if I was going to allow these, that I should throw this open for 7 days or 14 days for the amici briefs to come in during the period of argument and try to sort through whatever the Court's opinion would be and give you that courtesy and simply extend it. But I'm looking for your wisdom on that because you can anticipate if I'm getting these amici requests now, I promise you, as soon as you leave the courtroom, there's going to be another request. And I don't want to do that ex parte without your wisdom on both parties' parts.

So let's start with the first group. This motion for leave to file an amici brief by 16 states, and one of my concerns was whether this would become a bipartisan effort, for instance, of Democrats and Republicans using the Court in a sense, in a political sense, not necessarily a substantive sense. But I noticed there are what I consider some swing states, New Mexico certainly was during the last election,

Minnesota was, Michigan certainly was, Arizona was and has been what is popularly referred to as a swing state in a number of elections, and I don't know the voting history, for instance, of Illinois or Maryland, for instance. I don't know how they've swung in different elections between the parties, and I don't know if that's even a consideration, but I was inclined to accept this amici brief, but only after discussing this with you folks.

So why don't you talk amongst each other or to yourself, and then state what your respective positions might be on this.

**(Pause)**

**(Recessed at 7:46 a.m.; reconvened at 7:48 a.m.)**

**THE COURT:** Well, let me start with plaintiffs in this matter. What are your thoughts?

**MR. NEFF:** The United States' biggest concern is that this is resolved. The United States' foremost and only concern is that this is resolved in a manner that, as the Court shares the concern, that it needs to be handled expeditiously. As long as --

**THE COURT:** Yeah, because it's got to get to the Ninth Circuit and probably the Supreme Court.

**MR. NEFF:** And then there's, yes, and as long as amici don't get in the way of that, we have no objection.

**THE COURT:** Okay. And then I'll ask, if we do this,

what the time period is and how, but let me turn, and I've got my entities turned around, so please, once again, on behalf of?

**MR. NEFF:** The State, Your Honor.

**THE COURT:** The State.

**MR. NEFF:** Yeah. So we consent to the filing of these amici briefs, and we're happy to do a blanket consent.

**THE COURT:** Okay. That way you're not flying down or up in each occasion, because I'm a little hesitant to start parsing out which ones. I just assumed to give a time period, and those that are relevant, et cetera, we can all focus on. Those that aren't, we'll read anyway. Counsel?

**MR. DODGE:** The NAACP intervenors joined the State's position and agreed to blanket consent.

**THE COURT:** Okay, and Women, League of Voters?

**MS. ZELPHIN:** Same. We --

**THE COURT:** And just a case for the County, we don't want to exclude them. What would your position be?

**MS. SHOAI:** We have the same position, we don't have any objection, although the Court knows that the case against the County is stayed, but for the record.

**THE COURT:** Yeah, but no objection really.

**MS. SHOAI:** Correct.

**THE COURT:** All right. What time period would I give these and how would -- I think I would simply docket this. I'm going to put this case on a public website also, which we often

do in federal court, and that way the public has access to the transcripts, they have access with transparency when we have matters of this import. How long? Two weeks, three weeks? In other words, we'll hear the arguments today, but it's going to take a while for the Court to write.

**MR. BRUDIGAM:** I think two weeks would be fine, Your Honor.

**THE COURT:** Two weeks?

**MR. BRUDIGAM:** Yeah.

**THE COURT:** Counsel, what's your wisdom?

**MR. DODGE:** I would join in two weeks as I was explaining to co-counsel. I think, you know, the Department of Justice has now brought something like 14 of these suits against various states, and so I think that has given the public good awareness of these proceedings, and so I think two weeks is sufficient to give any interested amici time to --

**THE COURT:** Okay. What's your wisdom on behalf of the Women, League of Voters and NAACP?

**MS. ZELPHIN:** I agree with the --

**THE COURT:** Two weeks? What's your wisdom on behalf of plaintiff?

**MR. NEFF:** As long as it doesn't delay this proceeding.

**THE COURT:** Well, two weeks won't delay it.

**MR. NEFF:** Yeah. So that two weeks --

**THE COURT:** It's actually pretty quick for amici briefs.

**MR. NEFF:** Two weeks sounds fine to the United States.

**THE COURT:** Now, you just said something that this case is one now of 14 cases. I didn't know that before. Are we, in a sense, the lead case, or are cases more recently filed?

**MR. NEFF:** This is, I think, the case moving at the fastest speed, Your Honor. There were two cases filed before this one, but this one is out ahead of all of them.

**THE COURT:** I see. All right. Would you reach a joint stipulation for me, then, and help the Court with the wording that amici briefs are requested by the Court. Give that a two-week period of time. Certainly that way we're before the holidays. Well, just a moment. We've got Thanksgiving coming up, don't we?

**MR. NEFF:** We just had Thanksgiving, yeah.

**THE COURT:** Yeah, we just passed it, so we're through that holiday, thank goodness. No, I mean with goodness. Thanksgiving, good. You know, it's perfect. Two weeks because we're not going to get caught on the Jewish/Christian holidays anyway, and if we do, it's a short period of time for the Jewish faith. So, all right, then two weeks.

Could you fashion that for me today by agreement, and

I'll send out that docketed minute order today and get copies to you.

**MR. NEFF:** We will.

**THE COURT:** All right, this is the time for argument. You can take as long as you want, and there will be two rounds. I'm going to ask the intervenors to argue in this matter. If the County wants to contribute in any way, you're welcome to, although in a sense you're not involved today. But if you have something to say, I don't want to shortchange that.

And as intervenors, when I appointed two of you, that doesn't mean you necessarily agree. I'm not looking for a concerted position on some issues. There may be a variance. So you're not here as a uniform body. When I appointed each of you, I think you're a broad and representative group, and therefore, in a sense, as intervenors, you're arguing your position either collectively, if you decide to, or individually. And let's begin with who?

**MR. NEFF:** I think it would be the people that brought -- the party that brought the motion, but submitted to the Court, Your Honor.

**THE COURT:** Let's do it by procedure and start with them. So, counsel, go to the lectern then and restate your name, because we're on Court Smart. Otherwise, we don't have a very good record.

**MR. BRUDIGAM:** Deputy Attorney General Malcolm

Brudigam, on behalf of Defendants Secretary of State Shirley Weber and the State of California. And for the Court's awareness, Your Honor, I'm going to be handling the portion of the State's motion related to Title III of the Civil Rights Act of 1960, the National Voter Registration Act, and the Help America Vote Act, while my colleague, Will Setrakian, is going to handle the balance of the arguments concerning the federal privacy laws.

**THE COURT:** Thank you.

**MR. BRUDIGAM:** So, this case is before you today, Your Honor, because DOJ has insisted that California send it an unredacted electronic copy of its statewide voter registration list, which contains the personal information of over 23 million California voters. Now, when DOJ approached California requesting this information, as federal law requires, California did make some records available for their inspection. And as California law also requires, it only did so with appropriate redactions to voters' most sensitive personal information. But DOJ, they didn't accept this offer, and they brought this lawsuit.

And so I want to be clear that this lawsuit is about DOJ wanting to get the social security numbers, the driver's license numbers, and the personal information of California voters, and it wants them all in an electronic format. But federal law doesn't require this, and in fact, California law

prohibits it.

So, as you can tell, there's a, at the heart of this case, there is a question of whether federal law preempts state law. That's a key issue. But before we even get to that question, Your Honor, there's a series of initial legal and pleading hurdles that DOJ cannot even overcome. And so I'm going to address those initial legal hurdles claim by claim.

So first, with respect to Title III of the Civil Rights Act of 1960, that claim faces both a jurisdictional and a substantive defect. So to start, DOJ sued in the wrong court. The text of Title III is clear that the court that has jurisdiction to compel relief is the one where the records were demanded or where the records were located. And here, that's Sacramento. And so the proper district court to compel relief would be the Eastern District of California. And the only response that DOJ provides for this jurisdictional defect in their opposition is that it erroneously asserts that millions of these records are created and maintained in the Central District, but the fact of the matter is, is that the records are located and they can only be accessed in Sacramento. And also, their assertion isn't entirely true either, because a vast majority of the records within the statewide voter registration database, they flow in there through the DMV or the statewide online voter registration form.

And, you know, last year that accounted for almost 90

percent of the records -- that 90 percent of the registrations or updates to registrations. So on that ground, Your Honor, you should dismiss this Title III claim because the Court lacks jurisdiction to compel any relief under that statute.

So even if the Court does decide to take jurisdiction, DOJ encounters another statutory hurdle in Title III's text, which is that the demand doesn't contain a valid statement of the basis and the purpose for the records sought. So DOJ's demand lacks any basis at all. None has been alleged in the complaint. And the alleged purpose, evaluating -- a single sentence saying that they want all these records to evaluate compliance, to evaluate California's compliance with the NVRA, that's not a valid purpose under Title III.

A valid purpose would be one that relates to a civil rights investigation into discrimination in voting, and DOJ has admitted that that's not the purpose of their investigation here. So we have two hurdles already that DOJ can't overcome. But beyond that, even the relief that they seek in the complaint is inconsistent with the text of Title III. The Title III only requires that the Secretary make records available at her principal office, and that's something that the Secretary already offered them. And that's demonstrated through the letters that were exchanged between the Secretary and DOJ in advance of this litigation and which have been incorporated into the complaint and are properly before the

Court on this motion to dismiss.

And so what those records show is that DOJ can't -- has not pled any plausible entitlement to relief based on what's already been offered. And so again, there's another legal hurdle that DOJ cannot overcome. And even assuming they could get past all three of those, Your Honor, then we're faced with the preemption question: whether this Title III law would even preempt California's voter information protections. And there's no precedent involving Title III preempting a state law, but I would say that the analysis would be very similar to cases evaluating the NVRA and whether that law's disclosure provision would preempt a state law.

**THE COURT:** What's the Court's standard in deciding that issue?

**MR. BRUDIGAM:** I'm sorry, what was that?

**THE COURT:** What's the Court's standard in deciding that issue.

**MR. BRUDIGAM:** So yes, that standard is first, the Court would look at the text, of course, and see if there is a conflict between the text of the federal law and the state law. And so here, Title III's text, it says nothing about prohibiting or redacting sensitive voter information. And I would point Your Honor to a First Circuit case, Public Interest Law Foundation v. Bellows, where the same silence in the text on this question of redaction in the NVRA was found to be

sufficient to find that the State could properly redact records that were being disclosed. So that's the first question that the Court looks at.

The next thing that the Court should consider is whether the State law would, you know, get in the way of the objective of this federal law, you know, hinder whatever Title III is aimed to do. And here, there's just no connection between protecting voters' personal information, on the one hand, and then an investigation into a civil rights violation or discrimination in voting. There's just a disconnect between these two goals of these two laws. And I think it's important to remember that states didn't begin collecting this sensitive information until 2002, when the Help America Vote Act was enacted. That's over 40 years after Title III was enacted. And so they weren't even contemplating social security numbers and driver's license numbers being turned over in those records.

And if you look at the Kennedy v. Lynd decision, a Fifth Circuit decision that DOJ basically -- their whole case relies on this decision, which is obviously nonbinding. But if you go through that, you'll notice at the very end that they talk about the records that are being turned over were public records. They didn't contain the type of sensitive information that we're dealing with here. And so --

**THE COURT:** What's the sensitive information in this

case?

**MR. BRUDIGAM:** What's the sensitive information?

**THE COURT:** Let's start with social security numbers. The government certainly already has access to those. Is it the linking of those social security numbers to the individual voter that causes a privacy concern or a Title III concern?

**MR. BRUDIGAM:** Yeah. I mean, it's the linking of that social security number with not just the voter's name, but their address, their method of registering to vote, their voter participation history, their political party registration.

**THE COURT:** Just a moment. So voter registration history?

**MR. BRUDIGAM:** Yeah. And voter participation, which elections they voted in, which party they're registered with. It's the connection of all of this information.

**THE COURT:** Would the government be able to ascertain how that person voted?

**MR. BRUDIGAM:** No. No. That's -- yeah, the secret ballot is protected, but --

**THE COURT:** So the privacy concerns so far that I'm hearing in your papers are the social security numbers, the addresses of the voter, the history -- I'm sorry, voter registration, the history of the turnout at the poll, in other words, the fact whether they voted or not, but not the way that

they voted.

**MR. BRUDIGAM:** So to be clear, Your Honor, the specific information we're concerned about, which is protected by California law, is driver's license numbers and social security numbers. That other information, they are entitled to inspect that information, and we've given them that opportunity already.

**THE COURT:** All right.

**MR. BRUDIGAM:** But the big problem is --

**THE COURT:** Go through a list for me what you've given them.

**MR. BRUDIGAM:** Well, we haven't given them anything. What we did is we offered them to come to the office and inspect all these records.

**THE COURT:** What did you offer them?

**MR. BRUDIGAM:** We offered them to inspect the entire statewide voter registration.

**THE COURT:** No, I want you to list it for me now. In other words, I want to parse out what you believe is worthy of protection and what you've already offered to disclose, and I want a clear record of that.

**MR. BRUDIGAM:** Sure.

**THE COURT:** So slow down and go through that, point by point.

**MR. BRUDIGAM:** Of course, Your Honor. So what we

want to protect are the social security numbers and the driver's license numbers in voters' records, and there's other information protected by California law.

**THE COURT:** Other? Not good enough for my record.

**MR. BRUDIGAM:** Which is the voter's signature.

**THE COURT:** Okay, signature.

**MR. BRUDIGAM:** Whether they made a choice of a language preference of how they want to receive their ballot.

**THE COURT:** All right.

**MR. BRUDIGAM:** And also related to driver's license number, if they have an ID number rather than a driver's license number.

**THE COURT:** All right. Thank you.

**MR. BRUDIGAM:** And everything else we've made available.

**THE COURT:** And I want you to list everything else.

**MR. BRUDIGAM:** So everything else, I'm not sure if I have a comprehensive list, but it would be name.

**THE COURT:** If you don't, I don't.

**MR. BRUDIGAM:** So that comprehensive list is located in a regulation that we cited in our brief.

**THE COURT:** Then recite it to me. We've got lots of attorneys here. I've got lots of time.

**MR. BRUDIGAM:** Sure. I believe I'd have to look up.

**THE COURT:** Would you step over?

**MR. BRUDIGAM:** Okay.

**THE COURT:** This lumping together isn't going to get it for me. All right. So I want to know exactly what you're seeking to protect and what you're not.

**(Pause)**

**THE COURT:** Thank you.

**MR. BRUDIGAM:** Of course. So the regulation that specifies exactly what they're permitted to inspect is Title II of the California Code of Regulations, Section 19-001 subdivision H. That includes name, address, phone number, email, birth dates, voter participation history, registration method, their current registration status. Are they active? Are they inactive? And I believe that's everything. That is everything.

**THE COURT:** And you're seeking to protect that?

**MR. BRUDIGAM:** No.

**THE COURT:** You're seeking to turn that over?

**MR. BRUDIGAM:** Yes. We've offered it.

**THE COURT:** Go through that again very slowly. Names, addresses, voter participation.

**MR. BRUDIGAM:** Yeah.

**THE COURT:** Registration method.

**MR. BRUDIGAM:** Right.

**THE COURT:** What else?

**MR. BRUDIGAM:** Registration status.

**THE COURT:** Registration status.

**MR. BRUDIGAM:** And contact information, phone number and email.

**THE COURT:** Okay.

**MR. BRUDIGAM:** Not every voter necessarily provides an email.

**THE COURT:** Okay. Thank you.

**MR. BRUDIGAM:** Okay. And so that's what we've made available. And so I just want to, and again, the focus is just the --

**THE COURT:** Once again, you have not made available social security numbers and driver's license.

**MR. BRUDIGAM:** Correct, Your Honor.

**THE COURT:** Okay.

**MR. BRUDIGAM:** Okay. So I want to just bring us back to the preemption question. So we have no direct conflict between state law and federal law, and I think it's also important to look at the federal law that requires the State to collect social security numbers and driver's license numbers. That statute is the Help America Vote Act. And in requiring states to collect that information, they did not limit the state's ability to make that information confidential. In fact, HAVA specifically stated that the choices on the methods of complying with this requirement shall be left to the discretion of the states. That's 52 U.S.C. Section 21085.

So California, in its discretion delegated under HAVA, chose to keep voters' social security numbers and driver's license numbers confidential. And if you look at the state law making them confidential, this is Elections Code Section 2194(b)(1). It says that information added to the voter registration records to comply with the requirements of the Federal Help America Vote Act of 2002 are confidential and shall not be disclosed to any person.

So the bottom line is that the best way to read Title III with California's state law protections and HAVA is a reading where there is no conflict.

**THE COURT:** And what part of jurisprudence deals with this issue? Is there any?

**MR. BRUDIGAM:** So there is no jurisprudence specifically dealing with Title III preemption of state laws. And that's why we think the case law evaluating NVRA preemption, which has a disclosure provision, is the most suitable vehicle for that analysis.

And so, Your Honor, what I just went through were three legal hurdles that the Government cannot overcome in their Title III claim. And even if they were able to get past these three legal hurdles, the state law protecting this specific information is not preempted by Title III. And so that's our argument on Title III of the Civil Rights Act.

I want to move on to the NVRA claim. This is the

second count.

**THE COURT:** Sure. Let me ask you a question along the way, and we've got plenty of time.

**MR. BRUDIGAM:** Sure.

**THE COURT:** On one hand, you're arguing that this Court would use a procedural means and find that this Court didn't have jurisdiction and potentially the Eastern District did or Sacramento, as you've termed it. That then would not resolve this case on the merits.

**MR. BRUDIGAM:** It wouldn't resolve that claim on the merits.

**THE COURT:** Well, resolve that claim. But I thought each of you were looking for a broader resolution. In other words, I don't what I'm going to do with the jurisdictional issue right now, but I do know that it's important to all of us to get this issue resolved in some form, get it to the circuit, get it to the Supreme Court, but that could take place in another state. That could become your lead case.

So do you want this resolved on substantive grounds, or are you seeking to have this resolved on procedural grounds? And if I accept your jurisdictional argument, you're not going to have a substantive ruling. Maybe Michigan issues it, or New Jersey. I mean, think about that for a while. You don't have to respond right now, but make sure you don't, in a sense, win a battle and lose a war, okay? Because I thought that you were

here for one reason, and that was to get this resolved as a precedent-setting case by both sides. And then if there's a conflict in another jurisdiction, it goes up in another circuit, et cetera, or it goes up on appeal, however this Court decides these issues for the Ninth Circuit.

So think about whether you really want this resolved substantively or not. Now, that doesn't mean you give up your argument, of course, but if I did rule in your favor, then you're going to have a substantial portion of this case that's not resolved here. It'll be resolved in some other jurisdiction, like Arizona, maybe, okay? Up to you. So think about that. All right. Now, your next argument.

**MR. BRUDIGAM:** Yeah, we will think about that. Thank you, Your Honor.

**THE COURT:** I want to hear from the Women League of Voters. Do we want these issues resolved here, or do we want to potentially piecemeal these out, okay, and the NAACP as intervenors, okay? I'll be asking those questions.

Counsel, thank you, but please continue.

**MR. BRUDIGAM:** Of course. So turning to the NVRA claim. So DOJ just simply hasn't alleged a plausible violation under the NVRA. So as I mentioned at the beginning, the alleged facts in this case, they show that the Secretary has complied with that law's public inspection provision. As I've mentioned, the Secretary made the statewide voter registration

list available to DOJ for its inspection, and nothing more is required under that statute. And so they haven't plausibly alleged a violation of the NVRA's public inspection provision. And here, we have a lot better case law on the question of redactions. And courts have universally permitted that disclosures under the NVRA are that states can redact highly sensitive information like social security numbers and driver's license. And DOJ doesn't cite any contrary authority. And, in fact, until this case, it has repeatedly taken the position in legal briefs before court of appeals, federal court of appeals, that the NVRA does permit these kind of redactions.

**THE COURT:** In those cases and the circuits that they're in.

**MR. BRUDIGAM:** Sure. So the most recent one would be the Public Interest Foundation v. Benson, which is a Sixth Circuit case that was decided earlier this year, and the brief that DOJ filed stated that position.

**THE COURT:** And is that in the briefing that was submitted to the Court?

**MR. BRUDIGAM:** That's cited. It isn't. It's not in our briefing, but it is in --

**THE COURT:** Because I've missed that, so that's why I'm slowing you down.

**MR. BRUDIGAM:** Sure, sure.

**THE COURT:** I'd like to see that briefing. I'd like

to see if DOJ has taken a contradictory position in the past and what their argument was on one hand if you're arguing today that they're changing their position. So you've got time.

**MR. BRUDIGAM:** Sure.

**THE COURT:** As colleagues, you don't have to dig that out right now. Just make a note of that. I want to see if there's a constant, as I call it, in terms of DOJ's position or if it's contradictory. I didn't see that reading the record or at least I didn't pick that up.

**MR. BRUDIGAM:** So there's that case. And I think the one that we do cite in our moving papers is the First Circuit case, Public Interest Law Foundation v. Bellows. And in that case, DOJ, again, takes the same position. That's a 2024 case.

**THE COURT:** But at least then, if both cases were before the Court, the Court would see in both the First and the Sixth Circuit. From your standpoint, Judge, this just isn't the First Circuit as a one-off. This is a consistent position. Do you know of a contradictory position that the DOJ has taken prior to arguments today in another circuit?

**MR. BRUDIGAM:** I do not. And, in fact, I'll give you one more brief. In the Fourth Circuit, this is a 2012 case, and I think their brief was submitted in 2011. This is the Long case.

**THE COURT:** Public Interest v. Long?

**MR. BRUDIGAM:** No, it's -- it's Project Vote v.

Long.

**THE COURT:** Is this in the briefing?

**MR. BRUDIGAM:** That's -- it's in Intervenors NAACP Siren's briefing.

**THE COURT:** All right. When you argue that, please call that back to my attention because you've got briefing that's pretty scattered right now. I'm going to want all of those, and I'm going to want any contradictory position or any synonymous position that DOJ has taken so I can see the reasoning before different courts across the country, and if they're filed in the Sixth, the First, and the Fourth, I'd be interested to see if these are like positions or varying positions and what the arguments are.

**MR. BRUDIGAM:** Of course. We'd be happy to provide those. So, again, the courts have been unanimous. DOJ has been unanimous in concluding that under the NVRA's disclosure provision, highly sensitive voter information can be redacted.

**THE COURT:** Why is the social security number that the Government already has access to, highly sensitive information? Is it what it leads to after you obtain that information, or is it the social security number in and of itself?

**MR. BRUDIGAM:** I mean, I think it would be both, and I think it's a good question, Your Honor. If they have these social security numbers, why are they coming and getting them

--

**THE COURT:** Well, the argument's going to be we, the Government, already have this. What's the sensitive information if we have access to it? And therefore, I expect the argument, and the briefing argument seems to allude to the fact that it's not highly sensitive. That's going to be DOJ's position.

**MR. BRUDIGAM:** Well, whether or not they want to construe social security numbers as sensitive or not, the bottom line is that the claims that they're suing under do not require us to turn this over, period.

**THE COURT:** Driver's license information, that's uniquely California. That's not, in our case anyway, uniquely a California, what I view as a state.

**MR. BRUDIGAM:** I think that's right.

**THE COURT:** Information.

**MR. BRUDIGAM:** Right.

**THE COURT:** And in that case, much more information could be available, let's say, that you would have concerns about. There, DOJ normally, I would think, doesn't have information to California information, which could be more extensive than just a social security number. What are you concerned about concerning driver's license information?

**MR. BRUDIGAM:** I mean, driver's license information is connected to many different, you know, state programs,

participation in various programs, and so that's information that, you know, many voters wouldn't want to be --

**THE COURT:** So name those programs.

**MR. BRUDIGAM:** I don't --

**THE COURT:** Well, go over and talk to your counsel. Slow down. Go over and consult.

**MR. BRUDIGAM:** Okay.

**THE COURT:** Okay. This is your opportunity.

**MR. BRUDIGAM:** Sure. Sure.

**THE COURT:** And DOJ and the other parties will have the same courtesy. Because there appears from the briefing that there's a much greater, let's say, if nothing else, privacy right and much more information that can be dispersed, and that seemed to be uniquely California oriented, not federally oriented.

**(Pause)**

**MR. BRUDIGAM:** So I can't give you a list right now.

**THE COURT:** Sure you can. You've got lots of time. Step over and talk to your colleague now.

**MR. BRUDIGAM:** Well, so we don't have that information at the tip of our fingertips. We, of course, can go and talk to our client and figure out exactly what that information is connected to, but I would just say that the key point here is less what it's connected to and the fact that California law protects it. The legislature has made a

decision that this voter information is confidential, and the federal laws that are being invoked cannot overcome that protection. And so --

**THE COURT:** So no preemption.

**MR. BRUDIGAM:** That's right.

**THE COURT:** Just a moment. Eventually, I'm going to ask each of you a very broad question that you should anticipate. And that is, it may be that in some areas, such as the Social Security information, that there is a state and federal interest, and if I find that both have an interest, how does the Court balance that? What factors would I use in making my decision to citing preemption or not? In other words, in balancing the factors. And what would be my standard preponderance, clear and convincing? How do I make that decision? What standard am I basing that on? Or is it simply textual? Now, don't answer that. You've got lots of time.

The second is, in other areas, there may be a unique state right, or different states, whether it's Arizona or California, request information of voters. And there, there may be a much greater right, and federal preemption may not take place, but I need to know what you're protecting, because the argument from DOJ will and should be, Judge, we also should have access to this information, and I'll wait for their argument.

Uniquely, it seems, historically, that the states

have controlled the process and procedure in terms of a voter. The federal government has rarely moved into this area, except in the civil rights era in the South. And those were extraordinary circumstances. But normally, each individual state not only enforces these rights through their local district attorneys or their local law enforcement agencies, but historically, these rights have seemed to be state rights.

When I get to DOJ, I'm going to be asking you, why are you requesting driver's license in particular? And what's the federal, you know, nexus to this? Okay, so be forewarned about that question. So, counsel, please continue.

**MR. BRUDIGAM:** Sure, and I just want to make a comment in response to that, Your Honor. I think that that's really a great point. And if you look at the amicus brief submitted by the group of bipartisan former Secretaries of State, they make this point very strongly in their brief that states are the default --

**THE COURT:** Can I present to you something? I haven't read those carefully for one reason.

**MR. BRUDIGAM:** Sure.

**THE COURT:** I want to read all the amicus briefs if I'm going to allow them at one time. I don't want to start forming opinions in a piecemeal fashion as I get one amicus brief from one party, which is why I've delayed having this discussion with you and gotten your position if I can get these

amicus briefs at one time. I think it's dangerous for a court to piecemeal that, in a sense. So I want to, now that we know we're going to get amicus briefs in two weeks, I've glanced at them in terms of trying to make a determination whether I would allow them or not, but I was waiting for your input.

So I represent to you, it's been a quick, quick read and brief discussion with my law clerks, and that's about the extent of it.

**MR. BRUDIGAM:** Got it.

**THE COURT:** Okay? So when you refer me to that, I'll go back now and read, but --

**MR. BRUDIGAM:** Yes, bookmark it.

**THE COURT:** Yeah, okay.

**MR. BRUDIGAM:** Yeah, yeah.

**THE COURT:** I will.

**MR. BRUDIGAM:** Okay. So I just want to finish on this disclosure provision under the NVRA. So the last thing you said is, okay, so this doesn't preempt California law, but I want to actually just back up one step, which is that even irrespective of state law, courts that have looked at this question have allowed redactions of this highly sensitive material, whether or not there was necessarily a state law involved.

**THE COURT:** Which courts?

**MR. BRUDIGAM:** So I think the main one would be the

First Circuit, the Public Interest Legal Foundation v. Bellows. And that is really the lead case on this question, and it cites a number of authorities reaching the same conclusion. So I think that would be the best --

**THE COURT:** Behind this is your concern that there's voter suppression that would take place? In other words, as we argue the different Title III, et cetera, there's always some politics behind almost every case that the Court gets. In some way, is this, from your view, not only the protection of this information under the statutes, but also a concern that there's any voter suppression?

**MR. BRUDIGAM:** Well, I think that's a good question, Your Honor. And part of the problem here, first thing is we want to protect this information, but we're getting no explanation, no rationale whatsoever for all of these records, why the DOJ wants these records. So we don't even have an idea exactly what they want to do with them. But I think voter suppression is certainly something we're concerned about and a possibility, but --

**THE COURT:** I expect DOJ to argue that they want to stop illegal voting.

**MR. BRUDIGAM:** And I would say that they would need to allege some sort of facts, a statement or basis in support of their demand, a statement of the basis and the purpose, if that is their true purpose and basis, because what they've said

so far is not that. They've said very specifically, the purpose of these records is to evaluate compliance with the NVRA's list maintenance provisions.

And what those provisions require, just so you understand, is that states conduct a general program that makes a reasonable effort at removing ineligible voters from the voter list by reason of death and those who move. And so -- and that really brings me to the next point about the NVRA, is that aside from not alleging a violation of the disclosure provision, they also have not alleged any violation of the NVRA's list maintenance provision that I just listed out there. There's just no facts whatsoever.

And they actually suggest that they can't even allege anything in support of a violation, because they're saying that these records are -- you know, not having these records prevents them from assessing compliance, which is -- which doesn't make sense under the legal standard for that claim.

And so that's our argument regarding the NVRA count. So I'm going to move on to the last count. This is the Help America Vote Act claim. And so again, DOJ really runs into the same problems. They haven't alleged a violation of that law in their complaint, and it should be dismissed.

So the first violation of HAVA that they say, or that they that they allege, is that California not turning over these records in response to their demand violates HAVA. Well,

that's just not true. If you read the statute, there is no disclosure provision in that law. And DOJ admits this in their opposition, and that admission is dispositive on this claim, because the Ninth Circuit has held that a government investigative demand is created solely by statute. And here, there's nothing in the statute requiring we disclose these records or turn them over. And so when we consider whether HAVA could preempt state laws, or California state law, there's just no conflict whatsoever, and so there is no preemption there.

And then beyond the nondisclosure of records, they also kind of -- they attempt to allege other violations of HAVA, which don't really make any sense. They just assert legal conclusions about certain provisions in HAVA, but they don't allege any facts in support of them. You know, they allege that we're violating the provision, which requires us to collect social security numbers and driver's license numbers, which doesn't make any sense, because that's why we're here today, because we have that information and we're protecting it.

And so I would just say, if you look at that claim, it falls far below the Twombly-Iqbal plausibility standard. And, you know, beyond not actually alleging a violation, like with the NVRA, they also suggest that they can't allege any violation, because they need -- supposedly need these records

to evaluate compliance.

I would just -- the one point they make on HAVA is that it lacks a private enforcement mechanism. It can only be enforced by the federal government. And this is, and they're basic, and they're saying that because they have the right to enforce HAVA, they have the right to demand these records from us, but there is no authority supporting that proposition, and it's directly contrary to Ninth Circuit authority. And so there's no violation here for us not turning records over in advance of litigation, simply because they can bring an enforcement action and get records in discovery. You know, we have to get past the pleading stage first.

And so with that, Your Honor, I would say that all three of DOJ's counts should be dismissed. And at this point, I want to turn it over to my colleague.

**THE COURT:** All right. Step over with your colleagues, though, as a colleague, and just see how did they do, okay? Just walk over there for a moment, and I'll pay the same courtesy to DOJ. Step over with whoever, when you argue, but step over and have a conversation with them. And just, if there's anything you missed, you'll have a second round, okay?

**MR. BRUDIGAM:** I appreciate it, Your Honor.

**THE COURT:** It'll be a little bit more brief. Now, let me ask just a couple of questions along the way. Am I going to get more requests, and you folks know, because this is

going to be the lead case in the country, obviously, with the other 14 cases. So far, we have the states of Arizona, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. And when I was considering this amicus, I was wondering if I was going to have a political show of two different parties on these voter rights cases.

Here, you have a number of what I call border states, Arizona, Michigan, Minnesota, arguably New Mexico. So at least your acquiescence today to have this come before the Court is well received. Do you know, though, of other state attorney generals who are going to be voting just by rumor or hearsay, and are we giving them enough time in two weeks to get these amicus briefs in? And if so, inform us, because if we need three weeks, we can take it, okay? But counsel your argument, please.

**MR. SETRAKIAN:** Good morning, Your Honor.

**THE COURT:** Good morning.

**MR. SETRAKIAN:** Will Setrakian for Defendants, Secretary of State Shirley Weber and the State of California.

To start, to your most recent point, I have no special insight into whether or not future amicus briefs may be incoming from the organizations and individuals that you just identified.

My colleague has explained why DOJ fails to state a claim under the Civil Rights Act, the NVRA, and the Help America Vote Act. But even if the Court disagrees with everything that my colleague said, it still should grant the State's motion to dismiss, because three federal privacy laws serve as affirmative defenses to the complaint.

Now, I'll begin with the Privacy Act. Two Privacy Act violations appear on the face of DOJ's complaint. First, DOJ improperly seeks information on how California's registered voters exercise First Amendment protected rights, something the Privacy Act directly protects. DOJ does not dispute that the choice to register to vote constitutes protected expression. Now, DOJ thus cannot collect this information unless it falls into one of this subsection's statutory exceptions. Now, DOJ pins its hope on the exception for records collected, quote, within the scope of an authorized law enforcement activity, close quote, but the Ninth Circuit gives that exception a narrow reading. That's from the McPherson case.

To meet this exception, DOJ must show a good reason to believe that the records are pertinent and relevant to its claimed law enforcement basis. That comes from the Garris case, also cited in our briefing. Those two are the only Ninth Circuit cases to construe the law enforcement exception to Privacy Act Subdivision E-7.

DOJ cannot meet this test. DOJ claims it needs these

records to enforce the NVRA and the Help America Vote Act. But personalized, unredacted voter records are not pertinent or relevant to this wide ranging, amorphous investigation. Instead, this is the sort of overbroad data gathering disallowed when First Amendment protected rights are at stake. The Privacy Act thus bars this collection.

And the Privacy Act bars the collection for another reason. DOJ has not followed the Act's protocols for collecting sensitive information. The Privacy Act requires the Government to publish or identify something called a System of Records Notice, or SORN, before collecting data.

Now, a SORN tells Americans how their sensitive data will be collected, used, and shared. DOJ identifies no SORN in its complaint. It thus is out of compliance with the Privacy Act. Now, in its opposition, DOJ raises three SORNs, but none justify this collection. The first SORN identified concerns Civil Rights Division records, quote, indicating a violation or potential violation of law, and it covers information on investigations' subjects, victims, and potential witnesses.

Now, this SORN does not apply here for several reasons. First, California's voters are not the subjects, victims, or witnesses of DOJ's claimed investigation. That targets California, not its voters. But even overlooking this issue, this SORN fairly read allows for collection of information regarding discrete legal violations. Say, I like

to think of maybe the statements of witnesses interviewed while investigating a hate crime. It does not let DOJ claim an investigation covering all voters in a state, and indeed, maybe more than just one state, then collect, store, and possibly share that information based on only that representation.

And precedent supports this, I think, common sense instinct. In the related field of federal administrative subpoenas, this circuit restricts the Government's ability to overread text to engage in bulk information gathering. That's the Peters case cited in our briefing. There's also an ejusdem generis issue with DOJ's reading of this SORN.

As the court knows, observing other items in the statutory list can help interpret disputed text. This SORN covers two groups, subjects of investigations, as we've been discussing, and, quote, individuals of Japanese ancestry who were eligible for restitution benefits as a result of their internment during World War II, close quote.

I think that narrow pool of covered persons strongly suggests that the subjects of investigations language cannot sweep to cover all state residents. And for all those reasons, this SORN does not apply here, and the other two don't apply either. The other two cited by DOJ. First, they're not even SORNs of their own. Instead, they just revise the SORN we have been discussing. But second, those revisions target situations far afield from this one, a publicization of data after an

investigation ends and after a data leak.

The Privacy Act accordingly bars this collection. I want to address while I'm talking about this something that the Court wondered about during my friend's argument, which was whether or not the federal government just already has social security numbers. The way I view it, the federal privacy laws require data hygiene. Even if some agencies of Government may already possess a social security number, the law still restricts the Government's ability to share and use data between agencies without notice.

The Government is composed of many different bodies. And the mere fact that one agency, probably the Social Security Administration, is in possession of a log of, I assume, social security numbers, that does not mean that DOJ, a separate agency, can access that information. Indeed, that's what the Privacy Act was designed to slow down, to block, exactly that sort of exchange without any oversight process or publicization.

**THE COURT:** Okay.

**MR. SETRAKIAN:** I'll turn to the E-Government Act. DOJ, straightforwardly, has not complied with this law. The Act mandates that an agency take certain actions before it collects, quote, any information in an identifiable form permitting the physical or online contacting of, close quote, a person if more than 10 persons are implicated. If those

conditions are met, the agency must conduct something called a privacy impact assessment, have that assessment reviewed by agency staff, and publish it. Now, the assessment, in turn, must address --

**THE COURT:** Now, is that an administrative process decided by the executive branch, or is that statutory?

**MR. SETRAKIAN:** This is by statute. The E-Government Act is a statute. It leaves some elements to the executive.

**THE COURT:** What elements are you referring to?

**MR. SETRAKIAN:** Certainly. So the contents of a --

**THE COURT:** I'm sorry, what elements are you referring to in the Privacy Act?

**MR. SETRAKIAN:** Yes, the contents of a privacy impact assessment.

**THE COURT:** Read that to me.

**MR. SETRAKIAN:** Read the entire -- I have the regulation. It's 16 pages long.

**THE COURT:** No, you don't have to do that, counsel. But you're relying --

**MR. SETRAKIAN:** Yeah.

**THE COURT:** In other words, I want to be able to look back and find that section.

**MR. SETRAKIAN:** So yeah, so --

**THE COURT:** Mr. Mitchell, in the meantime, would you be kind enough to gather all the parties? I don't know what

Mr. Szabo's schedule is today, but this argument is going to take longer on the Voter Rights Act than I anticipated. So if he's only available a certain period of time. So if you could gather the parties, have them all come into court, and I'll get a time estimate. I'm sorry, counsel.

**MR. SETRAKIAN:** Not at all. So this is from Section 208, cited in our briefing, subdivision (b)(2)(A). So the director shall issue guidance to a --

**THE COURT:** I'm sorry. 2-B-A?

**MR. SETRAKIAN:** No, (b)(2)(A).

**THE COURT:** (b)(2)(A), thank you.

**MR. SETRAKIAN:** And Section 2 is called Contents of a Privacy Impact Assessment. And Section A says the director shall issue guidance to agencies, specifying the required contents of a privacy impact assessment. Now, subdivision B explains what that guidance must contain. I'll give a couple of examples. The guidance shall require that a privacy impact assessment address what information is to be collected, why the information is being collected, with whom the information is to be shared. I could go on.

The specific OMB guidance is titled M-03-22 OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002. We cite this in our briefing.

**THE COURT:** Okay.

**MR. SETRAKIAN:** DOJ simply has not followed this law.

It seeks information that triggers the statute, but it has not pleaded that it completed a privacy impact assessment. And DOJ claims it need not comply with this law, but that misses the mark.

DOJ argues it's not collecting data from individuals themselves, but from California, but the law asks only whether the federal government is collecting individuals' personal information. It says nothing about the information's source. And to the contrary, the OMB guidance we were just discussing clarified that the E-Government Act applies when collecting information, quote, from or about members of the public. So not just from, but also, as here, about.

Perhaps recognizing this weakness, DOJ pivots to policy, but its arguments fail. They argue that the E-Government Act would require DOJ to conduct many privacy impact assessments before collecting this data, but the purpose of federal privacy laws is to restrict the Government from unrestrained access to individuals' records. DOJ cannot paint the intended operation of this law as running against policy. The E-Government Act thus mandates the complaints dismissal.

I'll briefly conclude with the Drivers Privacy Protection Act, just a couple of points on that statute. The Act prohibits the disclosure of driver's license numbers obtained by a state DMV in connection with a motor vehicle record. Now, it covers California's Secretary of State because

she receives these numbers from DMV when voters register there through Motor Voter.

Now, recognizing the law's application, DOJ argues that it fits into a statutory exception. The law exempts data collected, quote, for use by any government agency in carrying out its functions. But as precedent explains, we cite a Seventh Circuit en banc opinion that goes deeply into this, the phrase "for use" plays a key role in that analysis. The Government falls into this exception only if it plans to use the specific information collected for an identified purpose. Now weighed against that standard, DOJ's argument collapses.

As the Seventh Circuit recognizes, the act's purpose is to prevent all but a limited range of disclosures. Here though --

**THE COURT:** What was the Seventh Circuit dealing with in that case?

**MR. SETRAKIAN:** Yeah, it's called Senne v. City of Palatine or village of Palatine. Yes, Senne v. Village of Palatine. The cite is 695 F3rd 597. As I mentioned, that's an en banc opinion from the Seventh Circuit cited in our papers.

**THE COURT:** Okay.

**MR. SETRAKIAN:** Here, DOJ has not pleaded that it will use the specifically requested material, these unredacted driver's license numbers, to conduct its NVRA and Help America

Vote Act investigations. This exception thus does not apply. I'm happy to answer any further questions the Court has. Otherwise --

**THE COURT:** Not now. There'll be a second round, but step over with your colleagues. Make certain that there's something that you might have missed. Just take a moment as a courtesy and consult with them.

**MR. SETRAKIAN:** Absolutely.

**(Pause)**

**MR. SETRAKIAN:** Nothing further at this time, Your Honor.

**THE COURT:** Okay. LA Alliance and the City, I'll be right with you. I'm going to ask about the time constraints and the availability of witnesses in just a moment, but I want to hear one other segment.

For the intervenors, who would like to go first, the NAACP or the League of Women Voters?

**MR. DODGE:** I'll be going first on behalf of the NAACP, Your Honor.

**THE COURT:** All right, please. And, counsel, once again, I'm going to continually ask, if you know of any other states joining us, Arizona, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, or Washington, tell me immediately, in case I need to extend this briefing

schedule or their input.

Number two, with the amici that are requested so far from the Secretaries of States of Colorado, Connecticut, Minnesota, Nebraska, Oregon, Pennsylvania, Washington, once again, if we get that kind of hearsay out there, you have a contact, let's get together very quickly so we can get that briefing and the amici briefs before the Court as quickly as possible, in case we're making a mistake in terms of two weeks.

I've allowed you to intervene. You do not have to take the same position as the Women League of Voters. You're arguing potentially collectively, but you're arguing also individually. And I'll say to both counsel, once again, when you're asking the Court to reflect upon jurisdiction, make sure that that's what you want, because I could decide this procedurally and refer this to another district. Therefore, this may not be the lead case in the country. Arizona may decide this, New Jersey, Washington. So be careful.

Number two, I have the Obama birth certificate case. I could have decided that in one paragraph on standing. We took 30 some pages to anticipate that this issue would arise again under the 25th Amendment. And sure enough, in the election, it was right back to us. So just if you want this resolved on the merits, fine. If you want it, if your argument holds water with the court, then you're maybe in some other

jurisdictions. So decide how quickly you want this decided, because I know about 40 million voters, minimally or depending upon this, just in this case submitted to us. So counsel, please.

**MR. DODGE:** Good morning, Your Honor. Chris Dodge of the Elias Law Group on behalf of Intervenor NAACP.

**THE COURT:** Nice meeting you.

**MR. DODGE:** I wanted to start by getting immediately to Your Honor's concerns about what this case is really about. This case is about voter registration, and voter registration is a canonical area of state government and state domain. The elector's clause in the Constitution assigns, in the first instance, responsibility for voter registration and all that it entails to the 50 states.

Now, the federal government, as Your Honor has alluded to, has limited tools that permit it to supervise that process when there's a breakdown, when there's not adequate list maintenance, when there's racial discrimination, when there's suppression of the right to vote. But DOJ's tools to do that are extremely limited. They can only exercise the power that Congress has given them to intrude upon this historical state domain. And that is what this case is really about, because what's going on here is completely unprecedented.

To give some context to the Court, which I think gets

to this amici issue, this issue starts with the Department of Justice demanding the full unredacted state voter registration lists of over 40 states. It has now sued 16 of those states in three tranches. It started with Maine and Oregon. California was in the second tranche. And just two days ago, it sued another six states. I can give you those 14 states if you would like. It overlaps somewhat with the states that have submitted an amici brief. But that's sort of what's going on. This is a national issue. And this Court is out front right now in terms of the briefing and the scheduling, but those cases will be following in short order.

There are two others in the Ninth Circuit in Washington and Oregon that are also underway. So that's the context here.

So what really this case is about is, is the Department of Justice using its limited tools given to it by Congress properly to intrude upon California's state voter registration system by demanding that it turn over a full unredacted voter list? And, you know, there's extensive briefing on the three tools that they point to. They claim three tools here: the Civil Rights Act, the NVRA, and HAVA. And my colleagues from the states have sort of gone through those. You know, we've raised similar arguments in our briefing, and I don't want to, you know, waste the Court's time repeating them because they are in the papers. I want to focus

on some of the more discreet arguments we raise in our brief.

And I guess one more piece of context for the Court that I think the Court will find interesting. In its most recent tranche of cases, the six cases they filed just a couple days ago, the Department of Justice is only pursuing a single claim. They abandon their NVRA and HAVA claims in these six most recent cases against, I believe, Vermont, Rhode Island, Delaware, Maryland, New Mexico, and Washington. They only, in those most recent cases, are pursuing their Title III Civil Rights Act claim, which I think tells you something about the degree of confidence they have in their NVRA and HAVA claims. And I think the briefing very adequately explains why they do not have any plausible claim for using those two tools, HAVA and the NVRA, for the purpose they're seeking here.

HAVA has no disclosure provision. Period. Full stop. It is not there. There will be -- you can find nothing in the Department of Justice's briefing about how HAVA entitles them to demand documents from a state. Non-existent.

The NVRA, it has a limited public inspection provision that applies to everyone, but it gives no special access to the Department of Justice. It means anyone in this courtroom could make a demand of a state and say, hey, I would like to see certain documents about how you maintain your voter rolls. But that's a limited public inspection right, and it does not get them the information they're seeking here. It

gives them documents about sort of the mechanics of voter registration, and it gives them certain information like names and addresses that the state has offered to give here, but it doesn't give them social security numbers. It doesn't give them driver's licenses. That's not in the statute. And there is a boatload of precedent on the NVRA, the Bellows case from the First Circuit that my friend alluded to, extensive, you know, cases cited in the briefing, throughout the briefing, that uniformly say states are allowed to enforce their own privacy laws to redact information that is requested under the NVRA.

**THE COURT:** You're referring to the Bellows case out of the First Circuit?

**MR. DODGE:** That would be the best one, Your Honor. And I think, and to Your Honor's earlier point, that is the paradigmatic instance of the DOJ just flip flopping its position here. There are numerous briefs from the Department of Justice in these NVRA cases. There are a lot of NVRA cases out there.

**THE COURT:** Okay. Just a moment.

**MR. DODGE:** The Bellows case is one --

**THE COURT:** Counsel, slow down. We've got lots of time. So far you've cited Benson out of the Sixth Circuit. You've cited Bellows out of the First, and the Long case out of the Fourth. My question to all of you is going to be if DOJ

has taken a consistent position as you're arguing, I also want to know if they've taken a contra position, and I want that briefing in front of the Court so I can see what the arguments were in this different circuits. Are you relying on the Bellows case?

**MR. DODGE:** Yes, Your Honor.

**THE COURT:** All right. Thank you.

**MR. DODGE:** And to that point, Your Honor, what I would say is in those three cases, which are the three I'm familiar with, in each of them, DOJ took the position that the NVRA permits states to redact certain voter registration information, in every single one across administrations, that was DOJ's position. I am not aware of the DOJ ever arguing until this case or, you know, this collection of cases that the NVRA permits the federal government to demand all of this.

**THE COURT:** Were the redaction the same areas that this Court's dealing with? Because here, slowing all of you down, the willingness of the State and potentially the County, when I hear from the County, are the names, addresses, voter registration, registration method, status, contact information is permissible, but you have strong arguments concerning Title III Privacy Act and privacy rights, from your viewpoint, concerning social security numbers and certainly the state driver's license information, which has a larger breadth of information.

Are you concerned -- as your briefing seems to allude to in some of the amicus so far, concerning voter registration, in other words, as you argue statutory language behind that, there's some motivation. And you -- I think we can all note that the federal government on occasion has moved in the civil rights issues, especially in the south, but rarely in terms of states. So for DOJ, you know that that question is coming. Why the state of California? Why these different jurisdictions? What's behind this? What is your real concern?

**MR. DODGE:** It's a great question, Your Honor. And you know, I do not have a direct link to AG Bondi's mind on this issue, but there is some --

**THE COURT:** We'll call her. I'm just joking.

**MR. DODGE:** That there is -- you know, their stated purpose, the Department of Justice's stated purpose is to supervise each individual state's list maintenance, how they maintain their voter rolls? We think that's not -- you know, that's not really suitable for the various tools they're trying to use here.

There is public reporting out there that is cited in the briefing that I think the Court can take notice of that says that what the Department of Justice is trying to do through these requests is in essence to compile a national voter registration list, which is something that has simply never existed in American history before because it's a

state responsibility, by design, so that there is not an over centralization of the electoral process in this country to sort of, you know, avoid one person controlling the voter rolls?

**THE COURT:** What do I do if I find that both the state and the federal government have a substantial interest? How do I balance that? What standard do I use because there's no jurisprudence in this area?

**MR. DODGE:** It's governed by the statutory text, Your Honor, because DOJ, of course, the federal government is a government of limited powers. The Department of Justice does have tools in its belt. Congress has given them the tools we're discussing here today, the Civil Rights Act, the NVRA, HAVA. The problem is they are trying to expand those tools beyond what the statutory text will permit to get more than what Congress has chosen to allow them to acquire. That's the nub of the issue here.

You know, I think everyone would agree that the federal government has a limited role to play in supervising the voter registration process, but it is limited. It is limited by design. And what is going on here is unprecedented and they are exceeding their authorization in trying to compile these full lists from essentially every state and that's sort of the nub of the issue. So it's not a balancing inquiry. It's a -- the question is is DOJ acting within the scope of their limited authority to intrude upon the state

voter registration process.

**THE COURT:** So you're relying upon statutory?

**MR. DODGE:** Yes, that's exactly right, Your Honor. So, you know, I've sort of briefly alluded to HAVA and the NVRA, which have -- you know, HAVA has no inspection power for DOJ, the NVRA has a universal public inspection that gives no special power to DOJ, and there's uniform case law saying that states are allowed to enforce their own privacy laws. California has a very robust state privacy law that protects voter information even when there's an VVRA request from the public.

So that leaves their last tool, which is the Civil Rights Act. The public documents request provision of the Civil Rights Act has collected dust over the years. It really hasn't been used much since the '60s. It was passed in 1960 during the Civil Rights era to bolster DOJ's ability to collect certain kinds of records for civil rights investigations. That's what the legislative history says, that's what the case law says.

And I want to raise one specific statutory argument that I think the NAACP alone has raised which is that when you look at the text of that document production requirement in the Civil Rights Act, what it says is that states are required to retain and preserve all records and papers which come into their possession relating to any application, registration, or

payment of a poll tax back when poll taxes existed before they were eliminated by the Civil Rights Act of 1964.

And the key language that I want to bring to the Court's attention there is come into possession. The only kinds of documents, states are required to preserve and turn over to the federal government are those that come into their possession and that obviously might refer to something like a voter registration application that someone submits to their local registrar, that comes into their possession. When you receive a letter in the mail that comes into your possession, when you write a letter yourself, it doesn't come into your possession. You don't receive it. You don't acquire it. That's what that language means. Come into possession means to acquire or to receive. That's what Black's Law Dictionary says. That's what a litany of decisions from the Supreme Court in the Ninth Circuit say. Huddleston is the Supreme Court case, I'll give you, but it's in the briefing.

So the question is the records they're seeking here under the Civil Rights Act, the full statewide voter registration list, is that a document that came into the possession of California election officials? No, of course not. It's one they created. It's something they created in the first instance. They didn't receive it from voters the way they might a registration application.

And I understand Your Honor hasn't fully read the

amici briefs, but I think the Maryland brief --

**THE COURT:** I won't until they're all before me at one time, so I don't read them piecemeal.

**MR. DODGE:** One point raised in that is that the animating concern behind this document preservation and production requirement in the Civil Rights Act was that southern registrars, when a black person came in to register to vote in the '60s, they'd oftentimes just destroy it. They wouldn't preserve it and they were -- so the Act is specifically concerned with making sure that election officials preserve documents they receive from voters so that there is documentary evidence for a subsequent civil rights investigation.

The Department of Justice has no explanation in its briefing. They're welcome to try and explain it here today how the state registration list is --

**THE COURT:** Does the executive branch have to give a reason? In other words from your perspective, they have to have, for want of a better word, some noble reason behind seeking to obtain this information. With the separation of the branches, why do they have to have and why do they have to explain that right?

**MR. DODGE:** Because the operative constitutional provision underlying all of this is the elections clause, and the elections clause says that in the first instance, the time,

manner, and place of elections for Congress is determined by the states. That is the default rule. Congress and never mind the executive branch, do not get the first say on that.

What it does say then is that Congress may supplant state laws, specifically as to the manner of holding elections, and that's so that states don't frustrate federal elections with suppressive rules or obstruction or what-have-you. So to Your Honor's question, the issue is has Congress here chosen to supplant state prerogative to give the executive branch a tool to intrude upon the states. That's the question and, you know, as has been discussed here, they point to three purported tools from Congress: Civil Rights Act, HAVA, NVRA, but they can't really explain how any of those tools actually gives them -- how the text of any of those laws authorizes them to make these demands of California or any other state. That's the essence of my argument, Your Honor.

**THE COURT:** Okay. Then step over just a moment and talk to your colleagues.

**MR. DODGE:** Sure.

**THE COURT:** Whether you have the same or different arguments. Take a moment.

**(Pause)**

**(Discussion regarding another case)**

**THE COURT:** This would be the League of Women Voters. And if you'd make your appearance, please.

**MS. ZELPHIN:** Thank you, Your Honor. Grace Zelphin on behalf of the League of Women Voters of California. And I'll attempt to keep it short, given the Court's calendar today.

**THE COURT:** We've got plenty of time, trust me.

**MS. ZELPHIN:** What the Department of Justice is doing here is putting the cart before the horse. It wants the sensitive personal information of 23 million Californians, but it simply does not have any legal authority by which to obtain this. And when I say that sensitive personal information, yes, it's the driver's license, it's the social security numbers, but it also includes the tranche of data, right? And these personal sensitive pieces of information in a larger context, in the whole set of 23 million Californians.

And as, you know, a lot of argument has already been taken here, the cases and the law cited by the Department of Justice simply do not give them any authority to obtain that information, which is housed rightly in the state of California.

I won't belabor the point as to preemption, but the NVRA public disclosure provision, upon which the Department of Justice originally relied heavily upon, requires disclosure of public voter rolls, but it does not require that information to include that sensitive information as prohibited by California and federal law. HAVA has no disclosure. And in its

opposition, the Department of Justice appears to have waived that argument, not addressing it at all in opposing the intervenor's motion to dismiss.

**THE COURT:** I'm sorry, you dropped your voice. State that again.

**MS. ZELPHIN:** Which the Department of Justice did not raise at all or argue on at all in their opposition.

**THE COURT:** Okay. Thank you.

**MS. ZELPHIN:** So that brings us to Title III of the Civil Rights Act, which also allows the Attorney General to demand records. But again, it still cannot require the sensitive data of 23 million Californians.

First of all, they failed to comply with the statutory regulations to request records under that statute. They have failed specifically to make a demand that contains a basis of the purpose, therefore. So they simply have not provided that. They have not said, what is the information, what is it based, what is it going to be used for? They attempt to cobble together some arguments based on their response -- the California's responses to EACS, but it just does not coincide with their request.

And even if they were able to put together a demand that includes a purpose and basis, that must be read in conjunction with state and federal privacy laws. And in doing that, again, there is absolutely no --

**THE COURT:** And let me slow you down. What's your concern about privacy? What areas are you specifically concerned about if the Government's argument is we already have access to social security numbers, the State is already willing to turn over names, addresses, voter registration, voter method, registration status, and contact information, or at least that's the representation made by your colleague. What's your concern?

**MS. ZELPHIN:** The League of Women Voters has used the NVRA public disclosure provision, which also provides this information, allows for public disclosure of those records, which are necessary to review to ensure that folks are not --

**THE COURT:** And what are those records? What are those records?

**MS. ZELPHIN:** That includes the state voter roll, which is what the federal government is seeking here. What it does not include in that voter roll -- right, so the voter roll is, I think, a set of data. But in that set of data, that cannot include specific information tied to each of those voters, which includes their driver's license number and their social security number, right?

So it's not just that the federal government doesn't have access to social security numbers anywhere, but in this tranche of data, as a voter, as someone who has registered to vote, complete information cannot be completing that data set

with sensitive information like driver's license. And that is exactly how it should be applied in the NVRA context, and that would also apply in the CRA context, where -- and similarly, there are instances, there have been historically, where folks are disenfranchised, and the League of Women Voters wouldn't say that that cannot be investigated, but what cannot happen is using the CRA as an unfettered discovery tool to gather tranches of information, including sensitive data, without any restriction.

**THE COURT:** And that's a privacy concern?

**MS. ZELPHIN:** Yes.

**THE COURT:** Okay.

**MS. ZELPHIN:** And to two of your other questions -- or one of your other questions, the League of Women Voters is very concerned about voter suppression and the use of this data, as it could be done directly to counter the actual purpose of these statutes, which is to franchise the citizen.

**THE COURT:** Okay. Check with your colleagues for just a moment, if you care to. And there'll be a second round, eventually, after I hear from DOJ. You okay?

**MS. ZELPHIN:** Okay.

**THE COURT:** Okay, when we come back, you can anticipate -- the question I've got for the Government will be, while the federal government has been active in the South, especially during the Civil Rights Movement in the 1960s, what

are you relying upon for intervention in your request of the states for this information? And the case started with the Orange County filing, and there were either 13 or 17, I believe, subject to the county's correction of the court --

**MS. SHOAI:** Seventeen.

**THE COURT:** -- instances of what was a concern of some kind of voter manipulation or fraud.

**MS. SHOAI:** Your Honor, just to clarify, the request was for voter registration data related to individuals who were no longer able to vote because they didn't meet the citizenship requirements?

**THE COURT:** That's correct. But there were 13 or 17, I forget.

**MS. SHOAI:** Correct. It was 17.

**THE COURT:** Seventeen, thank you. But what caught the notoriety was the dog who voted twice.

**MS. SHOAI:** Which is not the subject of the complaint, by the way.

**THE COURT:** I understand. But your former colleague argued that in the court.

When the states set up our voting apparatus, whether it's Arizona, California, or whatever, uniquely, the states have been in charge of just how we voted a polling place. Historically, they've been in charge with the local district attorneys, at least in this state, of any kind of voter fraud,

and therefore, the states have had a strong interest in the past, except with those exceptional circumstances in the South, of a state's rights, if you will, not only in terms of procedure, but enforcement.

Eventually, during your argument, I want to hear what interest the federal government has that is unique that causes the request of this information, and if the executive branch can request this information without a purpose, because you hear the other side arguing, in a sense, that this is a fishing expedition, and behind the scenes is voter suppression, of course. You have unlimited time, but for LA Alliance and the City, how long is Mr. Szabo available today?

**UNIDENTIFIED SPEAKER:** Until 2:00 p.m., Your Honor.

**THE COURT:** Can you bear with me? You have no choice, but could you take a recess for a moment, and one of you sit in the audience so you see our time frame. We could be done in five minutes or by 2:00 p.m., okay? But we'll come back to you. We'll try to resolve this today.

You're from D.C. or you're from Sacramento?

**MR. BRUDIGAM:** I'm from Sacramento, Your Honor.

**THE COURT:** Okay.

**MR. SETRAKIAN:** I'm here in Los Angeles.

**MR. DODGE:** I'm from D.C., Your Honor. In theory, I'm flying to San Francisco later this afternoon for another matter.

**THE COURT:** No, you won't. You'll be here. Okay. Where are you from?

**MS. ZELPHIN:** Sacramento.

**THE COURT:** Sacramento.

**MR. NEFF:** Washington, D.C., but I'm at the Court's discretion.

**THE COURT:** I can hold a nice session. I can go from 6:00 to 10:00, okay? That's not a threat. I'm just telling you I have unending hours, okay? So if you need it to get resolved tonight, I can reconvene in another court. This court closes at 6:00, but I can stay open until minimally 10 o'clock if you need to. So tell me -- we'll complete it today for you, okay? I promise you.

You have unlimited time, so when DOJ comes back, (indisc.). Don't worry about the time, okay? And if you need to make a call, I'm joking with you. They want you to call Bondi. You don't have to do that. But if you need to make a call, you're entitled to make that, all right? And then there'll be a second round. Fair enough? Okay.

So one of you sit out in the audience, and let's see how long this will take LA Alliance, all right?

**(Recessed at 9:09 a.m.; reconvened at 12:01 p.m.)**

**THE COURT:** If you'd come forward. If you folks come forward on the voting rights case, I'm going to make this a public case because of the nationwide interest in it. So I'm

going to create for you folks a public website, publish the transcripts and those will be done at court expense. They won't be a cost to either party. This has too much significance across the United States, not only California but I think nationwide. So I'll create that website for you, we'll get those transcripts up for you in a period of time and that way other districts, other courts considering this matter can see what's occurring here. Fair enough? And guess what? It's not going to cost you. Okay?

**MR. NEFF:** Thank you, Your Honor.

**THE COURT:** All right. Yeah. Thank you.

All right. Then, counsel, we're back on the record in the matter of the Weber case and I'm going to turn to the Department of Justice. And once again, you have as little or as much time as you want. If you need to stop at any time, consult with somebody, make a phone call, I don't find that any affront. Okay.

So once again, would you just identify yourself for the record and you can remain seated if you'd like to if you're more comfortable like state court or you can go to the lectern.

**MR. NEFF:** I do have a state court history, Your Honor, but for a change I'll go to the lectern.

**THE COURT:** It's entirely different than state court so go to the lectern then and just identify yourself for the record.

And counsel, all of you've hopefully had an early lunch. And with your permission, after DOJ argues, if we have the time, one of you have some engagement some place. Let that person, whether they're a party or an intervenor, argue first in terms of rebuttal and then if they want to stay but please, in the future, please don't tell me you've got something in the afternoon because I'm giving you unlimited time, okay? So okay.

So Counsel, on behalf of the Department of Justice.

**MR. NEFF:** Thank you, Your Honor.

Your Honor got straight to an issue that is overhanging this entire hearing today which is the procedural posture of it. What is truly the procedural posture? And I want to get to that because it's important here.

This is not just some other complaint that was filed. This was filed under the Civil Rights Act of 1960 which is a very particular unique law. That law has been interpreted when it's used as an equivalent of an OSC. There really is an OSC pending before this court.

The counsel opposed to this are really trying to bootstrap in a merits argument in a motion to dismiss. It's inappropriate.

However -- and I appreciated the Court's discussion, both of the People's motion to compel as well as questioning opposing counsel about where they stand as far as their

jurisdictional argument because the parties should be serious about what's going on here. The People, or the United States, while we believe that the motion to dismiss brought by various counsel is inappropriately bootstrapping in merits arguments, we also do believe that this deserves a resolution and that arguing it on the merits on the papers, regardless of what we call it, is an important matter for this country but we should be honest about what we're doing here.

The United States is asking for this court to issue, in accordance with the Civil Rights Act of 1960 and caselaw interpreting that, a prompt order that California produce records that we are clearly entitled to. That's what this motion really -- that's what this litigation really boils down to and we shouldn't lose sight of that.

The various issues brought up by Defense either fall into trying to avoid the text of that statute of the Civil Rights Act of 1960 or pure speculation or both. We can take each one in turn -- I'm happy to address the ones the Court would particularly like me to address more than we have in the briefing -- but if -- we want to start with the Civil Rights Act. The language just couldn't be clearer.

The records that the Civil Rights Act refers to under 52 USC 20701 through 6 is that every officer of election shall retain and preserve all records and papers related to any act requisite to voting. The scope is quite clear.

Then we go down from Section 301 to Section 303. It becomes very clear. Any 301 record shall, upon attorney general demand, be made available to us. We provide a statement of basis and purpose.

And Your Honor, it's the United States' position that that is the only thing that could even conceivably be litigated in a motion to dismiss if we're really calling it that. The United States believes that's not really what counsel is trying to do but let's take it -- let's stay in the motion to dismiss basket for right now.

The would have to challenge the complaint on its face. A Civil Rights Act (inaudible) complaint challenged on its face could really, I guess, only be argued that, (a), it wasn't the attorney general bringing the case; (b), it's not election records or, (c), that there's no statement of basis or purpose. And they spent a lot of time talking about basis or purpose.

But basis and purpose under this statute is not something that is reviewable and the courts have found that and it's clear from the text of the statute. Your Honor, it's equivalent of a requirement that the Court enter its meaning on the minutes. It can then be reviewed as to whether the Court put in a reason on the minutes but the reason itself is not reviewable for a -- for whatever action the Court took.

We only need to state a purpose. We have done that.

We actually went far beyond that. The counsel has to ignore many, many concerns with California that we cited in our complaint as to why we want these records. However, we are not required to do so. There is no burden. There is just simply a requirement that we state our purpose.

Now, our purpose is free and fair elections. Our purpose is to seek to make sure that voter rolls are clean and that every vote is represented and our purpose was clearly stated. And to understand our purpose the Court is going to need to read the three election statues at play here in their entirely and in totality.

The three statutes, the Civil Rights Act of 1960, the NVRA and HAVA all work together. It is a statutory framework for having free and fair elections in the country.

Counsel for the intervenors and for the State of California would like you to look at each of them individually. Piecemeal it out and not see them in totality, much the way you would instruct a jury that they should read all the instructions in totality and not get overfocused on one. In fact, they all are clear on their face what they say but in the big picture what it provides is a framework of how voters are protected under the NVRA for their registrations and then under HAVA what minimum requirements the state has as to what they have to do to maintain those voter rolls to be accurate. And then the Civil Rights Act provides the mode by which we can get

those records to make sure we are doing our duty as the federal government to make sure that these federal elections remain free and fair.

And counsel simply has to rely on both misrepresentations of the law and our position, stating our -- for example, that our whole case relies on Lynd. No. This action relies on the Civil Rights Act of 1960 and its very clear text, which is the one thing they don't want to talk about because it's very clear.

Privacy concerns are first not a proper concern for this motion to dismiss but even if they were, they're unfounded. Privacy -- the United States is going to comply with all federal laws. That includes the Federal Privacy Act. The DOJ Civil Rights Division itself has a stated policy available on a website as to how we will comply with the Federal Privacy Act and have before.

**THE COURT:** Explain that to me.

**MR. NEFF:** Yes, sure.

So we publish a series of regulations. They're called the SORNs that show how we tend to the data and make sure everything is properly protected under, not just Federal Privacy Act, but other obvious concerns when you're dealing with large databases.

**THE COURT:** Is that part of my record?

**MR. NEFF:** Yes.

**THE COURT:** And what would I look at that? What exhibit?

**MR. NEFF:** At our -- in our response to our motion to dismiss and the supporting data for that, the attachments for that.

However, I would state, that to any extent, especially the state privacy-type acts would contradict the Civil Rights Act, that the Civil Rights Act would rule.

The United States does this on a regular basis. We have multiple states that don't even see this as a dispute, that simply just -- in fact, on their own do this on a regular basis, share the information with the federal government so that we can run crosschecks to make sure that people are properly on voter rolls.

**THE COURT:** What states are those that have shared either their DMV registrations or the social security numbers of voters?

**MR. NEFF:** Offhand, right now, off of memory I believe the states are Kansas, Indiana -- there are four.

**THE COURT:** That's okay.

**MR. NEFF:** I'll also state the biggest one is -- so we also have an MOU that we produce at the state request. Some states request it, some don't. Some say, yes, you're entitled to this data, here you go. And we have a whole data-sharing setup ready. It's essentially the Box program, plus some

federal proprietary encryption technology to make sure that this is as secure as it needs to be. And we -- so Texas just told us today they're going to enter in the MOU and share us the data in the next few days. We believe many more states are going to follow just in the next few days but so we have four states that have already sent us the data. No questions asked. Probably another dozen or so states in the next week or so that are just going to sign the MOU and share with us. This really shouldn't be controversial. It's clearly stated as part of our duty under HAVA and the Civil Rights Act is clear that this is the mechanism in which we do it.

**THE COURT:** Do you think that those states with attorney generals complying with your request would be interested in filing an amicus just as other states who may be opposed to your request are filing amicus? In other words, what I want to do is make certain if we have states coming late to the table but in compliance that we're looking at the reasoning by all of the atty generals in the respective states.

And what I was worried about before, frankly, is if I had red and blue states lining up when I started to look at the amicus, I was particularly interested in the states bringing that to me.

Now, I don't know how you define what I call -- well those states that have voted for different -- in different elections in different ways. Arizona, New Mexico, Michigan,

Minnesota, seem to be what I call those states that traditionally doesn't go Democrat or Republican.

And then I looked down at the state secretaries for the states and if you notice, there are three states out of there on the amicus. Connecticut is in for the first time. They are not part of the amicus for the 16 states that we initially named but these are the state secretaries for the states of and Connecticut is an addition, Nebraska is an addition, Pennsylvania -- which has certainly been a swing state.

So I was a little worried and that's why I sought your wisdom about whether you all were going to stipulate to me accepting this because I didn't know the weight if I was just dealing with a party disagreement. And I'm not saying that these swing states necessarily carry greater or less weight but I want to be alert that if this is a partisan effort. And certainly the country is divided so ...

**MR. NEFF:** I would be --

**THE COURT:** ... so I've got a stipulation that I'm accepting all of these amicus briefs. I just want to pay you the courtesy if other states are coming onboard, like Texas, et cetera, that we give them a chance for those attorney generals to get this to us but by the same token, I'm going to be writing over the next couple weeks.

Is two weeks enough time for you?

**MR. NEFF:** We can inform the states that --

**THE COURT:** Okay.

**MR. NEFF:** -- a judge has invited them to file amicus but --

**THE COURT:** Will you do so? In other words, for both parties. Get it out to all the states that you can and I'll docket this, et cetera. And there may even be disagreements between different courts examining this matter and different circuits.

**MR. NEFF:** I think the bigger picture is that the states that are complying are likely not going to see this as something that they need to delve issue.

**THE COURT:** But I just want to pay you the courtesy in terms of due process. Okay.

**MR. NEFF:** Yes. And I would say that's because this really shouldn't be a political issue. One side can make it a political issue if they want to just simply in a single position declare it that but it doesn't change the fact that the Civil Rights Act of 1960, the text is quite clear and that no one is in favor of faulty voter rolls.

**THE COURT:** We've also had for both parties we've had a series of state rights issues in the federal court for years. And different states have taken a perspective on what the states' rights issues are. Some are much more state-right oriented, others aren't. That's why I was interested in the

division. But since you've all stipulated, I'm accepting this amicus at the present time. I just want to make sure you've got the courtesy on both sides of any other parties coming onboard so if we need an extra week we can take it, okay?

Okay. Won't you continue. I'm sorry.

**MR. NEFF:** Thank you, Your Honor.

The -- would emphasize that this data is necessary for the United States to conduct its HAVA operation -- its HAVA enforcement compliance and that is why that data is specifically cited in the statute. It simply couldn't be clearer that it needs to be the last four digits of a social security number or the driver's license; otherwise, we are not able to make a verified finding as to the various voter roll registrations that might have problems. In fact, we sometimes even have to follow up after that data is run. It's rare but there's a reason that was put in the statute because it's something like we can verify it from what I've talked to our database analysts something like 99.999 percent of the time. That's enough for us to be able to know if it's an actual person that lives in that location and is who the voter registration role says it is.

**(Pause)**

Again, with the caveat that we do not need to ever -- that we do not need to get to this. This is essentially an OSC where we only need to state our purpose and then we are

entitled to the records. Also under a prompt order, according to caselaw, a prompt order that this is essentially an OSC hearing.

The facts of California itself are particularly worrisome. Maybe the most worrisome state in the union.

The state is required to provide various data to the Election Assistance Commission which is a nonpartisan commission. The state -- the agency created by HAVA in order to try and keep this as neutral as possible and California doesn't provide the complete data. Their data doesn't have Los Angeles County in it. It's one-fourth the state's population. That on its own should cause concern countrywide that they've not submitted that data. It would be irresponsible of the United States to not come in at this point and say we need to see your data to ensure fair and free elections.

All of the harms that opposing counsel have pointed to are based on speculation, logical leaps and there is no concrete evidence they can point to.

That being said, with the overarching point that this is before the Court right now as essentially an order for an order to show cause, dressed up as a complaint, and that you have a dismissal that is essentially fighting that order to show cause, dressed up as a motion to dismiss, I believe the Court should act within what would be its lawful authority to issue a prompt order that California needs to turn those

records over to us that we are entitled to.

**THE COURT:** How do you deal with the state provisions concerning the DMV? In other words, the state is arguing to the Court that that has a -- for want of a better word -- a special category that is not subject to the Voting Rights Act of 1960 or HAVA, and that they have a privacy interest in a sense as well. What does the Court do with that?

**MR. NEFF:** Any state privacy interest would be trumped by federal law. It would be trumped by both the Federal Privacy Act, which we're complying with. It would be trumped by HAVA, which is a -- I repeat -- a federal minimum standards law for state compliance that specifically mentions driver's license number or last four digits of social.

The state is required to produce and provide this data under the statute. If they have some issue with the driver's license; hypothetically, if a state just said we have some real concerns about our driver's license, they comply with the statute if they provide the last four of the social security number.

Does the Court have other questions or concerns?

**THE COURT:** Just one moment. Let me look at a note that I made.

**(Pause)**

The state represents that they have offered -- and I think both in the Orange County case with the registrar -- and

it's represented today in the statewide case -- the names and addresses. Has that offer in fact been made?

**MR. NEFF:** Has that offer --

**THE COURT:** Yes. To you.

**MR. NEFF:** Oh --

**THE COURT:** Not to you but to the government, the DOJ.

**MR. NEFF:** California has taken the unique in the nation position that they are -- that they -- we are permitted to come and inspect it in their offices, that data; which, (a), is not sufficient; (b), we argue is not an appropriate way of providing it in today's day and age where it's actually more secure to share this data electronically through our shared file-sharing --

**THE COURT:** Kind of slow-walking you. Kind of slow walking.

**MR. NEFF:** I think --

**THE COURT:** For want of a better term.

**MR. NEFF:** That is the United States' interpretation of it but --

**THE COURT:** How about the voter participation and the registration methods? Have those been offered to you? In other words, that's been argued to me but behind the scenes I don't have that record right now. Has that been offered to you?

**MR. NEFF:** It is in the back-and-forth is in the letters attached as exhibits in the filings, Your Honor; however, the United States' position is that the responses have been woefully inadequate.

**THE COURT:** Okay. So we've never gotten down to really how that information would be exchanged. It's flowing back and forth in terms of representations but as a practical matter there's a big difference between a representation and conveying the information to you.

**MR. NEFF:** Well actually in our letters we did lay out to opposing counsel our file-sharing program, how it works, that it is secure and we invite them to -- assuming they have a change of heart, to use it.

**THE COURT:** About the registration status and the contact information, has that been offered to you?

**MR. NEFF:** That, I'm not sure about. I'm not sure what the scope of their offer is.

**THE COURT:** Okay.

**MR. NEFF:** I just know that it does not include the -- for sure, does not include the driver's license number or the last four of the social as required by the HAVA statute. And in other states as well, that has always been the crux of the dispute.

**THE COURT:** In their opening arguments they'd argued that in the Benson case out of the Sixth Circuit, Bellows out

of the First and Long case out of the Fourth, that there's an inconsistent and uniformed position taken by the government. How do you respond to that?

**MR. NEFF:** That the -- there is no inconsistency in position.

**THE COURT:** Explain that to me.

**MR. NEFF:** What there is is difference in posture of those cases. It is a true statement to say that the United States, as an agency, has yet to go to states to enforce the minimum standards of the HAVA statute. One can argue whether that was a wise or unwise decision but here we are 23 years later and the federal government has yet to do it. It is still, for certain, good law. The United States believes it is a law that should be enforced and complied with. Therefore, because of that history where this hasn't been done before, all of those cases relate to private parties trying to in some way get in.

The DOJ's position is that private parties do not have a right of action under HAVA and therefore they should not be allowed to go to states and say, I would like your driver's license or social security number. However, there are states around the country, including ones that are fighting us, that interestingly, have been willing to turn over that data to a private organization without the same protections as the United States. That's been cited in our briefing, the ERIC

Organization.

So what I would say is all those cases are inapplicable. It often requires selectively quoting them to make it sound like in some way the United States government is not entitled to it. No, the United States government is uniquely mentioned in both the CRA and HAVA. And therefore just because this is the first time the United States is coming in and doing it, doesn't mean that it's not clearly what the statute states.

**THE COURT:** For both parties, you mentioned that California is one of the main outliers, for want of a better word, from the DOJ and the executive branch's position. Is it the position of the executive branch that there need not be any stated purpose that there's an absolute right to obtain this information per statute?

**MR. NEFF:** Statute requires we state a purpose. A purpose.

**THE COURT:** And what is the purpose here?

**MR. NEFF:** The purpose is for, as stated in our letters to them, for voter roll maintenance enforcement and compliance.

**THE COURT:** And we stated in Orange County with a limited county case involving Page. There, there were -- and I keep 13 or 17 but 17, I believe, allegations. The most notorious became the dog that voted twice.

Is that, out of 1.2 million voters, what's the basis, for instance, of that kind of request because of course we're always going to have error, including people who legitimately die. So what's the threshold that this stated purpose has? How should I interpret that?

**MR. NEFF:** Under the CRA there is no threshold.

**THE COURT:** Okay. Now, do you need to -- and thank you. Do you need to make any calls? You're all by yourself, you're doing -- there's nobody to consult with but do you need to make any calls? Are you satisfied with your argument?

**MR. NEFF:** I appreciate the offer, Your Honor, but no, we're satisfied.

**THE COURT:** Okay. There'll be a second round.

**MR. NEFF:** Yes.

**THE COURT:** So counsel, however you'd like to proceed then. One of you has another obligation, I don't care which order. You can take the intervenors first or the parties.

**(Pause)**

**MR. BRUDIGAM:** So there was a lot going on there, Your Honor, and so I'm going to try to be thorough in making sure I cover all of those points.

So I think the first thing I want to talk about is this notion that the complaint is just an order to show cause. And essentially what the federal government wants to do is take the Court and sideline them in this dispute and say that the

Court has no room for any judicial review here. And that's just not supported by the text of the statute.

There's nothing in the Civil Rights Act that creates a special statutory procedure. The words "order to show cause" are not in the statute at all and I'll just read you the text right here.

It says that:

"The appropriate district court shall have jurisdiction by appropriate process to compel the production of such record or paper."

That's what it says, "By appropriate process." And so that's up to the Court to decide what the appropriate process is here.

And I'd also just point Your Honor to the fact that the Federal Rules of Civil Procedure contemplate what rules apply when you have a government investigative demand. I mean Federal Rule of Civil Procedure 81(a)(5) specifically says:

"The Federal Rules of Civil Procedure apply to proceedings governing demands for records by the U.S. government."

And so this idea that some other procedure applies, it's not supported by the text, it's not supported by the Federal Rules of Civil Procedure. The only thing that supports this purported procedure are these early 1960s' cases and like we've said, the federal government, they pin their hopes on

this one Kennedy v. Lynd, Fifth Circuit case from 1962. That's the one they're referring to which says that the Court shouldn't have any role here.

But that case is obviously nonbinding on Your Honor and it's really been overruled. I would point you to the United States v. Powell case.

**THE COURT:** I'm sorry, what -- just a moment.

**MR. BRUDIGAM:** Sure.

**THE COURT:** All right. Please continue. I've got my note.

**MR. BRUDIGAM:** So the Supreme Court in United States v. Powell found that the Federal Rules of Civil Procedure, they apply to a proceeding like this. And in that case it involved an IRS document request statute which used the very same language that we have here which is that the Court shall, by appropriate process, compel relief under that statute. So even if Your Honor found Kennedy v. Lynd persuasive, it's obviously unbinding, that's been overruled. So just to be clear, the Federal Rules of Civil Procedure govern this action.

**THE COURT:** Well, you've cited on both parties' parts, different enactments by council, statutory provisions. I think we can all agree that we want qualified voters to vote without any chilling effect.

**MR. BRUDIGAM:** I agree.

**THE COURT:** Is there -- well I think we can all

stipulate to that.

**MR. BRUDIGAM:** We can.

**THE COURT:** And I'll use the word "qualified voters".

Is there a chilling effect in the request by the government and if so, what is that chilling effect? How would there allegedly be persons who may believe that the government has no business in the sense of getting more information.

**MR. BRUDIGAM:** Sure I mean I think --

**THE COURT:** And behind this the concern of this court eventually, besides the statutory following the law, is going to be the impact of what we write and do. And this case will probably be the first case that comes out that other circuits look at. So with that noble goal in mind of having voter participation, is there a chilling effect or not?

**MR. BRUDIGAM:** I think there's absolutely a chilling effect here because --

**THE COURT:** And I need you to define that for me.

**MR. BRUDIGAM:** Sure.

**THE COURT:** And it may not be relevant to the opinion but behind all of this, we need voters who are qualified to be able to vote.

**MR. BRUDIGAM:** Right.

**THE COURT:** Now the ease of that could be differences between different administrations and whether you have different methodologies. And I know there's a huge controversy

about mail-in ballots and voter registration and drive-in, et cetera, but when we're finally done with this, we want qualified voters to vote. And if there's a chilling effect, or this privacy right that we've somewhat skipped over, I want to hear how you define that.

**MR. BRUDIGAM:** Sure. Your Honor, I think this action should make the stomach of every American turn, knowing that this executive branch is going in, state by state, collecting and vacuuming up everybody's voter registration information. It is on a scale that we have never seen before. Okay.

And what this is going to do --

**THE COURT:** It is their disparity argument. In other words, remember when I started this conversation early on, and I discussed the amicus briefs, I was particularly interested if I was getting just red and blue states. That's why I was looking to see if there were these swing states.

**MR. BRUDIGAM:** I mean I point Your Honor to --

**THE COURT:** Or is this a argument also that a particular group of states are being examined versus other states? Because here, the government has represented while California from their perception might be an outlier, they've also made inquiries of the let's say more, from their standpoint, compliant states like Kansas and -- I forget which one -- just a moment -- Indiana, and that Texas was coming onboard.

**MR. BRUDIGAM:** Yeah. Well, what I would say is I mean those aren't states that are complying, they're voluntarily giving that information to the federal government.

**THE COURT:** But regardless, the government has made an inquiry so if there's an argument that the government is reaching out and being selective, if the state is voluntarily complying that doesn't seem to me to be singling out progressive states. And if you think that, then I need to hear that and hear your reasoning behind that.

**MR. BRUDIGAM:** I'm not saying they're singling out states.

**THE COURT:** Okay. Then we can pass that.

**MR. BRUDIGAM:** They're going after every state and California is by no means --

**THE COURT:** So I'm not going to have a disparity argument.

**MR. BRUDIGAM:** Right, right. I just mean in terms of the position the secretary has taken, I mean the reason they had to sue 14 different states is because nobody wants to turn this data over. The representations that Counsel just gave today, that's the first that I've heard of any state turning over that information. So we are by no means an outlier in taking this position.

**THE COURT:** Wait just a moment. For the government or DOJ, how do we validate Kansas and Indiana? What validation

do I have about that?

**MR. NEFF:** I was actually looking that up right now, Your Honor, because --

**THE COURT:** Well go ahead and look it up. You've got lots of time.

**MR. NEFF:** And I --

**THE COURT:** By the way, I'm not holding you to it. I know it's in good faith but I'd like to hear what states that we have validation for turning this document over. And there may be numerous states.

**MR. NEFF:** It's a good-faith representation here. I am kind of a point --

**THE COURT:** Okay. Well now take away the good faith. I accept that. Okay, I'm asking for proof now.

**MR. NEFF:** Okay. Wyoming, Kansas, Indiana and Arkansas all complied voluntarily.

**THE COURT:** Okay. Just a moment.

**MR. NEFF:** Texas --

**THE COURT:** Kansas, Indiana, Wyoming and Arkansas ...

**MR. NEFF:** ... have already complied ...

**THE COURT:** ... voluntarily.

**MR. NEFF:** ... voluntarily.

**THE COURT:** Okay. Texas?

**MR. NEFF:** Texas, Virginia, Utah, Tennessee, South Dakota --

**THE COURT:** Just a moment.

**MR. NEFF:** Oh it's gonna go long, yeah. South Carolina, Nebraska, Montana, Mississippi, Missouri and Alabama, all fall into the list of they have expressed with us a willingness to comply based on the represented MOU that we have sent them. And so we expect full --

**THE COURT:** Now apparently Nebraska can't make up its mind because of the proposed amici briefed to the Court, they have the former state secretaries of state for Colorado, Connecticut, Minnesota and guess what? Nebraska.

**MR. NEFF:** Well those are former. And furthermore, just because some states are representing certain things in court, there are still discussions going on now that this MOU we have is fully blessed. There are the -- I don't think it's safe at this point to go beyond those states but --

**THE COURT:** Then that's fine.

**MR. NEFF:** -- that's a fair representation of the state of discussions as of today.

**THE COURT:** And Counsel, back to you.

**MR. BRUDIGAM:** Sure. And yeah, so all I heard there was we've heard a willingness. It doesn't sound like those states have actually turned over any data, just to be clear.

So I want to talk a little bit about --

**THE COURT:** No, I think he said that four states have actually. Kansas --

**MR. BRUDIGAM:** Four states have actually turned over but the broader list --

**THE COURT:** -- Indiana, Wyoming and Arkansas.

**MR. BRUDIGAM:** Right.

**THE COURT:** The others were a purported willingness.

**MR. BRUDIGAM:** Right.

So Your Honor, the federal government is really leaning hard into the text of these statutes and they say that we don't want to talk about the text but that's just absolutely not true. And I want to just start with the Civil Rights Act of 1960.

There is a very clear statutory limitation in that provision and it's in Section 20703. And it says that the attorney general's demand shall contain a statement of the basis and the purpose therefore. DOJ has not satisfied this requirement and so their demand is invalid plainly under the statutory text.

**THE COURT:** So the plain representation by the government is too broad; and that is, they want to stop voter fraud.

**MR. BRUDIGAM:** Well, so they've mentioned a couple of things. It keeps changing so I want to unpack this a little bit.

So they said that the purpose is free and fair elections, clean voter rolls. Then he said up here that it's

for enforcing HAVA. So these are multiple different bases. And also it's different than the -- or than the purpose that was originally articulated in the letters to the secretary.

The original request said that it was -- they were seeking it for NVRA voter list -- list maintenance compliance. So the reason and rationale keeps shifting and changing. And that's a problem, not just because it's suspicious, it's a problem because, again, the text says, "The demand shall contain a statement of the basis and the purpose therefore. The text use of the article." 'The,' twice, in front of the basis and the purpose indicates that there is only one basis and one purpose.

And the federal government has explicitly rejected this plain text reading. They said it up here that they just need to give you any old basis and then the demand is good.

**THE COURT:** That's my question also to both of you; and that is, does the executive branch need to state a purpose? Your argument is that they do.

**MR. BRUDIGAM:** They do.

**THE COURT:** Counsel for DOJ puts that in broad terms.

**MR. BRUDIGAM:** Right. Well but again, it's not just a purpose, it's -- or not just the purpose, it's also the basis.

**THE COURT:** Okay.

**MR. BRUDIGAM:** And they have not alleged any basis

anywhere in their action.

Now, I also want to talk about -- and just -- you know this -- I'm sorry. I want to talk a little bit more about HAVA, which is the law that apparently now that's the main method of enforcement we're now learning today, that that's what they want to enforce and they specifically reference the requirement under HAVA that states collect social security numbers and driver's license numbers. Well let's look to the text of HAVA. What does it say?

> "The state shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph in accordance with state law."

And that is -- when it says "this subparagraph," it's referring directly to the requirement that states collect that information when processing voter registration applications. So there is nothing for the federal government to enforce here. This is solely the state's domain.

And as I said in my original motion, another provision of HAVA explicitly delegates discretion of implementation of HAVA to the states. So again, we're not afraid of the text in this case, we think it strongly supports our position. And so I also want to talk about what this data could be used for.

So we've heard a lot of different reasons. I just

explained why it's not relevant for HAVA. I want to also talk about why it's not relevant for List Maintenance under the NVRA.

So the legal standard under the NVRA requires states to conduct a general program that makes a reasonable effort. So the Sixth Circuit held this year in that Benson case that this just means a serious attempt, a rational, sensible approach. It need not be perfect or optimal. And so under this standard, getting line-by-line voter information of their social security numbers and driver's license numbers, that's entirely unrelated to whether a general program exists or whether the state is making a reasonable effort. And so, again, at every turn, the supposed reason why they need this information, it just doesn't add up.

And then finally, I want to talk about they claimed, as they did in their brief, that California has, quote, "the most worrisome voter registration data in the nation." That's just absolutely wrong, okay? That's an assertion in a brief without any support.

And they also incorrectly say that in submitting data to the Election Administration Commission in response to the EACs survey, this is an election administration survey, they said the LA County didn't submit any data. That's not true. That's simply not true. You can go to the survey and look at the data that LA submitted and you can look at our explanation

to DOJ in our letters in advance (inaudible) litigation explaining the questions they had about that survey. So to the extent that they want to rely on EACs as some after-the-fact rationalization for this demand, it just doesn't make sense. It doesn't add up.

So those are the main --

**THE COURT:** Were there inconsistent or consistent offers if you're aware of the Page case, as well as this case. In other words, when this started in Orange County, originally counsel was here, there's a representation about the registrar there making the same or similar representations about what they were willing to share with DOJ but I've never compared the two. And I don't know what the state's position is because DOJ's argument might be, we're getting inconsistent data. In other words, even when we're sharing, with the different entities promising that they'll share some amount of this data, the different counties are supplying this in different ways.

**MR. BRUDIGAM:** Sure. So I won't speak too much about that case but I would say that case is different and there isn't a problem of inconsistent data sharing because in the state case, they're saying, give us the whole list. We want every voter.

In Orange County, they said, we want a list of just the individuals that have been removed from your list because of non-citizenship, people who renounced or for whatever

reason.

**THE COURT:** So this is much broader from your perspective in terms of protection, privacy, HAVA.

**MR. BRUDIGAM:** Yeah. It's not an issue of can they be reconciled.

So I do want to just back up again and just zoom out on the big picture here in this case.

You know, as we talked about -- my colleague talked about, in his motion, that the states really have the primary role in administering elections and the voter registration process. The Constitution makes that quite clear in the elections clause. And it makes sense to prioritize the state in this process because they're the ones that are closer to the voters, more accountable to the voters. And so this is an arrangement that it depends on the principle of subsidiarity where a decision should be made at the local level. And here, we don't -- there's no place for the federal government to come in and start demanding these records under that constitutional framework.

And not only are the states the default entity running elections but it's only Congress that can make or alter those rules. Here, we have the executive branch in court trying to get this information. The Constitution says nothing about the executive branch having any role in federal elections.

And I would just say that this is not a unique position by this administration. The president has been meddling in state election law since he came into office. And I would point Your Honor to a case in the District of Massachusetts, California v. Trump, where the executive was doing something sort of similar where they were going in under the guise of federal law and trying the change the way states administer and conduct elections and that was pursuant to an executive order the president issued. And so here, we're having another situation where the federal government is coming in under the guise of inapplicable federal laws and trying to interfere with the state's role in elections. And so I'd just say against that backdrop, it's important to keep that in mind; but even if, you know, considering all that, if you'd just go back to the text of these statutes, the federal government is not entitled to this information under those laws.

And so at this point I want to turn it over to my colleague, Will Setrakian, to just provide some rebuttal on the federal privacy laws issue.

**THE COURT:** Thank you. And once again, would you state your name because we're on CourtSmart.

**MR. SETRAKIAN:** Good afternoon, Your Honor. Will Setrakian for defendants, The State of California and California Secretary of State Shirley Weber. Just four quick points on the federal privacy statute.

First, I want the Court to recognize between the briefing and the argument, we have given the Court law on these three statutes. Statutory law, regulatory law and decisional law. And my friends on the other side have not.

Now, turning to my friend on the other side's reference to DOJ's Civil Rights Privacy Policy -- this is cited in their opposition to the motion to dismiss -- ECF 63 on Page 23 and Footnote 11. That privacy policy clearly does not apply here. The policy concerns some sort of form. It says to the reader, quote:

"The information you provide through this form will be used in some way or another."

And among other things, it says:

"All the information you give via this form is voluntary."

Now that, of course, is miles from this case where individuals are not providing data via some form to the government and they are not doing so voluntarily.

Third, my friend on the other side said the Civil Rights Act prevails over the Privacy Act. Now they, of course, offer no citation, no opinion for that proposition. And it's true that the question has not been litigated as between the Civil Rights Act and the Privacy Act but in the NVRA context, which also contains a disclosure provision, every court to read the two laws together, the NVRA and the Privacy Act. Every one

of them.

**THE COURT:** Let me stop both of you and just ask a naïve question.

Your argument is that the states not only set up the process and procedure for voting but they also have the enforcement applications.

(To Clerk): Oh, you want to check CourtSmart and just make sure it's operating? Still going? Let's make sure, Counsel, because we sent the staff to lunch, okay?

**MR. SETRAKIAN:** Yes.

**THE COURT:** And if it's not, guess what? We get to argue again on this record, okay? (laughs)

**MR. SETRAKIAN:** This would be everything since we began at noon.

**THE COURT:** Yeah, well it's like the Rocky horror picture show.

**MR. SETRAKIAN:** That's okay, Your Honor.

**THE COURT:** Or Ground Hog day.

Is it operating? Counsel --

**MR. SETRAKIAN:** Thumbs up.

**THE COURT:** -- magic electronics, it's still operating.

**MR. SETRAKIAN:** Excellent.

**THE COURT:** So let me come back to the question.

It sounds to me like this court's going to eventually

be in the position of deciding, at least in the privacy area, a unique issue of first precedence in the country and that is trying to decide what those states' rights are in terms of your unique position in terms of policy and practice. And I'm not referring to HAVA now or I'm not referring to statute but also if we get into privacy and also one that's legitimate for the federal government to intervene as they did in the civil rights cases in the South. How am I going to balance that so it's not a personal opinion or predilection by a court? Because I don't think there's any jurisprudence and I guarantee you you've got a good chance of whatever happens here going to the Supreme Court. In fact, I wouldn't be surprised if they took this case on cert.

**MR. SETRAKIAN:** Well, as to the privacy laws, I would submit this is not essentially a question of first impression, that several courts have already been working through, trying to read together --

**THE COURT:** Which courts?

**MR. SETRAKIAN:** Sure. We have six opinions that we cite in our briefing. A case called Public Interest Law Foundation v. Dahlstrom; case called True the Vote v. Hosemann; Public Interest Law Foundation v. Bellows; Public Interest Law Foundation v. North Carolina State Board of Elections; Project Vote v. Long, and a case called Greater Birmingham Ministries.

**THE COURT:** Now, you cited them.

**MR. SETRAKIAN:** Yes.

**THE COURT:** And are they all consistent?

**MR. SETRAKIAN:** They are.

**THE COURT:** Because I have to go back and do my homework now after argument?

**MR. SETRAKIAN:** Yes. They all are consistent in concluding that the Privacy Act still compels some redaction of voter information.

And the reasoning tends --

**THE COURT:** Do they deal specifically with what those redactions are? Are they the social security numbers? Yes or no?

**MR. SETRAKIAN:** I believe they all concern redactions of social security --

**THE COURT:** No, no, "I believe". That's the way police officers talk to me. "I believe".

**MR. SETRAKIAN:** No, yes, I believe they all concern redactions of social security numbers and they all --

**THE COURT:** Okay. Do they all involve redactions concerning state DMV or do they deal with that?

**MR. SETRAKIAN:** I don't think they all involve the DMV. They all involve voter records.

**THE COURT:** Do any of them involve DMV?

**MR. SETRAKIAN:** I am not sure where the source was of the data in all of them. I think Project Vote involves DMV

sourced data but in any event, this data is coming from state election offices and they all use similar reasoning. They all say that one of the purposes of the NVRA was to increase voter participation.

And there would be, as Your Honor recognized earlier, a chilling effect if individuals knew that by registering to vote, they were putting their entire packet of information, including social security numbers and driver's license numbers, available for exposure. The NVRA's case for members of the public but also from the federal government if it passed. And that's the reasoning these courts take and the reasoning I submit the Court should adopt here which is that we have to read these statutes together and that is a way that they can sort of play nicely with one another.

And I will just conclude with one comment on the history of privacy laws.

You'll recall the Privacy Act was enacted in the wake of Watergate and COINTELPRO. Scandals that shook Americans' faith that their data would be responsibly collected, used and stored. And this is not just attorney argument. The Ninth Circuit recognized this in the Garris case that we cite at Page 1295. They talked about a, quote, "Rightful and broad condemnation of government surveillance programs," close/quote. Applying the Privacy Act in these related laws here vindicates those ends.

I'm happy to answer any further questions the Court has.

**THE COURT:** I'm just going to joke with both of you but wait till we get from Watergate to AI.

**MR. SETRAKIAN:** Yeah.

**THE COURT:** And your refrigerator spying on you.

**MR. SETRAKIAN:** I do think there's something to that insight where these statutes came about as electronic surveillance was becoming more sophisticated. And so as it only continues to grow more sophisticated, the importance of these statutes looms even larger.

**THE COURT:** Is there any jurisprudence concerning data dumps that would be of value to the Court or any reasoning? There's been quite a controversy concerning government gathering information through massive data dumps involving private citizens. Is there any jurisprudence there?

**MR. SETRAKIAN:** Data dumps?

**THE COURT:** Because you're dealing basically data dumps.

**MR. SETRAKIAN:** Not that I'm aware of.

**THE COURT:** Okay.

**MR. SETRAKIAN:** But maybe.

**THE COURT:** Okay. All right then thank you very much.

And you're satisfied with your argument?

**MR. SETRAKIAN:** Yes.

**THE COURT:** Now, in three minutes -- it's up to you but in three minutes I'm going to take the other case because I only have an hour with the gentleman here from the County. So if you have three minutes, fine; if you don't, I'll see you about 2:00 o'clock.

**UNIDENTIFIED SPEAKER:** We're going to have rebuttal, right?

**THE COURT:** Oh, there's going to be rebuttal. In other words, we're not leaving, okay?

**UNIDENTIFIED SPEAKER:** I think Your Honor --

**THE COURT:** Why don't we just resume. I'm giving you the courtesy. If you wanted to catch the plane, you could have. I've let you go out of order but otherwise, why don't I see you folks at 2:00 o'clock. I'll take a recess -- well they'll take a recess then before the next witness and we'll try to finish off your arguments, okay?

**UNIDENTIFIED SPEAKER:** Okay.

**THE COURT:** Okay. Have a good recess and we'll see you at 2:00 o'clock.

**(Recess taken at 12:58 p.m.; reconvened at 2:00 p.m.)**

**THE COURT:** Call the matter of *United States v. Shirley Weber*.

You're not -- you don't have a 45-minute time constraint but come on up for a moment and let's see if we can

get you on your way.

**(Laughter; Pause)**

And then, Counsel, would you just restate your name for the record so we have -- we have it on CourtSmart, please.

Someone with Department of Justice?

**MR. NEFF:** Eric Neff for the United States.

**THE COURT:** Thank you.

**MR. BRUDIGAM:** Malcolm Brudigam for the State.

**THE COURT:** Thank you.

**MR. SETRAKIAN:** Will Setrakian for the States Defendants.

**THE COURT:** Thank you.

**MR. DODGE:** Chris Dodge for Intervenors NAACP and SIREN.

**MS. ZELPHIN:** Grayce Zelphin for Intervenor League of Women Voters of California.

**MS. SHOAI:** Deputy County Counsel Suzanne Shoai for Orange County Register of Voters Bob Page.

**THE COURT:** And I'll come back to you, in case you have any comments that you'd like to make. I somewhat skipped over you the first time. I'll come back.

**MS. SHOAI:** Thank you, Your Honor.

**THE COURT:** So Counsel, once again identify yourself by name and who you represent.

**MR. DODGE:** The gentleman who preceded me is quite

tall.

Good afternoon, Your Honor. Chris Dodge on behalf of the NAACP and SIREN Intervenors. I sort of want to address two things, I think, some nuts and bolts issues and then sort of the bigger picture, which Your Honor keeps coming back to here.

On the nuts and bolts, you know, as I said on the top half, this issue, this case really boils down to whether or not Congress has given the Executive Branch the tools necessary to make the demand that it has placed upon California. My friend on the other side during his argument said that me and my colleagues were trying to avoid the statutory text. That is completely backwards. There is one side here that is avoiding the relevant statutory. It is the Federal Government; it is not the Defendants and Intervenors. And I'll give you an example.

So in the top half of my argument I talked about Title III of the Civil Rights Act and one of the statutory arguments that the NAACP raised in its briefing. My friend on the other side got up, and I will assume this was an oversight on his part, but he purported to quote the statute to Your Honor, it will be in the transcript, and he left out the very portion of the statute that I quoted to Your Honor that decides this issue and he did not address the argument raised in our briefs. So I will read the actual text of the statute that my friend on the other side neglected.

This is 53 U.S.C. 20701 and in relevant part it says every officer of election shall retain and preserve all records and papers which come into his possession relating to any application, registration, and payment of a poll tax. My friend on the other side did not quote that part about come into possession.

And the same thing was true in their Complaint. They conspicuously left that portion of the statutory text out of their Complaint. And I think the reason why is quite clear. It's because as a statutory matter it forecloses what they are seeking in this case.

As I explained in the top half, that phrase come into possession carries a particular meaning. Congress oftentimes will use the term possession in a statute. As Your Honor surely knows, there are a litany of federal statutes that say possession. Come into possession is not the same. Come into possession means to acquire or receive something. I came into possession of my grandmother's antique china. I came into possession of a letter a friend from Fresno sent me. If I write a letter and place it on my desk I don't come into possession of that letter. I come into possession of a letter when it is sent to me and I receive it.

So that operative text in the Civil Rights Act means that the records subject to this inspection requirement they rely upon are only those that come into the possession of

election officials. Period. Full stop. If a California election official compiles a list in their office in Sacramento, that didn't come into their possession, they created it. In contrast, when a voter goes down to their local registrar and submits an application, that application comes into the possession of the registrar. That's the difference.

My friend on the other side has not addressed this statutory point in their briefing. They have not addressed it here in oral argument. And I think it's because there is no good answer to it. Simply put, if it does not come into their possession, if it is not a record that comes into the possession of state election officials it is not subject to mandatory disclosure under this Act. And, you know, I think my friend on the other side has to account for the statutory text at some point and he has not.

So that's sort of point number one on the text on the nuts and bolts, which, you know, again I think highlights who here is actually evading the statutory text.

The next, let's go to HAVA. My friend from the State I think addressed this very ably. DOJ counsel got up and said, well, HAVA requires a compilation of Social Security numbers and driver's license numbers. Well, that's true, but there's a very important omission that my friend from the State pointed out. HAVA says the states have to do that, subject to their own state voter registration laws. It is a -- and if you read

the legislative history of HAVA, and I know this is quoted in our brief, the NAACP brief, in the legislative history of HAVA Congress specifically says it praises the historical decentralization of election management in this country and it says very plainly that the rationale for that that the Founders had in the elections clause was that it would avoid the over-centralization of power when it comes to administering elections.

And that is precisely what the Department of Justice is trying to do here. They are trying to take unprecedented steps to centralize the management of federal elections, which the Constitution in the first instance assigns to the states. And I think, as my friend said, that should give everyone a great deal of pause. There should be a great deal of pause at the idea that federal elections are going to be run from Washington, D.C. rather than state capitals' county registrar offices.

And then with respect to the NVRA, the last of the three tools they invoke, you know, I think there's been a lot of discussion about that here today, the one point I would like to emphasize is that statute does have a inspection provision but it is one common to all people. It is not a special provision for the Government. And my friend from DOJ in trying to explain DOJ's past position in the *Long* case, the *Bellows* case, the *Benson* case said, oh, well, those cases were

different because they involved requests from private parties. There's absolutely no statutory basis to draw that distinction whatsoever. There's one public inspection provision in the NVRA, it applies -- you know, if you construe that provision, Your Honor, that construction will apply as much to the Department of Justice as it will to your law clerk, as it will to the Marshal downstairs who wants to put in a request to the state to say give me these documents. There's no special solicitation to the Government under the NVRA when it comes to what they are allowed to review as far as documents go. And I think my friend on the other side has played a little fast and loose with that fact.

And I think because there's only that one common public inspection provision, that's why you have, again, uniform case law. The *Bellows* case is, you know, I think a really good distinction of -- articulation of it. It collects all the other relevant case law, saying because this is a public inspection requirement we can't just have Joe Smith requesting every little bit of data about a voter. Of course you have to redact certain sensitive information. And the courts are uniform on that.

So that NVRA public inspection provision is not broad enough in scope to get the Government what they seek here. It is limited. For that reason, because anyone on the street can walk in and use it. And certainly it would be very troubling

if any person on the street could get the same kind of data the federal government is requesting here. And that's how they're asking you to construe the NVRA.

So that's sort of the nuts and bolts. Unless Your Honor has questions on them, I sort of want to, you know, again, zoom out, like why are we here, what's the big deal. The big deal is, again, this unprecedented effort on behalf of the Department of Justice to create a nationwide centralized voter database.

**THE COURT:** And by Department of Justice, that would be the Executive Branch?

**MR. DODGE:** Correct, Your Honor. Correct. And, you know, there was some discussion about, you know, are they targeting certain states, are certain states complying. You know, let's sort of look at the facts that are before the Court.

Four states have willfully complied with their demands. I suppose that's their prerogative. They might have unique state laws as far as what information is protected. But that's certainly not any sort of indication that these tools they rely on actually grant them that power. That just means the leaders in these states said you know what, we're okay with this or we don't have state laws that protect this information. Which is not the case in California. California has very robust state laws passed by the legislature that protect this

information. And so it doesn't really speak to California what these four states did.

My friend alluded to some dozen or so states that, you know, maybe kind of in the coming days are going to do something. I mean I don't know anything about that. I think we should -- I think it will be curious to see what that actually looks like in reality. You know, he's talked about this memorandum of understanding the Department of Justice has offered them. I don't know what that says. I don't know what sort of, you know, terms and conditions are in it. I think that would be, you know, sort of interesting to learn more about. And I don't think the Court should take on faith that these 12 states are just up and turning over their entire voters lists because someone sent them a letter in the mail from Washington, D.C. asking for it.

The facts, as I understand them, is that at this point in time the Department of Justice has made this demand of almost every state in the country. Blue, red, swing, purple, whatever you want to call it. States of all colors have resisted it. Lots of Republican led states. You know, my friend has quoted, if you add his numbers up that's 16 states. There are more than 16 states in this country that have a Republican government. The states they have sued so far I think do skew quite blue. Fifteen of them are led by Democratic governors. One is led by Republican, New Hampshire.

Whether that is an indication of something, I don't know. But I think in aggregate most states are pushing back on this.

And so my friend got up and said this shouldn't be a big deal, you know, this shouldn't be political. You know, in the abstract, of course, he's right. I think if this were a run-of-the-mill application of the NVRA it wouldn't necessarily be very political. But there's no precedent of the Department of Justice of the Executive Branch going around with this scope and breadth to the states. And Your Honor asked, you know, does that have any chilling effect on people. Of course it does.

You know, my friend on the other side has given very ephemeral reasons to the Court for why they need this information. Oh, we want to help people vote. We want good voter lists. Voter fraud. Freedom. You know, whatever. Like these very high level explanations of what they intend to use the data for. You know, I don't think those satisfy the text of the statute but I also think, you know, there's public reporting out there that is cited in the papers that casts a fair bit of shadow over what the Department of Justice purports to want this information for.

It is I think basically confirmed by public reporting that the Department of Justice will share this information with the Department of Homeland Security, an agency that is typically tasked with, you know, terrorism issues, national

security issues. And I think if you are someone who's represented by one of my clients, SIREN, which represents working class immigrants in California, and you hear that the Department of Justice is coming to your state and says turn over all this voter information and there's reports out there that it's going to be turned over to the Department of Homeland Security, they might start thinking, gosh, you know, I don't want -- I don't need this kind of trouble, I don't need this -- why should I bother registering to vote if my information is going to be on the fast lane from my local registrar's office to Washington, D.C. and the Department of Homeland Security. That absolutely chills people. And I don't think we have anywhere near the kind of assurances from the federal government that would give those groups of people comfort in knowing that their data was going to be compiled in a national database.

I think Your Honor's alluded sort of like to the question of they're all Social Security numbers, the federal government has them, what's the consequence of that? To me the consequence is voter lists are maintained at the state level by design. By constitutional design, by statutory design. The NVRA and HAVA, you know, actual enactments of Congress, assign these responsibilities to the states. They don't assign it to the Civil Rights Division of the Department of Justice.

And so I think the precedent of having a nationwide

voter registration database at the fingertips of the Executive Branch, it is precisely the centralization of election management authority that the Constitution is meant to avoid, the federal statutes are meant to avoid. But I think -- you know, my fried used the term subsidiarity, which, you know, is a very impressive term. I mean it really just boils down to the fact that you go to vote at your local registrar's office. You know your neighbors when you go to vote at the polls. The person who checks you in is somebody who lives down the street. There's a lot of trust that comes from voting at the local level, from registering at the local level. And elevating that to some focal point in our nation's capital, that remove from just going down to your town hall to vote, it's of huge consequence to people, especially those who, I think with good justification, are very hesitant to know that their information is going to the Executive Branch.

So I think that's -- I think those are the stakes and I think that on the nuts and bolts it really boils down to these three statutes they have invoked. You know, there are affirmative defenses, of course the Privacy Act, I think, you know, those things need to be considered as well. But, you know, in the first instance the most immediate legal question before the Court is do these three statutory tools they point to actually grant them the authority to compile these statewide voter registration lists. And the answer is no.

So if Your Honor has additional questions, I'm glad to address them. Otherwise, I know you have a busy day.

**THE COURT:** Counsel, thank you very much.

Counsel of behalf of the League of Women Voters?

**MS. ZELPHIN:** Thank you, Your Honor. Grace Zelphin on behalf of the League of Women Voters. I'll keep this brief because I think a lot of the points that we would like to raise are similar to our colleagues.

Just big picture here, the NVRA, HAVA, and the CRA were each passed for the purpose to ensure that eligible Americans can participate in free, fair, and secure elections, which I think are a cornerstone in America's democracy, the right of every citizen to vote. Each of these statutes was passed in the context to open up the ability for folks to register to vote, making new pathways for folks to get their registration organized, making sure that their registrations were not unfairly deleted, and that folks when they step to the polls to vote they're able to do so.

The Department of Justice's attempt to conflate and import pieces of these statutes now to authorize its line-by-line evaluations of voter data simply must fail for all the reasons my colleagues have spoken to earlier today. The statutes that were passed and thoroughly considered to help voters access the polls do not permit the federal government to use them to go line-by-line and try to find folks and any

imperfection in a state's data registry to disenfranchise voters.

And the harm is great. Having folks know that their data that they have entrusted with their local registrar is going to a massive database in the federal government discourages folks of all walks of life, of any walk of life that just does not want that kind of vulnerability in their personal data. It risks suppressing registration, it risks suppressing voting in, you know, a franchise that we're already less than 60 percent of eligible voters vote.

We should be doing everything we can to encourage voting and use these statutes for the purposes for which they were intended and for that reason, and for the reason that the statutes clearly do not permit the Department of Justice to use them in the way they are intending to, the Motion to Dismiss should be granted.

With that, I'll rest on our papers and thank the Court for their time.

**THE COURT:** Thank you very much, Counsel.

Let me turn to the County for a moment. In a sense you don't have to make a comment, you're here on the Page matter, but if you have anything that you'd like to share I want to make sure you have that opportunity.

**MS. SHOAI:** No, Your Honor. I really do appreciate the opportunity, but I have nothing to add at this time.

**THE COURT:** Let me turn to the Department of Justice.

**MR. NEFF:** Thank you, Your Honor.

**THE COURT:** I want you to just state your name.

**MR. NEFF:** Eric Neff for the Department of Justice --

**THE COURT:** Thank you.

**MR. NEFF:** -- Your Honor, the United States. The Civil Rights Act is so clear on its terms that we are ending up with absurd arguments here and dealing with opposing counsel's reference to language of come into possession. We have not been trying to hide from that language. It's simply for economy of briefing to not include that descriptive phrase, which is referring to just the any record that is coming into a state election official's possession, they then need to turn that over to us if they want. It doesn't provide any qualifier that applies to this case.

Is counsel arguing that if a state was discriminating against a whole class of voters based off of race that then the federal government would not be able to request their voter registration list because it was compiled by the state? It runs afoul of the very purpose of the statute.

It's simply saying that that is just a descriptive phrase that says any record that comes into the state election official's possession, if we deem it as something we need for our purposes we can request it.

HAVA. The language of HAVA does support subsidiarity

when one understands the purpose under which it was passed and the legislative context in which it was passed. Up to that point there had been no law passed that provided any minimum standards for the state that the federal government could enforce. Therefore, HAVA is clearly stating, while we are not undermining subsidiarity, while we still have respect for subsidiarity, we here are stating in very specific circumstances these minimum standards for the first time are ones that the federal government has statutory authority to enforce.

Big picture in this argument, I think you can put kind of the three arguments that have been made by opposing counsel kind of into three buckets. First, jurisdiction, whether it's proper here in Sacramento. We stated in our papers that we believe in an electronic era any office where the records are available is a principal office under the statute. The request for these rolls are made on a regular basis at Secretary of States and registrars all around the state.

Going in reverse order, I think, of depth of discussion and importance.

The privacy issue seemingly getting lost here is that we're dealing with the United States, the federal government, the agency that issues this number, that has more protections than any other agency to preserve private information, is

dealing with national security matters on a day-to-day basis. And within that context, this can't be clearer. Election integrity and privacy laws do not conflict. I repeat they do not conflict. Privacy laws are about protecting the public as the government goes about its lawful business.

With all respect, I would push back on Your Honor that this is a unique issue posed before the Court. I would say it's not. It's a non-issue. No one thinks that privacy laws preempt the government from going about its lawful business. No one thinks the government is restricted in its ability to enforce federal laws, either civilly or criminally, because of privacy laws, much less getting the last four digits of a Social Security number where there's a specific federal statute saying that we get it. We are pursuing clean voter rolls and free and fair elections and we will protect all citizens' privacy, as it is our obligation to do and as we have laid out in our papers how we will do it.

Furthermore, the request is not something extraordinary. For example, the SAVE database has been in operation in the Department of Homeland Security for at least two decades that I'm aware of. And just in the past six, I believe it was instituted in May, they began running voter rolls for voluntary states with this data, with driver's license and last four of Social. Twenty-one states gave it to them. Twenty-one at last count. The states are interested in

having their own clean voter rolls. The federal government is interested if states are not maintaining clean voter rolls.

Now the final bucket I would say is falling under or at least getting to the statute here of the Civil Rights Act, the purpose, the requirement that we state a purpose. Opposing counsel is trying to make just a mountain out of a molehill on this. As I've said to Your Honor, I would analogize it to a requirement that putting a reason on the minutes. Because that precludes their various claims and defenses here they want to say things like, and I'm quoting, we need to unpack that, this is -- they are giving ephemeral reasons, also that we need to allege some sort of facts. Those are all quotes. And none of those are in the statute. The Civil Rights Act does not allow for that. The Civil Rights Act is about getting election records in short order and whether the purpose is combatting discrimination, voter roll list maintenance, it does not matter.

The *Coleman v. Kennedy* (phonetic) case made it clear. Quote, no prima facie case is required. Quote, we do not need to identify in a general way the reasons. Quote, it's comparable to an order to show cause. Your Honor should just -- given the proper complaint, quote, it entitles AG to a prompt order requiring compliance. A prompt order is important here because we do have concerns about this -- all states are -- it's an interest in the federal government in ensuring

free and fair elections and clean voter rolls.

In California we have particular concerns. It's the largest, as we've alleged in our papers, it's the largest state in the Union. Just on their own publicly available data there were 2.1 million duplicate registrations. That is 15.6 percent of the voter rolls were duplicates. That doesn't even -- that number doesn't even include the largest county in the state because the data was not provided to them. There are other counties that weren't provided as well. They provided no data on duplicate registration removals. Their removal -- their death removal rate, removing someone from the voter rolls because they have died, was half, about half the national average. These are all concerning data points.

There could be many more. We're not required to allege any of them. I myself could get up here under oath. I used to be the election -- prosecutor of election crimes here in Los Angeles. I could describe my cases, go down the list. It's not required. All we have to do is allege a purpose. And the records need to be turned over to us in short order.

This isn't about the Privacy Act or California privacy laws and their conflict with HAVA going to the Supreme Court, this is just about the most populous state in the nation failing in their list obligations and then, frankly, obstructing federal oversight efforts.

Thank you.

**THE COURT:** All right. Long, long ago when I was practicing I knew that when I got to the elevator door if I just would have told that judge one more thing that I had forgotten I would have persuaded that judge. So this is a shotgun one round, anything you have missed, anything that you want to say but now it's brief. It's that one succinct statement that says, I really want the judge to hear this.

**MR. BRUDIGAM:** Your Honor, at the very beginning of today you asked whether we wanted a decision based on jurisdiction or the merits and I just want to be clear that we, even though we raised that jurisdictional argument, we invite a decision on all of the merits in this case.

**THE COURT:** Okay. I feel more comfortable -- I'll follow the law, but I think we all need a decision subjectively on this.

**MR. SETRAKIAN:** Nothing further from me, Your Honor.

**THE COURT:** Counsel?

**MR. DODGE:** One thing I'll briefly add, Your Honor, on whether motions to dismiss are a proper vehicle, and they absolutely are. Pure questions of law are resolved on motions to dismiss all the time. That's what this presents, whether the statutes actually supply the authority the Government is claiming. And, you know, it's already been discussed a little bit but nothing in any of these laws creates a special proceeding where the Government doesn't have to prove its case

under the Federal Rules of Civil Procedure. They filed a civil action. Literally the first rule of the Rules of Civil Procedure says all civil actions shall be governed by the Federal Rules.

So, you know, I know they're in a hurry. I don't think they want to tarry in this court long. They want to take it up. But they have to follow the Federal Rules and the Federal Rules, including Rule 12(b)(6) and, if necessary, Rule 56, are the proper mechanisms for resolving this case.

**THE COURT:** Counsel on behalf of the League of Women Voters?

**MS. ZELPHIN:** Thank you, Your Honor. Along similar lines I just wanted to reiterate that the Civil Rights Act Title III does not have any special judicial process that oversets the proper judicial oversight -- appropriate process that this Court may exercise. And even though the Department of Justice seems to want to assert that in a CRA proceeding they're above the law, that's certainly not the case and the cases that they cite do not support that.

**THE COURT:** County?

**MS. SHOAI:** No, thank you, Your Honor.

**THE COURT:** DOJ?

**MR. NEFF:** Submitted, Your Honor.

**THE COURT:** All right, I want to thank you for your courtesy. Obviously, I'll wait for the amicus briefing. But

before you leave, I want to know that the wording meets with your approval concerning the amicus briefs and it meets with the time that we've tried to reflect upon. Do we have a draft of that by any chance?

**MR. SETRAKIAN:** Yes, Your Honor. In fact, we all agreed on a draft that matched --

**THE COURT:** Could you just read it?

**MR. SETRAKIAN:** Well, we just -- sure. One of my colleagues is having it be submitted to the Court now. Yeah, sure, let me read it --

**THE COURT:** Why don't you just read it. Why don't we all hear it and see if we can stipulate to it.

**MR. SETRAKIAN:** Sounds good. Quote:

"On December 4th, 2025, the parties appeared and stipulated to the following briefing schedule. All potential amici have 14 days from entry of this order to submit proposed amicus briefs. Potential amici need not seek leave to file proposed amicus briefs."

**THE COURT:** Acceptable to all parties?

**MR. NEFF:** Acceptable. Eric Neff for the United States.

**THE COURT:** Now, is that 14 working days or is that excluding weekends or not? In other words, you've got the holiday season upon you.

**MR. SETRAKIAN:** I imagine that --

**THE COURT:** You want to make sure you get the briefing, depending upon where it comes from. Working days or -- for my days it's seven days a week so it doesn't matter, but, you know, other people might have a different view. So do you want that court days or working days or just seven calendar days?

**MR. SETRAKIAN:** I viewed it as 14 calendar days.

**THE COURT:** Okay. Counsel?

**MR. NEFF:** The United States as well.

**THE COURT:** Okay. So it will be calendar. That will be calendar days. I'll put it out tomorrow, not out today, just so we have enough time. Okay? Because people are going to get this on a Friday, you've already gone through three days by Monday.

I want to really thank you. Just excellent briefing and excellent argument. I want to pay that compliment to you. It's been very helpful. Obviously, you're not going to get a decision before two weeks. I want to get that amicus briefing and look at that also. But obviously I'll be thinking and reflecting upon it in the meantime. Okay?

Thank you very much. Have a good day now.

**(Counsel thank the Court)**

**(Proceeding adjourned at 2:31:40 p.m. and then resumed at 2:31:51 p.m.)**

**THE COURT:** …and those questions to you with a page

limit and a time limit. Okay?

**MR. BRUDIGAM:** Your Honor, I do think --

**THE COURT:** And also I think that there was some briefing due concerning the position of DOJ and the juxtaposition of DOJ in a number of cases that you cited to me. I'll need that as quickly as possible as well.

**MR. BRUDIGAM:** Yeah, we can provide a supplemental notice attached --

**THE COURT:** Provide that to the other parties. They should have a chance to respond.

**MR. BRUDIGAM:** Of course. Just attaching those three DOJ amicus briefs that were referenced in argument --

**THE COURT:** Okay.

**MR. BRUDIGAM:** -- that's what we're talking about.

**MR. NEFF:** Your Honor, I do think there's one more issue we should deal with.

**THE COURT:** Okay.

**MR. NEFF:** The United States's Motion to Compel. We understand Your Honor's concern with that. However, we would submit that it is still procedurally proper for us to set out a date in accordance with the Rules of Civil Procedure on that, which would, being as generous as possible accounting for them, would be 28 days from today I believe.

**THE COURT:** Now, I didn't preclude you, just for due process grounds it was filed yesterday.

**MR. NEFF:** Yes.

**THE COURT:** The Rules say 28 days, so you're not -- I tried to (inaudible) you're not curtailed from filing that.

**MR. NEFF:** Okay.

**THE COURT:** Okay?

**MR. NEFF:** Thank you.

**THE COURT:** Have a good day then. Thank you very much.

**(This proceeding was adjourned at 2:33 p.m.)**

**CERTIFICATION**

**I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.**

**Signed**

**December 8, 2025**

**Dated**

***TONI HUDSON, TRANSCRIBER***

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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|---|---|
| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her official capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**[PROPOSED] ORDER GRANTING COMMON CAUSE, RUTH GOLDMAN, AND CHRIS MELODY FIELDS' MOTION TO INTERVENE AS DEFENDANT**

Upon consideration of the Motion to Intervene as Defendants filed by Common Cause, Ruth Goldman, and Chris Melody Fields, alongside the materials filed in support thereof, as well as any opposition thereto, the Court finds good cause, and it is hereby ORDERED that the Motion is GRANTED.

It is further ORDERED that Proposed Intervenors' Motion to Dismiss, attached as Exhibit 1 to their Motion to Intervene, is to be entered on the Docket.

IT IS SO ORDERED on this _____ day of _____, 202_.

_____
Hon. Randolph D. Moss
U.S. District Court for the District of Columbia

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| THE UNITED STATES OF AMERICA,<br><br>*Plaintiff*,<br>v.<br><br>DISTRICT OF COLUMBIA BOARD OF ELECTIONS; MONICA H. EVANS, in her official capacity as Executive Director for the District of Columbia Board of Elections; GARY THOMPSON, in his official capacity for the District of Columbia Board of Elections as Chair and Member; and KARYN GREENFIELD, in her official capacity for the District of Columbia Board of Elections as Member,<br><br>*Defendants*. | Civil Action No. 25-4403 (RDM) |

**CERTIFICATE REQUIRED BY LCVR 26.1 OF THE LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

I, the undersigned, counsel of record for Proposed Intervenors Common Cause, Ruth Goldman, and Chris Melody Fields certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries, affiliates, or companies which own at least 10 percent of the stock of Common Cause which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this Court may determine the need for recusal.

Dated: December 26, 2025

Respectfully submitted,

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* *Pro hac vice* application forthcoming