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10
11 **UNITED STATES DISTRICT COURT**
DISTRICT OF ARIZONA

12 United States of America,

13 Plaintiff,

14 v.

15 Adrian Fontes, in his official capacity as
16 Secretary of State of the State of Arizona,

17 Defendant.

No. 26-cv-00066-PHX-SMB

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

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INTEREST OF AMICI

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

SUMMARY OF ARGUMENT

Title III of the Civil Rights Act of 1960 is a vital tool that helps the Attorney General make "preliminary investigations of registration practices," determine whether to file voting lawsuits, and obtain evidence for those suits. *Kennedy v. Lynd*, 306 F.2d 222, 225 (5th Cir. 1962). Though "[w]ide scope must be accorded the Attorney General in the facilities for adequate investigation," *id.* at 228, that scope is not unlimited. Title III requires DOJ to provide "a statement of the basis and the purpose" for its information requests. 52 U.S.C. § 20703. Here, DOJ has overstepped its bounds by requesting "all fields" of the registration list for every voter in Arizona—including email addresses, signatures, partial Social Security Numbers (SSNs), and driver's license numbers—without a sufficient basis and in furtherance of an improper purpose. DOJ has not provided any basis at all for thinking that Arizona might be violating federal statutes, much less a basis that would justify requesting sensitive voter data about all Arizona voters. And while DOJ has provided a purpose for its requests—enforcing the NVRA and HAVA—that purpose appears to be a stalking horse

1 for its true purpose: to enable the federal government to conduct its own list maintenance
2 to discover whether noncitizens or undocumented immigrants are registered to vote. That
3 purpose cannot justify the requests for sensitive data here. The NVRA and HAVA place
4 *States*—not the federal government—in charge of developing and maintaining voter
5 registration lists. DOJ’s sweeping request, made without adequate investigative rationale,
6 is a radical departure from the sorts of targeted, justified requests that *amici* and others in
7 the Voting Section have previously made under Title III.

8 ARGUMENT

9 THE 1960 CIVIL RIGHTS ACT DOES NOT JUSTIFY THE DEPARTMENT 10 OF JUSTICE’S REQUESTS IN THIS CASE

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

24 DOJ has failed to meet that basic standard here: it (1) fails to provide a “basis” for
25 suspecting that Arizona is not fulfilling its NVRA and HAVA obligations, and (2) appears
26 to be obscuring its true “purpose” in seeking not only Arizona’s voter rolls, but the rolls of
27 every State in the country. When DOJ has used the 1960 Civil Rights Act, it has rarely
28 sought a State’s entire voter database, and it has not done so to enable a fishing expedition.

1 **A. DOJ’s Justification For Seeking Full Voter Files From Arizona Is**
2 **Inadequate Under the 1960 Civil Rights Act**

3 DOJ may use the 1960 Civil Rights Act to seek some information that cannot be
4 disclosed under other statutes, like the NVRA. But Title III’s statutory framework
5 establishes restrictions on DOJ’s ability to obtain and disseminate this material. *First*, DOJ
6 must make a “demand in writing” for the requested records. 52 U.S.C. § 20703. That
7 demand “shall contain a statement of the basis and the purpose” for seeking the information.
8 *Id. Second*, in contrast to the NVRA’s “public” disclosure right, 52 U.S.C. § 20507(i)(1),
9 DOJ must not “disclose any record or paper produced” pursuant to Title III, except to
10 Congress or other agencies, or in court proceedings, 52 U.S.C. § 20704. *Third*, the statute
11 grants courts “jurisdiction *by appropriate process* to compel the production” of records. 52
12 U.S.C. § 20705 (emphasis added). DOJ is bound by these restrictions and processes
13 whenever it seeks voting records under the 1960 Civil Rights Act.

14 This case directly implicates the written demand requirement. Under Title III, any
15 demand for records “shall contain a statement of *the basis and the purpose* therefor.” 52
16 U.S.C. § 20703 (emphasis added). Like with any statute, the Court must “avoid a reading
17 which renders some words altogether redundant.” *Gonzalez v. Herrera*, 151 F.4th 1076,
18 1085 (9th Cir. 2025). This is particularly so here, since the statute uses the word “and” to
19 connect “basis” with “purpose,” indicating that the United States must show “not just one
20 or the other, but both.” *Confederated Tribes & Bands of Yakama Nation v. Yakima Cnty.*,
21 963 F.3d 982, 990 (9th Cir. 2020) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 58 (1930)).
22 Thus, the purpose and basis must be read as independent requirements. The *purpose* of a
23 records request is the rationale for the investigation—*e.g.*, determining whether a State is
24 complying with the NVRA or the Voting Rights Act (VRA). The *basis* is the statement
25 indicating why DOJ believes, or what evidence suggests, that it should investigate this
26 particular State or locality, or what other suspected violation the records are needed to
27 investigate. Combined, the basis and purpose requirements make explicit what is implicitly
28 true for many other coercive, investigative information requests: the agency seeking

1 information must have both a legitimate *purpose* within its enforcement ambit for pursuing
2 an investigation and a sufficient *basis* for suspecting a potential violation to which the
3 requested records would be relevant. *See United States v. Powell*, 379 U.S. 48, 58 (1964)
4 (noting an administrative summons must have a proper purpose “reflecting on the good
5 faith of the particular investigation”); *E.E.O.C. v. Fed. Exp. Corp.*, 558 F.3d 842, 848 (9th
6 Cir. 2009) (administrative subpoenas must be based in statutory authority and satisfy
7 procedural requirements).

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

18 DOJ cannot seek Arizona’s full, unredacted voter file here, when it has satisfied
19 neither Title III’s “basis” nor its “purpose” requirement. *See United States v. Weber*, 2026
20 WL 118807, at *8-12 (C.D. Cal. Jan. 15, 2026) (holding same in near-identical case brought
21 against California); *United States v. Oregon*, 2026 WL 318402, at *8-10 (D. Or. Feb. 5,
22 2026) (same in case brought against Oregon).

23 **1. DOJ has provided no adequate “basis” for needing records from**
24 **Arizona, as the 1960 Civil Rights Act requires**

25 DOJ has not provided an adequate basis for the broad requests it has made in this
26 case. Although Title III does not impose a high standard for the basis of a demand for
27 records, the provision is not so deferential as to allow DOJ to engage in fishing expeditions.
28 *See E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 113 (4th Cir.

1 1997) (“[A]n agency’s ‘broad access to information relevant to inquiries’ is not without
2 limits.”). Rather, the requirement that the Attorney General articulate in writing the “basis”
3 for a Title III demand means that DOJ must know of specific, articulable facts suggesting
4 that a violation of federal law may have occurred. *See, e.g., Lynd*, 306 F.2d at 229 n.6.

5 To be sure, early cases—decided in the midst of a concerted effort to frustrate federal
6 investigations of racial discrimination in voter registration in the Jim Crow South—opined
7 that “the factual foundation for, or the sufficiency of, the Attorney General’s ‘statement of
8 the basis and the purpose’ contained in the written demand, § [20703], is not open to judicial
9 review or ascertainment.” *Lynd*, 306 F.2d at 226.¹ That assertion in *Lynd* must be
10 considered in the context of what was a particularized investigation into racial
11 discrimination in 1961 Forrest County, Mississippi, and in four rural parishes in northwest
12 Louisiana, and not a dragnet of unprecedented national scope. But even so, the Supreme
13 Court has since held that notice requirements similar to those in Title III create judicially
14 reviewable standards. *See Powell*, 379 U.S. at 53, 58 (holding that statute requiring
15 Treasury Secretary to “notif[y] the taxpayer in writing that an additional inspection is
16 necessary” allows courts to “inquire into the underlying reasons for the examination”
17 because “a court may not permit its process to be abused”). The Court also has long applied
18 a strong presumption in favor of judicial review of the government’s actions, and the
19 Administrative Procedure Act “itself articulates the default principle that parties in
20 enforcement proceedings can challenge an agency’s interpretation of a statute.”
21 *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 156 (2025).

22
23 ¹ This determination was based in part on the idea that the “process to compel the production
24 of record[s],” 52 U.S.C. § 20705, should be treated as merely “a summary proceeding” not
25 subject to regular rules of procedure, *Lynd*, 306 F.2d at 226. Title III’s text, however,
26 requires “appropriate process,” 52 U.S.C. § 20705 (emphasis added), and statutes granting
27 jurisdiction “by appropriate process to compel” document production must allow witnesses
28 to “challenge the summons on any appropriate ground,” *Reisman v. Caplin*, 375 U.S. 440,
445-46, 449 (1964). The Federal Rules of Civil Procedure also expressly apply 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. *See, e.g., Oregon*, 2026 WL 318402, at *8; *Weber*,
2026 WL 118807, at *8.

1 Here, DOJ has provided no basis at all for demanding sensitive data about every
2 Arizona voter, much less a basis that would indicate that Arizona possibly violated federal
3 law. DOJ's supposed *purpose* is "to ascertain Arizona's compliance with the list
4 maintenance requirements of the NVRA and HAVA." Dkt. No. 8-3, at 3; *but see infra* Part
5 A.2. But DOJ has provided no *basis* for thinking that Arizona might be violating the NVRA
6 or HAVA in a manner that would justify its request for the State's full, unredacted voter
7 rolls. DOJ's initial letter simply requested "a description of the steps that you have taken,
8 and when those steps were taken, to ensure that the State's list maintenance program has
9 been properly carried out in full compliance with the NVRA," and asked for "all fields" in
10 Arizona's statewide voter registration list. Dkt. No. 8-1, at 2. (It also initially requested
11 the information pursuant to Section 8(i) of the NVRA, not the Civil Rights Act. *Id.*)
12 Arizona stated that it needed to determine "whether any redactions may be required by state
13 law." Dkt. 8-2, at 2. DOJ's follow-up letter insisted that it must receive "*all fields*,"
14 including driver's license numbers and SSNs, but it did not explain what reason it had to
15 think there was a potential statutory violation as to which that sensitive data would be
16 relevant. Dkt. 8-3, at 3. DOJ simply stated that the request's purpose was "to ascertain
17 Arizona's compliance with the list maintenance requirements of the NVRA and HAVA."
18 *Id.* But DOJ apparently treated this statement as satisfying the entirety of Title III's basis-
19 and-purpose requirement, despite the lack of any stated *basis* for the investigation.

20 And requiring that basis is especially important given the questionable fit between
21 DOJ's demand and its ostensible purpose. The statutes DOJ invokes only require States to
22 conduct a "general program" of list maintenance that makes a "reasonable effort" to remove
23 ineligible voters from the rolls. 52 U.S.C. § 20507(a)(4); 52 U.S.C. § 21083(a)(4)(A)
24 (requiring a "system of file maintenance"). They also require only a "reasonable effort" to
25 remove deceased or relocated voters. *Id.* "[T]he attempt need not be perfect, or even
26 optimal, so long as it remains within the bounds of rationality." *Pub. Int. Legal Found. v.*
27 *Benson*, 136 F.4th 613, 625 (6th Cir. 2025), *cert. denied*, 2026 WL 568298 (U.S. Mar. 2,
28 2026). A snapshot of a State's voter file at one point in time is unlikely to convey whether

1 a State is engaging in that reasonable effort through a continuing program. *See, e.g., id.*
2 (rejecting identification of “27,000 ‘potentially deceased’ voters on Michigan’s registration
3 rolls” as evidence of an NVRA violation). Indeed, HAVA provides that “[t]he specific
4 choices on the methods of complying with [the list maintenance mandate] shall be left to
5 the discretion of the State.” 52 U.S.C. § 21085. And the potential for government misuse
6 of the information sought—including partial SSNs and driver’s license numbers—
7 outweighs any reason yet provided for needing that information to investigate an ostensible
8 HAVA or NVRA violation. DOJ therefore cannot derive from the NVRA’s and HAVA’s
9 mandates a “basis” for seeking Arizona’s full, unredacted voter files. 52 U.S.C. § 20703.

10 **2. DOJ cannot seek voter records for the purposes of conducting its**
11 **own list maintenance and identifying noncitizens**

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

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

25 DOJ is currently “compiling the largest set of national voter roll data it has ever
26 collected” in an attempt “to prove long-running, unsubstantiated claims that droves of
27 undocumented immigrants have voted illegally.” Devlin Barrett & Nick Corasaniti, *Trump*
28 *Administration Quietly Seeks to Build National Voter Roll*, N.Y. Times (Sept. 9, 2025),

1 <https://perma.cc/9PM4-2A6R>. As part of that scheme, DOJ plans to compare States’ “voter
2 data to a different database, maintained by the Department of Homeland Security, to see
3 how many registered voters on the state lists match up with noncitizens listed by
4 immigration agents.” *Id.*; see Kris Maher & Eliza Collins, *The Fight Over the Justice*
5 *Department’s Push for State Voter Data*, Wall St. J. (Dec. 24, 2025),
6 [https://www.wsj.com/politics/elections/the-fight-over-the-justice-departments-push-for-](https://www.wsj.com/politics/elections/the-fight-over-the-justice-departments-push-for-state-voter-data-111103f8)
7 [state-voter-data-111103f8](https://www.wsj.com/politics/elections/the-fight-over-the-justice-departments-push-for-state-voter-data-111103f8) (“The Trump administration has signaled it plans to conduct an
8 unprecedented fact-check of these state voter lists.”). An executive order, blocked by a
9 court in October 2025, “would have required [DHS] and the Department of Government
10 Efficiency, also known as DOGE, to cross-check state voter-registration lists with federal
11 immigration databases.” Maher & Collins, *supra*; see Exec. Order 14,248, § 2(b)(3), 90
12 Fed. Reg. 14005, 14006-07 (Mar. 28, 2025). To accomplish these goals, DOJ has sent
13 requests for voter-roll data to at least 48 States and so far has sued 29 of them along with
14 the District of Columbia. See *Tracker of Justice Department Requests for Voter*
15 *Information*, Brennan Ctr. for Just. (last updated Mar. 4, 2026), [https://perma.cc/G2PC-](https://perma.cc/G2PC-PP6V)
16 [PP6V](https://perma.cc/G2PC-PP6V). The Administration has “scour[ed] voter rolls” from cooperating States for alleged
17 noncitizen voting. Glenn Thrush et al., *Administration Targets Noncitizen Voting, Despite*
18 *Finding It Rare*, N.Y. Times (Feb. 18, 2026), [https://www.nytimes.com/2026/02/18/us/](https://www.nytimes.com/2026/02/18/us/politics/voting-trump-immigrants-midterms.html)
19 [politics/voting-trump-immigrants-midterms.html](https://www.nytimes.com/2026/02/18/us/politics/voting-trump-immigrants-midterms.html).

20 DHS has largely confirmed these reports, issuing a statement to media outlets
21 explaining that the Administration’s plan to have DOJ and DHS share voter roll information
22 is essential to “scrub aliens from voter rolls,” and that DHS’s “collaboration” with DOJ will
23 “prevent illegal aliens” from voting. Jonathan Shorman, *DOJ Is Sharing State Voter Roll*
24 *Lists With Homeland Security*, Stateline (Sept. 12, 2025), <https://perma.cc/C6RQ-6ATP>.
25 As DHS put it, “[e]lections exist for the American people to choose their leaders, not illegal
26 aliens,” *id.*, and “[b]y allowing states to efficiently verify voter eligibility, we are
27 reinforcing the principle that America’s elections are reserved exclusively for American
28 citizens,” Maher & Collins, *supra*. For its part, DOJ admitted in a separate statement that

1 state voter rolls were in fact “being screened for ineligible voter entries.” *Id.*; accord
2 Shorman, *supra*. Assistant Attorney General for Civil Rights Harmeet Dhillon has also
3 stated that the federal government has “checked 47.5 million voter records”—apparently
4 through Systematic Alien Verification for Entitlements (SAVE), a system with known
5 accuracy issues—and that there are “several thousand noncitizens who are enrolled to vote
6 in federal elections.” Jude Joffe-Block, *Trump’s SAVE Tool Is Looking for Noncitizen*
7 *Voters. But It’s Flagging U.S. Citizens Too*, NPR (Dec. 10, 2025), [https://perma.cc/6NE7-](https://perma.cc/6NE7-ECGT)
8 [ECGT](https://perma.cc/6NE7-ECGT).

9 DHS has now expanded the SAVE database to include Social Security and passport
10 data, “and the Trump administration has encouraged states to upload their voter files to the
11 beefed-up SAVE system to hunt for potential noncitizens on their voter rolls.” Tierney
12 Sneed & Fredreka Schouten, *Bondi’s Injection of Voter Roll Demands into Minneapolis*
13 *ICE Tensions Draws Claims of ‘Ransom,’* CNN (Jan 27, 2026), [https://perma.cc/7VF6-](https://perma.cc/7VF6-U4CU)
14 [U4CU](https://perma.cc/7VF6-U4CU). And “Homeland Security Investigations, an arm of Immigration and Customs
15 Enforcement [(ICE)], recently issued a two-page memo,” citing the blocked executive
16 order, “requiring its employees to ‘review all open and closed voter fraud cases’ involving
17 immigrants who registered to vote, or actually voted, before they became naturalized U.S.
18 citizens.” Thrush et al., *supra*.

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

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

27 Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. Times
28 (Nov. 16, 2025), <https://perma.cc/JGH7-NQ7P>.

1 DOJ recently underscored the potential connection between its efforts to seek States’
2 voter rolls and its immigration enforcement efforts. In response to intense outrage over a
3 sustained ICE operation in Minneapolis—including two fatal attacks by ICE officers on
4 citizens—Attorney General Pam Bondi sent a letter to Minnesota Governor Tim Walz
5 outlining three “common sense solutions” to “restore the rule of law, support ICE officers,
6 and bring an end to the chaos in Minnesota.” Letter from Pamela Bondi, U.S. Att’y Gen.,
7 to Tim Walz, Gov. of Minnesota 2 (Jan. 24, 2026), <https://perma.cc/34U4-3SK3>. One of
8 the solutions was to “allow the Civil Rights Division of the Department of Justice to access
9 voter rolls to confirm that Minnesota’s voter registration practices comply with federal
10 law.” *Id.* at 3; *see* Sneed & Schouten, *supra* (discussing concerns about extortive
11 implications of letter’s demand).

12 DOJ’s use of the Civil Rights Act to maintain its own voter lists to help substantiate
13 unsupported claims of widespread voter fraud by noncitizens is improper twice over.

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

23 Second, even if DOJ had been truthful about its purpose for seeking voter data, that
24 purpose would have been improper, as the very statutes that DOJ invokes establish that the
25 *States*, not the federal government, are in charge of maintaining voter rolls. The NVRA
26 provides that “each *State* shall . . . conduct a general program that makes a reasonable effort
27 to remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C.
28 § 20507(a)(4) (emphasis added). HAVA is likewise clear that *States* are required to define,

1 maintain, and administer voter rolls. For example, HAVA requires “each State” to
2 “implement” “a single, uniform, official, centralized, interactive computerized statewide
3 voter registration list *defined, maintained, and administered at the State level.*” 52 U.S.C.
4 § 21083(a)(1)(A) (emphasis added). It is this “list” that serves “as the official voter
5 registration list for the conduct of all elections for Federal office in the State.” *Id.* HAVA
6 similarly requires each State to provide for a “[m]inimum standard for accuracy of State
7 voter registration records.” 52 U.S.C. § 21083(a)(4). While DOJ has authority to enforce
8 these provisions, 52 U.S.C. §§ 20510(a), 21111, it does *not* have authority to conduct list
9 maintenance itself and then force States to remove certain voters from their rolls. Yet that
10 is precisely what Memoranda of Understanding that DOJ recently offered to several States
11 proposed to do. *See* Confidential Memorandum of Understanding 5, U.S. Dep’t of Just.
12 (Dec. 1, 2025), <https://perma.cc/G2PC-PP6V> (click hyperlink over phrase “confidential
13 memorandum of understanding” on Brennan Center page).

14 Simply put, there is nothing in the Civil Rights Act, the NVRA, or HAVA that
15 authorizes the federal government to use highly sensitive, personal data in state voter rolls
16 to conduct a nationwide search for individual registrants that it suspects may not be eligible
17 to vote. If an Administration were to have legitimate concerns about non-citizens
18 unlawfully registering and voting, the appropriate DOJ divisions would have to use DOJ’s
19 *legitimate* authorities to investigate—DOJ cannot misuse Title III to do so.

20 The lawful and appropriate steps to review States’ treatment of noncitizens in their
21 registration systems are straightforward. Assuming its review is consistent with federal
22 statutes like the Privacy Act,² DOJ may first obtain and examine the non-sensitive

23 ² The Privacy Act requires certain procedural steps before the government can lawfully
24 collect information on individuals indexed to each individual’s identity, 5 U.S.C. § 552a(e),
25 including having to publish a notice in the Federal Register before developing a new system
26 of records, *id.* § 552a(e)(4). DOJ has recently admitted that DOGE staffers agreed to help
27 an outside advocacy group—whose aim was “to find evidence of voter fraud and to overturn
28 election results in certain States”—match Social Security Administration data against
States’ voter rolls. Notice of Corrections to the Record 5 & n.1, *Am. Fed’n of State and
Mun. Empls. v. Soc. Security Admin.*, No. 1:25-cv-00596 (D. Md. Jan. 16, 2026), Dkt. 197,
<https://storage.courtlistener.com/recap/gov.uscourts.mdd.577321/gov.uscourts.mdd.577321.197.0.pdf>. These revelations highlight the Privacy Act concerns raised by the mass
requests for voters’ SSNs here.

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

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

20 **B. The Civil Rights Division Has Previously Used The Civil Rights Act To**
21 **Seek Targeted Information Based On Reasonable Law-Enforcement**
22 **Concerns**

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

27 The earliest Title III cases from the 1960s arose against a backdrop of blatant, widely
28 documented racial exclusion from voter registration. *See Lynd*, 301 F.2d at 819-20
(describing the government’s clear showing of voting rights discrimination against Black

1 voters). Those decisions reflect two relevant features of Title III practice. First, DOJ’s
2 demands were directed at “records and papers” connected to the mechanics of registration
3 and voting—materials that would allow federal investigators to evaluate whether
4 discriminatory administration was occurring. They were not generalized requests for
5 personal identifiers untethered to a defined investigative need. For example, in *Kennedy v.*
6 *Bruce*, 298 F.2d 860, 861 (5th Cir. 1962), DOJ sought inspection of records “relating to any
7 application, registration, payment of poll tax, or other act requisite to voting” for federal
8 elections, and provided both a basis (*i.e.*, it believed that “distinctions on the basis of race
9 or color have been made with respect to registration and voting within your jurisdiction”) and
10 a purpose (*i.e.*, “to examine the aforesaid records in order to ascertain whether or not
11 violations of Federal law in regard to registration and voting have occurred”).

12 Second, those cases underscore that Title III’s inspection mechanism was conceived
13 as an investigative instrument keyed to identifiable concerns about discriminatory voting
14 practices in discrete locations, not a free-standing entitlement to assemble broad voter data
15 sets to try to find a “problem” in the first place. In *Bruce*, the Fifth Circuit noted that the
16 record reflected extraordinary racial disparities in access to registration in Wilcox County,
17 Alabama, that made an inspection plainly appropriate. 298 F.2d at 863-64. And in *Lynd*,
18 the Fifth Circuit emphasized with respect to five southern counties that a Title III
19 application is intended to “enable the Attorney General to determine whether . . . suit[s] . . .
20 should be instituted” and “to enable him to obtain evidence for use in such [suits] if and
21 when filed.” 306 F.2d at 228. These requests fulfilled Title III’s principal purpose: serving
22 as a “necessary supplement” to, and helping to “implement federal enforcement” of, the
23 1957 Civil Rights Act’s prohibitions against racial discrimination in voting. H.R. Rep. No.
24 86-956, at 26 (1959). It is unthinkable that the Department of Justice in 1960 could instead
25 have invoked the authority of the new Civil Rights Act to demand millions of voter
26 registration cards held by the thousands of voter registration authorities across the country,
27 to assemble a central federal voter file.

28 Modern practice reinforces the same point. When the Civil Rights Division has

1 invoked Title III more recently, it has typically done so to obtain discrete categories of
2 records narrowly keyed to a specific, articulated enforcement concern. Several examples
3 illustrate how the Civil Rights Division has traditionally wielded its investigative authority,
4 including under the Civil Rights Act:

- 5 • When necessary to investigate potential violations of Section 2 of the VRA, the Voting
6 Section may send Title III requests to specific jurisdictions under investigation based on
7 definite, articulable discriminatory practices, seeking, for example, a voter registration
8 list to conduct racial bloc voting analysis of elections held within the jurisdiction. DOJ
9 has not generally needed, and has rarely made, Title III requests for SSNs or driver’s
10 license numbers to conduct any such analyses.
- 11 • In 2021, the United States challenged several provisions of Georgia’s new omnibus
12 voting law, SB202, as having been adopted with a discriminatory purpose. *See* Compl.
13 ¶ 161, *United States v. Georgia*, No. 1:21-cv-2575 (N.D. Ga. June 25, 2021), Dkt. No.
14 1. Counties with records relevant to the case were not parties to the lawsuit, and the
15 district court froze discovery while deciding the defendants’ motions to dismiss. *See*
16 Min. Order of Aug. 6, 2021, *Georgia, supra*. DOJ therefore used its authority under the
17 1960 Civil Rights Act to request county records that were relevant to the allegations that
18 DOJ had already made in its lawsuit: (1) the Numbered Lists of Provisional Voters from
19 each polling place in a county—paper lists of provisional voters, with voters’ names and
20 their reasons for casting a provisional ballot—which were relevant to DOJ’s challenge
21 to SB202’s “prohibition on counting most out-of-precinct provisional ballots,” Compl.
22 ¶ 161(g); and (2) Drop Box Ballot Transfer Forms—paper records of how many ballots
23 a county picked up from each mail-in ballot drop box on each day—which were relevant
24 to DOJ’s challenge to SB202’s “cutback in the number of drop boxes permitted” and
25 limitations on their dates and times of use, *see id.* ¶ 161(e). *See, e.g.*, Decl. of Dr. Barry
26 C. Burden, 35, 51, *In re Georgia Senate Bill 202*, No. 1:21-mi-55555 (N.D. Ga. May
27 30, 2023), Dkt. No. 566-42.
- 28 • In 2024, DOJ sued Alabama for systematically removing several thousand people from

1 its voter rolls within 90 days of a federal election, in violation of the NVRA’s Quiet-
2 Period Provision, 52 U.S.C. § 20507(c)(2). See Compl. ¶¶ 2-4, *United States v.*
3 *Alabama*, No. 2:24-cv-1329 (N.D. Ala. Sept. 27, 2024), Dkt. No. 1. DOJ sent a letter to
4 state election officials explaining that DOJ had “reviewed reports” (which it cited)
5 suggesting that the State was implementing within 90 days of the November 5, 2024
6 federal election a “program” to identify and remove registrants identified as noncitizens,
7 in violation of the Quiet-Period Provision. Letter, *Alabama, supra*, Dkt. No. 11-7, at 2.
8 DOJ then requested a defined set of materials keyed to that asserted concern, including
9 (1) a list of the voters removed under the State’s new processes; (2) a list of any
10 additional voters sent notices of intent to cancel on similar grounds; and (3) a “complete
11 description” of the methodology used, including contacts with or requests to federal
12 agencies. Letter, *Alabama, supra*, at 2-3. The letter did not explicitly invoke Title III.
13 *Id.* In later conversations, DOJ did “assert[]” that authority, and the State “produced”
14 the requested records “in compliance with Title III of the Civil Rights Act of 1960.”
15 Letter, *Alabama, supra*, Dkt. No. 11-9, at 1. DOJ did not request SSN or driver’s license
16 data, but the State did provide it for those registrants who were ensnared in its program.

- 17 • In 2024, DOJ and private plaintiffs also sued Virginia for substantially the same reasons
18 as in DOJ’s suit against Alabama. See Compl. ¶¶ 2-4, *United States v. Virginia*, No.
19 1:24-cv-1807 (E.D. Va. Oct. 11, 2024), Dkt. No. 1. As part of the Virginia suit, DOJ
20 sent a Title III request to Loudoun County for certain discrete data, which the County
21 provided. See Declarations of Judy Brown, *Virginia Coal. for Immigrant Rts. v. Beals*,
22 No. 1:24-cv-1778 (E.D. Va. Oct. 23, 2024), Dkt. Nos. 100-3, 100-4, 100-5, 100-6. DOJ
23 also sent a letter to State election officials in Virginia identifying the same concerns as
24 in Alabama and requesting similar materials. Letter, *Virginia, supra*, Dkt. No. 9-17, at
25 1. As in Alabama, this letter did not directly invoke Title III. *Id.* Virginia did not turn
26 over the records in response to DOJ’s request, but provided them as part of expedited
27 discovery in litigation. See Order, *Va. Coal. for Immigrant Rts., supra*, Dkt. No. 72.

28 Thus, in the rare instances when DOJ has requested or received sensitive information

1 like SSNs and driver’s license numbers, it was because this information was vital to
2 investigating or proving a potential legal violation in a particular jurisdiction, and there was
3 an articulable reason to believe that a violation might have occurred. DOJ does not usually
4 request such data under Title III.³

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

17 The United States has typically gotten such information in discovery. *See, e.g., Mi*
18 *Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 962 (D. Ariz. 2024) (noting that United States’
19 expert witness—to help show that state requirement for place of birth on voter registration
20 forms is not material to determining registrants’ qualifications—“determined that of the
21 nearly 4.7 million active and inactive voter records in Arizona, only 2,734 records cannot
22 be uniquely identified based on the voter’s name and date of birth”), *aff’d in part, vacated*
23 *in part, remanded*, 129 F.4th 691 (9th Cir. 2025); *Veasey v. Perry*, 71 F. Supp. 3d 627, 659

24
25 ³ In 2006 and 2008, DOJ sent Title III requests to Georgia and Texas, seeking the States’
26 voter files with SSNs and/or driver’s license numbers to ensure compliance with the NVRA.
27 *See* Compl. ¶¶ 9-10, *United States v. Georgia*, No. 1:06-cv-02442 (N.D. Ga. Oct. 12, 2006),
28 Dkt. No. 1; *Memorandum of Understanding*, U.S. Dep’t of Just. (May 13, 2008),
<https://perma.cc/6NE7-ECGT>. 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, Dkt. No. 4. DOJ and Texas signed a memorandum of understanding, obviating any
litigation. *Memorandum of Understanding, supra*.

1 (S.D. Tex. 2014) (noting that United States’ expert witness determined which voters and of
2 what race lacked IDs covered by Texas’s photo ID law “by comparing individual [state]
3 voter records with databases” of U.S. passports, citizenship certificates, and military IDs),
4 *aff’d in part, vacated in part sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *aff’d*
5 *in part, vacated in part, rev’d in part*, 830 F.3d 216 (5th Cir. 2016) (en banc). And crucially,
6 it has done so under strict court supervision and pursuant to the terms of detailed protective
7 orders that prescribe procedures for exchanging, handling, storing, protecting, and deleting
8 this sensitive data. *See, e.g.*, Protective Order, *Mi Familia Vota, supra*, Dkt. No. 353. Title
9 III does not offer these kinds of safeguards. *See* 52 U.S.C. § 20704.

10 Against this backdrop, DOJ’s approach in this litigation stands out for both
11 overbreadth and lack of justification. DOJ refuses to inspect the statewide voter registration
12 list with sensitive fields redacted. Instead, it demands an unredacted electronic copy,
13 asserting simply that the data was needed “to ascertain Arizona’s compliance with the list
14 maintenance requirements of the NVRA and HAVA.” Dkt. No. 5-2, at 8. DOJ expressly
15 insists in its requests that the statewide file must include “*all fields*”—including driver’s
16 license numbers or the last four digits of SSNs. Dkt. No. 75-2, at 2, 8. DOJ has not sought
17 this information to further any *purpose* for which DOJ traditionally might need this sensitive
18 voter data. Nor has DOJ offered the kind of articulated enforcement *basis* that must
19 accompany such requests.

20 CONCLUSION

21 For the reasons discussed above, the Court should grant the motion to dismiss.
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RESPECTFULLY SUBMITTED this 5th day of March, 2026.

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APPENDIX A

*Alphabetic List of Amici Curiae**

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