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FORMER EMPLOYEES OF THE
U.S. DEPARTMENT OF JUSTICE

**Pro hac vice application pending
(additional counsel on following page)*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHIRLEY WEBER, in her official
capacity as Secretary of State of the
State of California, and the STATE OF
CALIFORNIA,

Defendants.

Case No. 2:25-cv-09149-DOC-ADS

**BRIEF OF *AMICI CURIAE*
FORMER EMPLOYEES OF THE
U.S. DEPARTMENT OF JUSTICE**

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Judge: Hon. David O. Carter

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1 **I. INTEREST OF AMICI**¹

2 *Amici curiae* are all former attorneys who worked on voting enforcement in
3 the Civil Rights Division of the U.S. Department of Justice (DOJ). *Amici*'s
4 experience is widespread and varied. Some worked at DOJ decades ago; others
5 worked there until earlier this year. Some were line attorneys; others were
6 managers who reviewed their work. Most worked in the Division's Voting Section,
7 directly enforcing federal voting rights law; others worked alongside them as
8 Appellate Section attorneys or political appointees. Many *amici* have made,
9 reviewed, and approved information requests to States and localities under the
10 National Voter Registration Act (NVRA) and Title III of the Civil Rights Act of
11 1960, or have litigated under those statutes and the Help America Vote Act
12 (HAVA) on behalf of the United States. *Amici* file this brief to explain that, even
13 though DOJ retains significant authority to investigate potential violations of
14 federal election law, DOJ's request to California for its full unredacted voter file is
15 inconsistent with prior DOJ practice and cannot be justified by any of the
16 authorities it has invoked.

17 A full list of *amici* can be found in Appendix A.

18 **II. SUMMARY OF ARGUMENT**

19 Section 8(i) of the NVRA and Title III of the Civil Rights Act of 1960 are
20 vital tools that help the Attorney General determine whether to file voting lawsuits,
21 obtain evidence for those lawsuits, and identify "both error and fraud in the
22 preparation and maintenance of voter rolls." *Project Vote/Voting for Am., Inc. v.*
23 *Long*, 682 F.3d 331, 339 (4th Cir. 2012). Although "[w]ide scope must be
24 accorded the Attorney General in the facilities for adequate investigation," *Kennedy*

25
26 ¹ Though they are not members of this Court's bar and have not submitted *pro hac*
27 *vice* motions, and so do not appear in the signature block of this brief, counsel
28 would like to thank Xander Nabavi-Noori, Alexander Ely, and Kelsey A. Miller, all
of O'Melveny & Myers LLP, who were also integral parts of the team drafting this
brief.

1 *v. Lynd*, 306 F.2d 222, 228 (5th Cir. 1962), that scope is not unlimited. And here,
2 DOJ has overstepped its bounds by requesting “all fields” of the registration list for
3 every voter in California—including registration method, participation history,
4 party affiliation, partial Social Security Numbers (SSNs), and driver’s license
5 numbers—without a sufficient basis and in furtherance of an improper purpose.

6 A. Both DOJ and the federal courts have interpreted Section 8(i) of the
7 NVRA to allow for broad public disclosure of registration and voting-related
8 records. But DOJ has also consistently taken the position, and courts have
9 consistently agreed, that Section 8(i) must be read in conjunction with other federal
10 privacy statutes and court-recognized privacy exemptions. Sensitive data about
11 individual voters—including, as relevant here, partial SSNs and driver’s license
12 numbers—can thus be redacted or withheld without running afoul of Section 8(i).

13 B. Title III of the 1960 Civil Rights Act is a government investigative tool,
14 rather than a public disclosure provision, and may be used to request sensitive voter
15 data when needed. The statute, however, requires DOJ to provide “a statement of
16 the basis and the purpose” for its information requests. 52 U.S.C. § 20703. DOJ
17 has not provided any basis at all for thinking that California might be violating
18 federal statutes, much less a basis that would justify requesting sensitive voter data
19 about all California voters. And while DOJ has provided a purpose for its
20 requests—enforcing the NVRA—that purpose appears to be a stalking horse for its
21 true purpose: to create a national voter roll and enable the federal government to
22 conduct its own list maintenance to discover whether noncitizens or undocumented
23 immigrants are registered to vote. Various news reports, as well as statements from
24 DOJ employees and Administration officials, confirm that this is how DOJ plans to
25 use the data it seeks. That purpose cannot justify the requests for sensitive data
26 here. The NVRA and HAVA place *States*—not the federal government—in charge
27 of developing and maintaining voter registration lists. DOJ’s sweeping request,
28 made without adequate investigative rationale, is a radical departure from the sorts

1 of targeted, justified requests that *amici* and others in the Voting Section have
2 previously made under Title III.

3 C. Finally, DOJ brings a claim under HAVA, but HAVA contains no
4 disclosure provision or other investigative authority of its own that could form the
5 basis for a legal claim.

6 **III. ARGUMENT**

7 **A. Courts Consistently Have Adopted the United States’ Previous**
8 **Position That The NVRA’s Disclosure Provisions Are Robust But**
9 **Do Not Authorize Requestors To Seek Sensitive Voter Data From**
10 **State Officials**

11 The NVRA does not require States to hand over sensitive voter information
12 to DOJ. Congress enacted the NVRA to combat “discriminatory and unfair
13 registration laws.” *Project Vote/Voting for Am.*, 682 F.3d at 334; *see also Pub. Int.*
14 *Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 264 (4th Cir. 2021).
15 The statute requires States to follow various voter registration and list-maintenance
16 procedures meant to help “‘increase the number of eligible citizens who register to
17 vote in elections for Federal office;’ ‘enhance[] the participation of eligible citizens
18 as voters in elections for Federal office;’ ‘protect the integrity of the electoral
19 process;’ and ‘ensure that accurate and current voter registration rolls are
20 maintained.’” *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 41 (1st Cir.
21 2024) (quoting 52 U.S.C. § 20501(b)(1)-(4)).

22 The NVRA contains a public-disclosure provision that is designed to “assist
23 the identification of both error and fraud in the preparation and maintenance of
24 voter rolls,” and thus to help monitor and enforce compliance with the NVRA’s
25 other provisions. *Project Vote/Voting for Am.*, 682 F.3d at 339; *see* 52 U.S.C.
26 § 20510(b) (creating private right of action for NVRA enforcement). Section 8(i)
27 sets forth the NVRA’s recordkeeping and disclosure requirements: except for two
28 types of documents not relevant here, “[e]ach State shall maintain for at least 2

1 years and shall make available for public inspection and, where available,
2 photocopying at a reasonable cost, all records concerning the implementation of
3 programs and activities conducted for the purpose of ensuring the accuracy and
4 currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). When it
5 comes to disclosing certain sensitive personal data, however, federal privacy laws
6 like the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974,
7 5 U.S.C. § 552a, as well as other court-recognized privacy concerns, impose crucial
8 limits.

9 DOJ is charged with enforcing the NVRA, including Section 8(i). *See* 52
10 U.S.C. § 20510(a). The Attorney General is also, of course, a member of the
11 “public” entitled to inspect records under Section 8(i). 52 U.S.C. § 20507(i). The
12 United States thus has a dual interest in both enforcing the underlying statute and
13 enabling the broader public to monitor States’ compliance with the NVRA. As a
14 result, DOJ’s Civil Rights Division has filed numerous amicus briefs in NVRA
15 disclosure cases in the federal courts of appeals that lay out its interpretation of
16 Section 8(i). *See* Br. for the U.S. as Amicus Curiae, *Pub. Int. Legal Found. v. Sec’y*
17 *Commonw. of Pa.*, 136 F.4th 456 (3d Cir. 2025) (Nos. 23-1590 & 23-1591) (Dkt.
18 No. 96, at 5), <https://www.justice.gov/crt/media/1324146/dl> (“*Pa. Br.*”); Br. for
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21 [1307451/dl](https://www.justice.gov/crt/media/1307451/dl) (“*Bellows Br.*”); Br. for U.S. as Amicus Curiae, *Greater Birmingham*
22 *Ministries v. Sec’y of State of Ala.*, 105 F.4th 1324 (11th Cir. 2024) (No. 22-13708),
23 <https://www.justice.gov/crt/case-document/file/1575631/dl> (“*GBM Br.*”); Br. for
24 U.S. as Amicus Curiae, *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331,
25 334 (4th Cir. 2012) (No. 11-1809) (Dkt. No. 96, at 33), [https://www.justice.gov/](https://www.justice.gov/sites/default/files/crt/legacy/2011/10/19/projectvotebr.pdf)
26 [sites/default/files/crt/legacy/2011/10/19/projectvotebr.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/10/19/projectvotebr.pdf) (“*Project Vote Br.*”).
27 Those amicus briefs require the Solicitor General’s authorization and represent the
28 official position of the United States. *See* 28 C.F.R. § 0.20(C); U.S. Dep’t of Just.,

1 Justice Manual §§ 2-3.210(C), 8-2.170(D), <https://www.justice.gov/jm/justice->
2 manual.

3 Given the “broad[] language” of Section 8(i), as well as the surrounding
4 statutory “context” and the disclosure provision’s importance to fulfilling the
5 NVRA’s “purpose[s],” DOJ has consistently advised federal appellate courts that
6 Section 8(i) provides for public access to “a broad range of disclosable documents.”
7 *Pa.* Br. 9, 12; *Bellows* Br. 6, 11; *GBM* Br. 5, 8; *see Project Vote* Br. 11. But the
8 public is not entitled to access sensitive personal data. DOJ’s request for (most of)
9 California’s statewide voter file therefore complies with both past DOJ and court
10 interpretations of Section 8(i)—subject to redaction limits noted below.

11 Most relevant to this case, DOJ has previously taken the position “that
12 Section 8(i) applies to voter registration databases”—*i.e.*, their voter rolls. *Bellows*
13 Br. 7. A State’s voter “registration and list-maintenance efforts plainly constitute
14 ‘programs’ or ‘activities,’” and those efforts plainly are “conducted for the purpose
15 of ensuring” that the “official lists of eligible voters” are both accurate and up-to-
16 date. *Id.* at 8-9 (quoting 52 U.S.C. § 20507(i)(1)). Because the voter data in a
17 State’s database “reflect[] the results of [the State’s] registration and list-
18 maintenance activities,” they “‘concern’—or relate[] to—the ‘implementation’ of
19 those activities.” *Id.* at 10. For similar reasons, DOJ has interpreted Section 8(i) as
20 mandating disclosure of various other voting-related records. *See Project Vote* Br.
21 12-24 (voter-registration applications); *GBM* Br. 6-19 (lists of voters denied
22 registration or removed from rolls due to felony convictions); *Pa.* Br. 9-28 (records
23 about State’s efforts to find and remove from rolls noncitizens registered to vote).
24 DOJ has also argued that Section 8(i) preempts state-law limits on access, use, and
25 dissemination of voter data to the extent they “prohibit uses or disseminations of
26 disclosed information that would further the NVRA’s purposes.” *Bellows* Br. 21.

27 Courts uniformly have agreed with DOJ’s interpretations. In *Bellows*, for
28 example, the First Circuit ruled that Section 8(i) requires disclosure of a State’s

1 voter roll, 92 F.4th at 49,² and preempts various state-law access, use, and
2 dissemination restrictions on voter data, *id.* at 56.³ In *Project Vote/Voting for*
3 *America*, the Fourth Circuit held that Section 8(i) requires disclosure of completed
4 voter registration applications. 682 F.3d at 336-37. And in *Greater Birmingham*
5 *Ministries*, the Eleventh Circuit held that Section 8(i) requires disclosure of the
6 identities of those denied registration or removed from the voter rolls due to felony
7 convictions. 105 F.4th 1324, 1331-32 (11th Cir. 2024). Courts have also agreed
8 that records related to finding and removing noncitizens from the voter rolls must
9 be disclosed under the NVRA. *See N.C. State Bd. of Elections*, 996 F.3d at 266;
10 *Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 561 (M.D. Pa. 2019); *cf.*
11 *Pub. Int. Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1011 (D. Alaska
12 2023) (“data concerning deceased and potentially deceased voters”).

13 At the same time, however, DOJ has just as consistently advised courts that
14 Section 8(i) does *not* require States to release to the public certain sensitive personal
15 voter data contained within the broader voter files. In *Bellows*, for example, DOJ
16 clarified that the statute did not prohibit States “from redacting ‘uniquely sensitive
17 information’ like voters’ [SSNs],” or “an even broader set of personal information
18 in certain sensitive circumstances—for instance, the names and personal
19

20 ² Many other courts have also so ruled. *See Voter Reference Found., LLC v.*
21 *Torrez*, 2025 WL 3280300, at *2 n.2, *10-14 (10th Cir. Nov. 25, 2025); *Sullivan v.*
22 *Summers*, 769 F. Supp. 3d 455, 463 (D. Md. 2025); *Pub. Int. Legal Found., Inc. v.*
23 *Knapp*, 749 F. Supp. 3d 563, 570 (D.S.C. 2024); *Pub. Int. Legal Found., Inc. v.*
24 *Matthews*, 589 F. Supp. 3d 932, 941 (C.D. Ill. 2022); *Ill. Conservative Union v.*
25 *Illinois*, 2021 WL 2206159, at *5 (N.D. Ill. June 1, 2021); *True the Vote v.*
26 *Hosemann*, 43 F. Supp. 3d 693, 723 (S.D. Miss. 2014); *see also Project Vote, Inc.*
27 *v. Kemp*, 208 F. Supp. 3d 1320, 1341 (N.D. Ga. 2016) (holding that various data
28 derived from statewide voter database must be disclosed).

26 ³ *See also Voter Reference Found.*, 2025 WL 3280300, at *10; *Sullivan*, 769 F.
27 Supp. 3d at 463; *Knapp*, 749 F. Supp. 3d at 572; *Matthews*, 589 F. Supp. 3d at 943;
28 *Boockvar*, 431 F. Supp. 3d at 564; *Ill. Conservative Union*, 2021 WL 2206159, at
*7.

1 information of people subjected to criminal investigation (but later exonerated) on
2 suspicion of being illegally registered to vote.” *Bellows* Br. 27-28. In *Project*
3 *Vote/Voting for America*, DOJ similarly noted that records required to be disclosed
4 under Section 8(i) could “be redacted to address legitimate privacy concerns”—for
5 example, concerns about revealing felony convictions and mental incapacity.
6 *Project Vote* Br. 24 (capitalization omitted). As in *Bellows*, DOJ noted that
7 “[n]othing in the NVRA requires disclosure of an applicant’s SSN.” *Id.* at 24 n.5.
8 And in *Secretary of the Commonwealth of Pennsylvania*, DOJ reiterated that “the
9 NVRA does not prohibit the *redaction* of highly sensitive information within
10 [disclosed] records, or information whose disclosure would violate other federal
11 laws.” *Pa.* Br. 28.

12 Courts have agreed with DOJ here, too. They have made clear that “nothing
13 in the text of the NVRA prohibits the appropriate redaction of uniquely or highly
14 sensitive personal information in” otherwise-disclosable voter rolls. *Bellows*, 92
15 F.4th at 56. While “the NVRA’s disclosure provision is broad and does not contain
16 an explicit exemption from disclosure for sensitive information subject to potential
17 abuse,” it “must be read in conjunction with the various statutes enacted by
18 Congress to protect the privacy of individuals and confidential information held by
19 certain governmental agencies.” *N.C. State Bd. of Elections*, 996 F.3d at 264. For
20 example, the Freedom of Information Act and the Privacy Act of 1974 both evince
21 a congressional concern for individual privacy that would be undermined if States
22 were required to publicly disclose unredacted, highly sensitive personal information
23 contained in the voter registration file. *See Kemp*, 208 F. Supp. 3d at 1344. The
24 Federal Rules of Civil Procedure likewise carve out an exception to the “general
25 presumption that judicial records are public documents, . . . allowing redaction of
26 [SSNs], an individual’s birth year, a minor’s full name, and financial account and
27 taxpayer-identification numbers.” *Id.* at 1344-45. The Fourth Circuit has even
28 noted that “condition[ing] voting on public release of a voter’s Social Security

1 number” could “create[] an intolerable burden on that right as protected by the First
2 and Fourteenth Amendments.” *Project Vote/Voting for Am.*, 682 F.3d at 339.
3 Courts have thus read the NVRA to permit States to redact registrants’ SSNs and
4 birthdates, *Voter Reference Found.*, 2025 WL 3280300, at *9 n.14; *Project*
5 *Vote/Voting for Am.*, 682 F.3d at 339; *True the Vote*, 43 F. Supp. 3d at 739; phone
6 numbers and email addresses, *Voter Reference Found.*, 2025 WL 3280300, at *9
7 n.14; *Kemp*, 208 F. Supp. 3d at 1345; *Matthews*, 589 F. Supp. 3d at 944; and any
8 confidential information regarding those under or previously under criminal
9 investigation, *Bellows*, 92 F.4th at 56; *N.C. State Bd. of Elections*, 996 F.3d at 266-
10 68.

11 Yet in this case, the United States is demanding from California data that
12 DOJ itself has repeatedly persuaded courts can be withheld from requestors under
13 the NVRA. DOJ’s letters to California insist upon receiving “all fields contained
14 within” the State’s statewide voter registration list, Dkt. No. 1 ¶ 34A, and specify
15 that this includes voters’ “state driver’s license number, and the last four digits of
16 their Social Security number,” Dkt. No. 1 ¶ 38. SSNs are the paradigmatic example
17 of sensitive personal information, and conditioning voter registration on a statutory
18 mandate of “public release of a voter’s [SSN] creates an intolerable burden on that
19 right as protected by the First and Fourteenth Amendments.” *Project Vote/Voting*
20 *for Am.*, 682 F.3d at 339. Likewise, public disclosure of “drivers’ license numbers,
21 in addition to other personal information” provided in voter registration files, “can
22 provide an opening for fraud, including applying for credit cards or loans or
23 opening bank accounts.” *In re USAA Data Sec. Litig.*, 621 F. Supp. 3d 454, 466-67
24 (S.D.N.Y. 2022); *see also* 18 U.S.C. § 2721(a)(1) (prohibiting state “department[s]
25 of motor vehicles” from disclosing driver’s license numbers except in delineated
26 circumstances).⁴ DOJ’s information requests to California thus both exceed what

27
28 ⁴ Because Section 8(i) authorizes “public inspection” without differentiation among
members of the public, 52 U.S.C. § 20507(i)(1), any records to which courts rule

1 court decisions have authorized and contradict its own consistent past position.

2 **B. The 1960 Civil Rights Act Does Not Justify The Department of**
3 **Justice's Requests in this Case**

4 Title III of the Civil Rights Act of 1960 gave election officials a new duty to
5 preserve, and granted DOJ a new power to request, certain election-related
6 documents. It gives DOJ broad investigative authority to seek at least some of the
7 information at issue in this case—but subject to important guardrails. Under Title
8 III, “[e]very officer of election shall retain and preserve, for a period of twenty-two
9 months from the date of any general, special, or primary election of which
10 candidates for” federal office “are voted for, all records and papers which come into
11 his possession relating to any application, registration, payment of poll tax, or other
12 act requisite to voting in such election.” 52 U.S.C. § 20701. DOJ may then seek
13 “inspection, reproduction, and copying” of “[a]ny record or paper required by
14 section 20701 of this title to be retained and preserved.” 52 U.S.C. § 20703. But
15 the government must have, and provide its targets with, both a “purpose” for
16 conducting an inquiry and a “basis” for thinking there may be a legal violation to
17 which the requested records would be relevant. *Id.*

18 DOJ has failed to meet that basic standard here: it (i) fails to provide a
19 “basis” for suspecting that California is not fulfilling its NVRA and HAVA
20 obligations, and (ii) appears to be obscuring its true “purpose” in seeking not only
21 California’s voter rolls, but the rolls of every State in the country. When DOJ has
22 used the 1960 Civil Rights Act, it has rarely sought a State’s entire voter database,
23 and it certainly has not done so to enable a fishing expedition.

24 **1. DOJ’s Justification For Seeking Full Voter Files From**
25 **California Is Inadequate Under the Civil Rights Act**

26 Unlike Section 8(i) of the NVRA, which acts as a public-disclosure

27 _____
28 DOJ can have access pursuant to this provision must likewise be made available to
any other requestor.

1 provision, Title III of the 1960 Civil Rights Act is a record-retention and
2 governmental investigative tool. *See Lynd*, 306 F.2d at 225 (noting that “Title III
3 provides ‘an effective means whereby preliminary investigations of registration
4 practices can be made’”). DOJ may use the 1960 Civil Rights Act to seek
5 information that cannot be disclosed under the NVRA. But at the same time, Title
6 III’s statutory framework establishes restrictions on DOJ’s ability to obtain and
7 disseminate this material. *First*, DOJ must make a “demand in writing” for the
8 requested records. 52 U.S.C. § 20703. That demand “shall contain a statement of
9 the basis and the purpose” for seeking the information. *Id.* *Second*, in contrast to
10 the NVRA’s “public” disclosure right, 52 U.S.C. § 20507(i)(1), DOJ must not
11 “disclose any record or paper produced” pursuant to Title III, except to Congress or
12 other agencies, or in court proceedings, 52 U.S.C. § 20704.⁵ *Third*, the statute
13 grants courts “jurisdiction *by appropriate process* to compel the production” of
14 records. 52 U.S.C. § 20705 (emphasis added). DOJ is bound by these restrictions
15 and processes whenever it seeks voting records under the 1960 Civil Rights Act.

16 This case directly implicates the written demand requirement. Under Title
17 III, any demand for records “shall contain a statement of *the basis and the purpose*
18 *therefor.*” 52 U.S.C. § 20703 (emphasis added). Like any statute, this provision
19 must be construed “so that no part is rendered superfluous.” *Matter of Evans*, 69
20 F.4th 1101, 1108 (9th Cir. 2023), *cert. denied sub nom. McCallister v. Evans*, 144
21 S. Ct. 1004 (2024). Thus, the purpose and basis must be read as independent
22 requirements. The *purpose* of a records request is the rationale for the
23 investigation—*e.g.*, determining whether a State is complying with the NVRA or
24 the Voting Rights Act. The *basis* is the statement indicating why DOJ believes, or
25 what evidence suggests, that it should investigate this particular State or locality, or

26 ⁵ This distinction is yet another reason why neither DOJ nor any other member of
27 the public may request the sort of sensitive voter data under the NVRA that DOJ
28 may request under the 1960 Civil Rights Act. *See, e.g., Kemp*, 208 F. Supp. 3d at
1344; *True the Vote*, 43 F. Supp. 3d at 734-35.

1 what other suspected violation the records are needed to investigate. Combined, the
2 basis-and-purpose requirement makes explicit what is implicitly true for many other
3 coercive, investigative information requests: the agency seeking information must
4 have both a legitimate *purpose* within its enforcement ambit for pursuing an
5 investigation and a sufficient *basis* for suspecting a potential violation to which the
6 requested records would be relevant. *See United States v. Powell*, 379 U.S. 48, 58
7 (1964) (noting an administrative summons must have a proper purpose “reflecting
8 on the good faith of the particular investigation”); *see also E.E.O.C. v. Children’s*
9 *Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426 (9th Cir. 1983) (requiring that
10 administrative subpoenas be based in statutory authority and satisfy procedural
11 requirements), *overruled on other grounds as recognized in Prudential Ins. Co. of*
12 *Am. v. Lai*, 42 F.3d 1299, 1303 (9th Cir. 1994).

13 DOJ’s investigative actions in the early years of Title III confirm the
14 difference between these two necessary procedural elements, both of which were
15 provided in its requests under Section 20703. In *Lynd*, 306 F.2d at 229 n.6, for
16 instance, DOJ said that its purpose in requesting records was “to ascertain whether
17 or not violations of Federal law in regard to registration and voting”—*i.e.*, the Civil
18 Rights Act of 1957—“have occurred.” And it stated that the basis for the request
19 was “information in the possession of the Attorney General tending to show that
20 distinctions on the basis of race or color have been made with respect to registration
21 and voting within your jurisdiction.” *Id.* DOJ made similar statements of basis and
22 purpose in *In re Coleman*, 208 F. Supp. 199, 199-200 (S.D. Miss. 1962), *aff’d sub*
23 *nom.*, *Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963).

24 DOJ cannot seek California’s full, unredacted voter file here, when it has
25 satisfied neither Title III’s “basis” nor its “purpose” requirement.

26 *a. DOJ has provided no adequate “basis” for needing*
27 *records from California, as the Civil Rights Act requires*

28 DOJ has not provided an adequate basis for the broad requests it has made in

1 this case. Although Title III does not impose a high standard for the basis of a
2 demand for records, the provision is not so deferential as to allow DOJ to engage in
3 fishing expeditions. *See E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*,
4 116 F.3d 110, 113 (4th Cir. 1997) (“[A]n agency’s ‘broad access to information
5 relevant to inquiries’ is not without limits.”). Rather, the statutory requirement that
6 the Attorney General articulate in writing the “basis” for a Title III demand means
7 that DOJ must know of specific, articulable facts suggesting that a violation of
8 federal law may have occurred. *See, e.g., Lynd*, 306 F.2d at 229 n.6.

9 To be sure, early cases—decided in the midst of a concerted effort to
10 frustrate federal investigations of racial discrimination in voter registration in the
11 Jim Crow South—opined that “the factual foundation for, or the sufficiency of, the
12 Attorney General’s ‘statement of the basis and the purpose’ contained in the written
13 demand, § [20703], is not open to judicial review or ascertainment.” *Lynd*, 306
14 F.2d at 226.⁶ That assertion in *Lynd* must be considered in the context of what was
15 a particularized investigation into racial discrimination in 1961 Forrest County,
16 Mississippi, and in four rural parishes in northwest Louisiana, and not a dragnet of
17 unprecedented national scope. But even so, the Supreme Court has since held that
18 notice requirements similar to those in Title III create judicially reviewable
19 standards. *See Powell*, 379 U.S. at 53, 58 (holding that statute requiring Treasury
20 Secretary to “notif[y] the taxpayer in writing that an additional inspection is
21 necessary” allows courts to “inquire into the underlying reasons for the

22 ⁶ This determination was based in part on the idea that the “process to compel the
23 production of record[s],” 52 U.S.C. § 20705, should be treated as merely “a
24 summary proceeding” not subject to regular rules of procedure, *Lynd*, 306 F.2d at
25 226. Title III’s text, however, requires “*appropriate* process,” 52 U.S.C. § 20705
26 (emphasis added), and courts must ensure that their process is not being abused,
27 *Powell*, 379 U.S. at 58. The Federal Rules of Civil Procedure also expressly apply
28 to proceedings seeking “production of documents” in the analogous context of a
subpoena issued under any federal statute, unless the statute clearly states
otherwise. Fed. R. Civ. P. 81(a)(5). The statutory text and case law confirm that
Title III proceedings are likewise subject to traditional procedural rules.

1 examination” because “a court may not permit its process to be abused”). The
2 Court also has long applied a strong presumption in favor of judicial review of the
3 government’s actions, and the Administrative Procedure Act “itself articulates the
4 default principle that parties in enforcement proceedings can challenge an agency’s
5 interpretation of a statute.” *McLaughlin Chiropractic Assocs., Inc. v. McKesson*
6 *Corp.*, 606 U.S. 146, 156 (2025).

7 Here, DOJ has provided no basis at all for demanding sensitive data about
8 every California voter, much less a basis that would indicate that California
9 possibly violated federal law. DOJ’s supposed *purpose* is “to assist in [its]
10 determination of whether California’s list maintenance program complies with the
11 NVRA.” Dkt. No. 87-7, at 2; *but see infra* Part III.B.1.b. But DOJ has provided no
12 *basis* for thinking that California might be violating the NVRA. DOJ’s initial letter
13 simply “request[ed] information regarding the state’s procedures for complying
14 with” the NVRA’s list-maintenance provisions and asked for “all fields” in
15 California’s statewide voter registration list. Dkt. No. 87-3, at 1. (It also initially
16 requested the information pursuant to Section 8(i) of the NVRA, not the Civil
17 Rights Act. *Id.*) DOJ’s follow-up letter “reaffirmed” that it was trying to determine
18 whether California was complying with the NVRA, but it erroneously treated this
19 statement as satisfying the entirety of Title III’s basis-and-purpose requirement,
20 despite the lack of any stated *basis* for the investigation. Dkt. No. 87-7, at 2.

21 And requiring that basis is especially important given the questionable fit
22 between DOJ’s demand and its ostensible purpose. The statutes DOJ invokes only
23 require States to conduct a “general program” of list maintenance that makes a
24 “reasonable effort” to remove ineligible voters from the rolls. 52 U.S.C.
25 § 20507(a)(4); 52 U.S.C. § 21083(a)(4)(A) (requiring a “system of file
26 maintenance”). They also require only a “reasonable effort” to remove deceased or
27 relocated voters. *Id.* “[T]he attempt need not be perfect, or even optimal, so long
28 as it remains within the bounds of rationality.” *Pub. Int. Legal Found. v. Benson*,

1 136 F.4th 613, 625 (6th Cir. 2025), *petition for cert. filed*, No. 25-437 (U.S. Oct. 7,
2 2025). A snapshot of a State’s voter file at one point in time is unlikely to convey
3 whether a State is engaging in that reasonable effort through a continuing program.
4 *See, e.g., id.* (rejecting identification of “27,000 ‘potentially deceased’ voters on
5 Michigan’s registration rolls” as evidence of an NVRA violation). Indeed, HAVA
6 provides that “[t]he specific choices on the methods of complying with [the list
7 maintenance mandate] shall be left to the discretion of the State.” 52 U.S.C.
8 § 21085. And the potential for government misuse of the information sought—
9 including partial SSNs and driver’s license numbers—outweighs any reason yet
10 provided for needing that information to investigate an ostensible HAVA or NVRA
11 violation. DOJ therefore cannot derive from the NVRA’s and HAVA’s mandates a
12 “basis” for seeking California’s full, unredacted voter files. 52 U.S.C. § 20703.

13 *b. DOJ cannot seek voter records for the purposes of*
14 *creating a national voter roll and identifying noncitizens*

15 DOJ fails the purpose prong of Title III’s basis-and-purpose requirement
16 because (1) the true purpose is not articulated in the request for records and (2) the
17 true purpose exceeds DOJ’s enforcement authority under the cited statutes.

18 Although courts’ “review” of an information request’s purpose is deferential,
19 courts “are ‘not required to exhibit a naiveté from which ordinary citizens are
20 free.’” *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019). News reports and
21 the Administration’s public statements have revealed that DOJ’s true purpose in
22 seeking these voter files is not what DOJ stated in its information requests—*i.e.*, to
23 monitor California’s compliance with the NVRA’s and HAVA’s list-maintenance
24 requirements. Rather, that proffered purpose has been shown to be a pretext for
25 other, undeclared aims, which appear to include creating DOJ’s *own* national voter
26 database and then sharing that information with the Department of Homeland
27 Security (DHS) as part of a broader effort to discover what DOJ thinks are
28 undocumented immigrants who are unlawfully voting.

1 DOJ is currently “compiling the largest set of national voter roll data it has
2 ever collected” in an attempt “to prove long-running, unsubstantiated claims that
3 droves of undocumented immigrants have voted illegally.” Devlin Barrett & Nick
4 Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y.
5 Times (Sept. 9, 2025), <https://perma.cc/9PM4-2A6R>. As part of that scheme, DOJ
6 plans to create a “central, federal database of voter information,” and then compare
7 that “voter data to a different database, maintained by the Department of Homeland
8 Security, to see how many registered voters on the state lists match up with
9 noncitizens listed by immigration agents.” *Id.* To accomplish this, DOJ has sent
10 requests for voter-roll data to at least 40 States and so far has sued 21 of them along
11 with the District of Columbia. *See Tracker of Justice Department Requests for*
12 *Voter Information*, Brennan Ctr. for Just. (last updated Dec. 19, 2025),
13 [https://www.brennancenter.org/our-work/research-reports/tracker-justice-](https://www.brennancenter.org/our-work/research-reports/tracker-justice-department-requests-voter-information)
14 [department-requests-voter-information](https://www.brennancenter.org/our-work/research-reports/tracker-justice-department-requests-voter-information).

15 DHS has largely confirmed these reports, issuing a statement to media outlets
16 explaining that the Administration’s plan to have DOJ and DHS share voter roll
17 information is essential to “scrub aliens from voter rolls,” and that DHS’s
18 “collaboration” with DOJ will “prevent illegal aliens” from voting. Jonathan
19 Shorman, *DOJ Is Sharing State Voter Roll Lists With Homeland Security*, Stateline
20 (Sept. 12, 2025), <https://perma.cc/C6RQ-6ATP>. As DHS put it, “[e]lections exist
21 for the American people to choose their leaders, not illegal aliens.” *Id.* For its part,
22 DOJ admitted in a separate statement that state voter rolls were in fact “being
23 screened for ineligible voter entries.” *Id.* Assistant Attorney General for Civil
24 Rights Harmeet Dhillon has also stated that the federal government has “checked
25 47.5 million voter records”—apparently through SAVE, a system with known
26 accuracy issues—and that there are “several thousand noncitizens who are enrolled
27 to vote in federal elections.” Jude Joffe-Block, *Trump’s SAVE Tool Is Looking for*
28 *Noncitizen Voters. But It’s Flagging U.S. Citizens Too*, NPR (Dec. 10, 2025),

1 <https://www.npr.org/2025/12/10/nx-s1-5588384/save-voting-data-us-citizens>.

2 An attorney in the Housing Section of the Civil Rights Division, who was
3 “detailed to work in the Voting Section enforcing the [NVRA]” and participated in
4 making the requests for States’ voter rolls, has also explained DOJ’s true purpose to
5 the *New York Times*:

6 Leadership said they had a DOGE person who could go through all
7 the data and compare it to the Department of Homeland Security data
8 and Social Security data. The idea was, We want to identify
9 undocumented immigrants that have registered to vote. There was no
10 pre-existing evidence this is a problem. I had a concern that the data
11 would be used not for purging voter rolls of people who aren’t eligible
12 to vote but for broader immigration enforcement.

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

16 DOJ’s use of the Civil Rights Act for these purposes—*i.e.*, to create and
17 maintain its own voter list and then use that list to substantiate its claims of
18 widespread voter fraud by noncitizens—is improper twice over.

19 First, it is not the “purpose” that DOJ set forth in its “statement” to
20 California. 52 U.S.C. § 20703. “If men must turn square corners when they deal
21 with the government, it cannot be too much to expect the government to turn square
22 corners when it deals with them.” *Niz-Chavez v. Garland*, 593 U.S. 155, 172
23 (2021). An agency’s action thus cannot be sustained when there is “a significant
24 mismatch between the decision [an agency] made and the rationale [it] provided.”
25 *Dep’t of Com.*, 588 U.S. at 783. This principle is especially important in the
26 context of a proceeding to enforce administrative process, since it would be an
27 abuse of the court’s *own* process to invoke it when there are doubts about “the good
28 faith of the particular investigation.” *Powell*, 379 U.S. at 58.

Second, even if DOJ had been truthful about its purpose for seeking voter

1 data, that purpose would have been improper, as the very statutes that DOJ invokes
2 establish that the *States*, not the federal government, are in charge of maintaining
3 voter rolls. The NVRA provides that “each *State* shall . . . conduct a general
4 program that makes a reasonable effort to remove the names of ineligible voters
5 from the official lists of eligible voters.” 52 U.S.C. § 20507(a)(4) (emphasis
6 added). HAVA is likewise clear that *States* are required to define, maintain, and
7 administer voter rolls. For example, HAVA requires “each State” to “implement”
8 “a single, uniform, official, centralized, interactive computerized statewide voter
9 registration list *defined, maintained, and administered at the State level.*” 52
10 U.S.C. § 21083(a)(1)(A) (emphasis added). It is this “list” that serves “as the
11 official voter registration list for the conduct of all elections for Federal office in the
12 State.” *Id.* HAVA similarly requires each State to provide for a “[m]inimum
13 standard for accuracy of State voter registration records.” 52 U.S.C. § 21083(a)(4).
14 While DOJ has authority to enforce these provisions, 52 U.S.C. §§ 20510(a),
15 21111, it does *not* have authority to conduct list maintenance itself and then force
16 States to remove certain voters from their rolls. Yet that is precisely what a
17 Memorandum of Understanding that DOJ recently offered to Colorado proposed to
18 do. *See* Confidential Memorandum of Understanding 5, U.S. Dep’t of Just. (Dec. 1,
19 2025), [https://www.brennancenter.org/media/14806/download/2025-12-01-doj-](https://www.brennancenter.org/media/14806/download/2025-12-01-doj-mou-to-colorado.pdf?inline=1)
20 [mou-to-colorado.pdf?inline=1](https://www.brennancenter.org/media/14806/download/2025-12-01-doj-mou-to-colorado.pdf?inline=1).

21 Simply put, there is nothing in the Civil Rights Act, the NVRA, or HAVA
22 that authorizes the federal government to use highly sensitive, personal data in state
23 voter rolls to conduct a nationwide search for individual registrants that it suspects
24 may not be eligible to vote. If an Administration were to have legitimate concerns
25 about non-citizens unlawfully registering and voting, the appropriate divisions of
26 DOJ can (and must) use the DOJ’s legitimate authorities to investigate—it cannot
27 misuse Title III to do so.

28 The lawful and appropriate steps to review States’ treatment of noncitizens in

1 their registration systems are straightforward. Assuming its review is consistent
2 with federal statutes like the Privacy Act,⁷ DOJ may first obtain and examine the
3 non-sensitive information that States are required to disclose to the public under the
4 NVRA. If review of that non-sensitive information were to lead to legitimate
5 suspicion that any particular individual is unlawfully registered in violation of
6 criminal registration and voter fraud provisions, then the Criminal Division—not
7 the Voting Section of the Civil Rights Division—can conduct further, targeted
8 investigations. *See* U.S. Dep’t of Justice, Justice Manual §§ 9-85.100, 9-85.210
9 (granting Criminal Division supervisory jurisdiction over cases involving “election
10 crimes,” including voter registration fraud).

11 As part of its additional investigation, the Criminal Division can seek
12 suspected individuals’ driver’s license numbers, SSNs, and other information from
13 state DMVs under the law enforcement exception to the federal Driver Privacy
14 Protection Act. *See* 18 U.S.C. § 2721(b)(1). And if state privacy law provides
15 suspected individuals with additional protections beyond the Driver Privacy
16 Protection Act, the Criminal Division can seek those individuals’ voluntary
17 disclosure and, failing that, issue grand jury subpoenas. *See* U.S. Dep’t of Justice,
18 Justice Manual § 9-85.210 (describing “investigative step[s]” for election-related
19 crimes as including “interviewing witnesses, issuing grand jury subpoenas,
20 executing search warrants, or conducting surveillance”). But what DOJ cannot do
21 is what it tries to do here: misuse the records provisions of the Civil Rights Act and
22 NVRA to conduct fishing expeditions for highly sensitive personal information
23 from every voter in a State while offering a pretextual investigative purpose.

24
25
26 ⁷ The Privacy Act requires certain procedural steps before the government can
27 lawfully collect information on individuals indexed to each individual’s identity, 5
28 U.S.C. § 552a(e), including having to publish a notice in the Federal Register
before developing a new system of records, *id.* § 552a(e)(4).

1 **2. The Civil Rights Division Has Previously Used The Civil**
2 **Rights Act To Seek Targeted Information Based On**
3 **Reasonable Law-Enforcement Concerns**

4 DOJ’s demand for California’s full voter roll is also out of step with the way
5 the Civil Rights Division historically has used Title III’s records-inspection
6 authority: as a focused investigative tool tethered to concrete, articulable concerns
7 about unlawful registration or voting laws or practices.

8 The earliest Title III cases from the 1960s arose against a backdrop of
9 blatant, widely documented racial exclusion from voter registration. *See Lynd*, 301
10 F.2d at 818-19 (describing the government’s clear showing of voting rights
11 discrimination against Black voters). Those decisions reflect two relevant features
12 of Title III practice.

13 First, DOJ’s demands were directed at “records and papers” connected to the
14 mechanics of registration and voting—materials that would allow federal
15 investigators to evaluate whether discriminatory administration was occurring.
16 They were not generalized requests for personal identifiers untethered to a defined
17 investigative need. For example, in *Kennedy v. Bruce*, 298 F.2d 860, 861 (5th Cir.
18 1962), DOJ sought inspection of “all records and papers . . . relating to any
19 application, registration, payment of poll tax, or other act requisite to voting” for
20 federal elections, and provided both a basis (*i.e.*, it believed that “distinctions on the
21 basis of race or color have been made with respect to registration and voting within
22 your jurisdiction”) and a purpose (*i.e.*, “to examine the aforesaid records in order to
23 ascertain whether or not violations of Federal law in regard to registration and
24 voting have occurred”).

25 Second, those cases underscore that Title III’s inspection mechanism was
26 conceived as an investigative instrument keyed to identifiable concerns about
27 discriminatory voting practices in discrete locations, not a free-standing entitlement
28 to assemble broad voter data sets to try to find a “problem” in the first place. In

1 *Bruce*, the Fifth Circuit noted that the record reflected extraordinary racial
2 disparities in access to registration in Wilcox County, Alabama, that made an
3 inspection plainly appropriate. 298 F.2d at 863-64. And in *Lynd*, the Fifth Circuit
4 emphasized with respect to five southern counties that a Title III application is
5 intended to “enable the Attorney General to determine whether . . . suit[s] . . .
6 should be instituted” and “to enable him to obtain evidence for use in such [suits] if
7 and when filed.” 306 F.2d at 228. These requests fulfilled Title III’s principal
8 purpose: serving as a “necessary supplement” to, and helping to “implement federal
9 enforcement” of, the 1957 Civil Rights Act’s prohibitions against racial
10 discrimination in voting. H.R. Rep. No. 86-956, at 26 (1959). It is unthinkable that
11 the Department of Justice in 1960 could instead have invoked the authority of the
12 new Civil Rights Act to demand millions of voter registration cards held by the
13 thousands of voter registration authorities across the country, to assemble a central
14 federal voter file.

15 Modern practice reinforces the same point. When the Civil Rights Division
16 has invoked Title III more recently, it has typically done so to obtain discrete
17 categories of records narrowly keyed to a specific, articulated enforcement concern.
18 Several examples illustrate how the Civil Rights Division has traditionally wielded
19 its investigative authority, including under the Civil Rights Act:

- 20 • When necessary to investigate potential violations of Section 2 of the Voting
21 Rights Act, the Voting Section may send Title III requests to specific jurisdictions
22 under investigation based on definite, articulable discriminatory practices, seeking,
23 for example, a voter registration list to conduct racial bloc voting analysis of
24 elections held within the jurisdiction. DOJ has not needed, and has not made, Title
25 III requests for SSNs or driver’s license numbers to conduct any such analyses.
- 26 • In 2021, the United States challenged several provisions of Georgia’s new
27 omnibus voting law, SB202, as having been adopted with a discriminatory
28 purpose. *See* Compl. ¶ 161, *United States v. Georgia*, No. 1:21-cv-2575 (June 25,

2021), Dkt. No. 1. Counties with records relevant to the case were not parties to the lawsuit, and the district court froze discovery while deciding the defendants’ motions to dismiss. *See* Min. Order of Aug. 6, 2021, *Georgia, supra*. DOJ therefore used its authority under the 1960 Civil Rights Act to request county records that were relevant to the allegations that DOJ had already made in its lawsuit: (1) the Numbered Lists of Provisional Voters from each polling place in a county—paper lists of provisional voters, with voters’ names and their reasons for casting a provisional ballot—which were relevant to DOJ’s challenge to SB202’s “prohibition on counting most out-of-precinct provisional ballots,” Compl. ¶ 161(g); and (2) Drop Box Ballot Transfer Forms—paper records of how many ballots a county picked up from each mail-in ballot drop box on each day—which were relevant to DOJ’s challenge to SB202’s “cutback in the number of drop boxes permitted” and limitations on their dates and times of use, *see id.* ¶ 161(e). *See, e.g.*, Decl. of Dr. Barry C. Burden, 35, 51, *In re Georgia Senate Bill 202*, No. 1:21-mi-55555 (May 30, 2023), Dkt. No. 566-42.

• In 2024, DOJ sued Alabama for systematically removing several thousand people from its voter rolls within 90 days of a federal election, which would violate the NVRA’s Quiet-Period Provision, 52 U.S.C. § 20507(c)(2). *See* Compl. ¶¶ 2-4, *United States v. Alabama*, No. 2:24-cv-1329 (N.D. Ala. Sept. 27, 2024), Dkt. No. 1. DOJ sent a letter to state election officials explaining that DOJ had “reviewed reports” (which it cited) suggesting that the State was implementing within 90 days of the November 5, 2024 federal election a “program” to identify and remove registrants identified as noncitizens, in violation of the Quiet-Period Provision. Letter, *Alabama, supra*, Dkt. No. 11-7, at 2. DOJ then requested a defined set of materials keyed to that asserted concern, including (i) a list of the voters removed under the State’s new processes; (ii) a list of any additional voters sent notices of intent to cancel on similar grounds; and (iii) a “complete description” of the methodology used, including contacts with or requests to

1 federal agencies. Letter, *Alabama, supra*, at 2-3. The letter did not explicitly
2 invoke Title III. *Id.* But in later conversations, DOJ did “assert[]” that authority,
3 and the State “produced” the requested records “in compliance with Title III of the
4 Civil Rights Act of 1960.” Letter, *Alabama, supra*, Dkt. No. 11-9, at 1. DOJ did
5 not request SSN or driver’s license data, but the State did provide it for those
6 registrants who were ensnared in its program.

7 • In 2024, DOJ and private plaintiffs also sued Virginia for substantially the
8 same reasons as in DOJ’s suit against Alabama. *See* Compl. ¶¶ 2-4, *United States*
9 *v. Virginia*, No. 1:24-cv-1807 (E.D. Va. Oct. 11, 2024), Dkt. No. 1. As part of the
10 Virginia suit, DOJ sent a Title III request for certain discrete data from Loudoun
11 County, which the County provided. *See* Declarations of Judy Brown, *Virginia*
12 *Coal. for Immigrant Rts. v. Beals*, No. 1:24-cv-1778 (E.D. Va. Oct. 23, 2024), Dkt.
13 Nos. 100-3, 100-4, 100-5, 100-6. DOJ also sent a letter to State election officials
14 in Virginia identifying the same concerns as in Alabama and requesting similar
15 materials. Letter, *Virginia, supra*, Dkt. No. 9-17, at 1. As in Alabama, this letter
16 did not directly invoke Title III. *Id.* Virginia did not turn over the records in
17 response to DOJ’s request, but provided them as part of expedited discovery in
18 litigation. *See* Order, *Va. Coal. for Immigrant Rts., supra*, Dkt. No. 72.

19 Thus, in the rare instances when DOJ has requested or received sensitive
20 information like SSNs and driver’s license numbers, it was because this information
21 was vital to investigating or proving a potential legal violation in a particular
22 jurisdiction, and there was an articulable reason to believe that a violation might
23 have occurred. DOJ does not usually request such data under Title III.⁸

24 ⁸ In 2006 and 2008, DOJ sent Title III requests to Georgia and Texas, seeking the
25 States’ voter files with SSNs and/or driver’s licenses to ensure compliance with the
26 NVRA. *See* Compl. ¶¶ 9-10, *United States v. Georgia*, No. 1:06-cv-02442 (N.D.
27 Ga. Oct. 12, 2006), Dkt. No. 1; *Memorandum of Understanding*, U.S. Dep’t of Just.
28 (May 13, 2008), <https://www.justice.gov/crt/case-document/file/1444746/dl?inline>. DOJ and Georgia agreed to a consent order approved by the court shortly
after DOJ filed a complaint. *See* Consent Judgment and Decree, *Georgia, supra*,

1 To the extent DOJ has need of sensitive voter data, it has instead tended to
2 obtain it through traditional civil litigation tools. *See, e.g.*, Fed. R. Civ. P. 34
3 (authorizing discovery of documents); Fed. R. Civ. P. 45 (authorizing issuance of
4 subpoenas to nonparties). For instance, DOJ may need a State’s entire voter file
5 (including SSNs and driver’s license numbers) to analyze whether a voter ID law
6 violates the Voting Rights Act, because having this information allows DOJ to
7 compare the voter file to other state and federal databases to determine (i) how
8 many people registered in a State do not have driver’s licenses or the other forms of
9 ID allowed under the voter ID law and (ii) whether there are significant racial
10 disparities in possession of those IDs. Likewise, it may need such information to
11 determine whether a required field on a voter-registration form is “not material in
12 determining whether” an applicant “is qualified under State law to vote” and so
13 violates the Civil Rights Act of 1964. 52 U.S.C. § 10101(a)(2)(B).

14 The United States has typically gotten such information in discovery. *See,*
15 *e.g., Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 962 (D. Ariz. 2024) (noting
16 that United States’ expert witness—to help show that state requirement for place of
17 birth on voter registration forms is not material to determining registrants’
18 qualifications—“determined that of the nearly 4.7 million active and inactive voter
19 records in Arizona, only 2,734 records cannot be uniquely identified based on the
20 voter’s name and date of birth”), *aff’d in part, vacated in part, remanded*, 129 F.4th
21 691 (9th Cir. 2025); *Veasey v. Perry*, 71 F. Supp. 3d 627, 659 (S.D. Tex. 2014)
22 (noting that United States’ expert witness determined which voters and of what race
23 lacked IDs covered by Texas’s photo ID law “by comparing individual [state] voter
24 records with databases” of U.S. passports, citizenship certificates, and military IDs),
25 *aff’d in part, vacated in part sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir.
26 2015), *aff’d in part, vacated in part, rev’d in part*, 830 F.3d 216 (5th Cir. 2016) (en

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28 Dkt. No. 4. DOJ and Texas entered into a memorandum of understanding,
obviating any litigation. *Memorandum of Understanding, supra.*

1 banc). And crucially, it has done so under strict court supervision and pursuant to
2 the terms of detailed protective orders that prescribe procedures for exchanging,
3 handling, storing, protecting, and deleting this sensitive data. *See, e.g.,* Protective
4 Order, *Mi Familia Vota, supra*, Dkt. No. 353. Title III does not offer these kinds of
5 safeguards. *See* 52 U.S.C. § 20704.

6 Against this backdrop, DOJ’s approach in this litigation stands out for both
7 overbreadth and lack of justification. DOJ rejected an offer to allow inspection of
8 the statewide voter registration list with sensitive fields redacted. Instead, it
9 demanded an unredacted electronic copy, asserting simply that the data was needed
10 to determine “whether California’s list maintenance program complies with the
11 NVRA.” Dkt. No. 87-3, at 1; Dkt. No. 87-7, at 2. DOJ also demanded copies of
12 “all original and completed voter registration applications” from a multi-year
13 period, which likewise would include voters’ driver’s license numbers or partial
14 SSNs. Dkt. No. 87-7, at 2. DOJ’s requests expressly insisted that the statewide file
15 must include “all fields”—including driver’s license numbers and the last four
16 digits of SSNs—and that the requested registration applications be provided in
17 “unredacted” format. Dkt. No. 87-3, at 1; Dkt. No. 87-7, at 2. DOJ did not seek
18 this information to further any *purpose* for which DOJ traditionally might need this
19 sensitive voter data. Nor did DOJ offer the kind of articulated enforcement *basis*
20 that must accompany such requests.

21 **C. HAVA Does Not Create Independent Disclosure Rights**

22 Finally, DOJ cannot rely on HAVA as an independent basis for its
23 information requests. Unlike the Civil Rights Act and the NVRA, Congress chose
24 not to include a provision in HAVA creating subpoena authority or requiring
25 disclosure. *See generally* 52 U.S.C. §§ 20901-21145. This makes sense, as
26 HAVA’s list-maintenance requirements build on the NVRA’s, *see* 52 U.S.C.
27 § 21083(a)(2)(A) and (4), and the NVRA already includes a public-disclosure
28 provision. HAVA requires recipients of grants made under the statute to maintain

1 financial records only for the purpose of allowing audits by the “office making a
2 grant or other payment” under the statute. 52 U.S.C. § 21142(a)-(b). The inclusion
3 of this audit provision further indicates that Congress did not silently provide for
4 other records-access or subpoena power in HAVA. *See Collins v. Yellen*, 594 U.S.
5 220, 248 (2021); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328
6 (2015). DOJ appears to recognize this fact: while it asks the Court to declare that
7 California is *violating* the Civil Rights Act and the NVRA, it asks only for a
8 declaration that California’s failure to hand over everything DOJ wants “prevents
9 the Attorney General from enforcing HAVA’s list maintenance requirements.”
10 Dkt. No. 1, Prayer for Relief ¶ 3. But HAVA grants DOJ authority to seek
11 remedies only for actual violations of the statute’s “uniform and nondiscriminatory
12 election technology and administration requirements.” 52 U.S.C. § 21111. Thus,
13 while DOJ can make proper information requests under the Civil Rights Act or the
14 NVRA for the purpose of ensuring compliance with HAVA, HAVA itself provides
15 no separate disclosure right. Nor does HAVA authorize DOJ to collect and comb
16 through highly sensitive personal data from state voter rolls in search of registrants
17 it suspects are not eligible to vote.

18 **IV. CONCLUSION**

19 For the reasons discussed above, the Court should grant Defendants’ motion
20 to dismiss.
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12 **Pro hac vice* application pending
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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for *amici curiae* Former Employees of the
U.S. Department of Justice certifies that this brief contains 25 pages, which:

_____ complies with the word limit of L.R. 11-6.1.

 X complies with the page limit set by Section 6 under “Judge’s
Procedures” on this Court’s courtroom website,
<https://apps.cacd.uscourts.gov/Jps/honorable-david-o-carter>.

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