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13  
14 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

15  
16 United States of America

17 Plaintiff,

18 v.

19 Adrian Fontes, in his Official Capacity as  
20 Secretary of State for the State of Arizona,

21 Defendant(s).

Case Number: 2:26-cv-00066-SMB

**PLAINTIFF’S OPPOSITION TO  
DEFENDANT’S MOTION TO  
DISMISS (DOC. 25) AND REPLY IN  
SUPPORT OF ITS MOTION TO  
COMPEL (DOC. 7).**

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23 **I. INTRODUCTION**

24 The Attorney General of the United States brought this case as part of her  
25 investigation of Arizona’s list maintenance practices under the Help America Vote Act  
26 (“HAVA”) and the National Voter Registration Act (“NVRA”). Pursuant to Title III of the  
27 Civil Rights Act (CRA), she sent a written demand to Defendant Fontes for copies of  
28 election records under his custody or control, citing the CRA as the basis for the demand

1 and indicating that the purpose was to investigate the State’s compliance with other federal  
2 election laws. The Defendant refused to comply with the written demand. The Department  
3 of Justice instituted this action to enforce its rights under the CRA. Compl., Doc. 1.

## 4 II. STATUTORY AND FACTUAL BACKGROUND

5 As discussed in the Motion to Compel (Doc. 7) and Complaint (Doc. 1), Title III of  
6 the CRA forms the basis for this action to compel the production of election records. *See*  
7 Doc. 1, ¶¶. 1-4, 16-18; Doc. 7 at 2-3. The statutory background provisions are incorporated  
8 herein by reference.

9 The CRA creates a “special statutory proceeding,” which the Attorney General  
10 through the Civil Rights Division of the Department of Justice may file to compel the  
11 production of election records. When filed and granted by this Court, Defendant must  
12 produce the voter registration lists and other federal election records demanded. *Kennedy*  
13 *v. Lynd*, 306 F.2d 222, 225 (5th Cir. 1962), *cert denied* 371 U.S. 952 (1963).<sup>1</sup> The court in  
14 *Lynd* reasoned that this special proceeding was necessary to obtain federal election records  
15 because no other procedural device or maneuver was available. *Id.* at 226. Title III is a  
16 unique provision of federal law because it is purely an investigative tool. As such, it enables  
17 the Attorney General to determine whether a federal lawsuit “should be instituted” and “to  
18 obtain evidence for use in such cases if and when filed.” *Id.* at 228.

19 The CRA restricts the Court to a “severely limited” inquiry: (1) did the Attorney  
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21 <sup>1</sup> Circuit caselaw addressing the CRA in any depth has been confined to courts within the  
22 Fifth Circuit in the early years following the CRA’s enactment. The United States is  
23 unaware of any circuit courts disagreeing with the Fifth Circuit’s approach to the CRA. As  
24 noted in Def.’s Mot., three district courts reached contrary conclusions. However, those  
25 decisions are burdened by erroneous applications of the statute and have been appealed.  
26 *United States v. Benson*, No. 1:25-cv-01148-HYJ-PJG, 2026 WL 362789 (W.D. Mich.,  
27 Feb. 10, 2026), appeal docketed, No. 26-1225 (6th Cir. Mar. 3, 2026), *United States v.*  
28 *Oregon*, Case No. 6:25-cv-01666-MTK, 2026 WL 318402 (D. Or., Feb. 5, 2026), appeal  
docketed, No. 26-1231 (9th Cir., Mar. 3, 2026); *United States v. Weber*, Case No. 2:25-cv-  
09149-DOC-ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026) appeal docketed, No. 26-  
1232 (9th Cir., Feb. 25, 2026).

1 General make a written demand for federal election records stating the basis and purpose;  
2 (2) was that demand made to one or more “officer[s] of election” responsible for performing  
3 any act requisite to voting in federal elections including voter registration; (3) did the  
4 officer(s) of election fail or refuse to make the demanded federal election records “available  
5 for inspection, reproduction, and copying”; and (4) did the Attorney General make “a  
6 simple statement” to the Court that she satisfied the first three elements. *Id.* at 225-26; *see*  
7 *also* 52 U.S.C. § 20703.

8 The Department of Justice sent Secretary Fontes written demands compelling  
9 production of the State’s voter registration database (VRDB) for inspection. *See*, Doc. 1, ¶¶  
10 19-28, Doc. 7 at 3, Neff Decl. in Support of Mot. to Compel, Doc. 8-5 at ¶¶ 4-10. Despite  
11 granting him an extension, the Secretary refused to comply with the demand. Doc. 1 at ¶  
12 29, Doc. 7 at 3. *See also*, Neff Decl., Doc. 8-5, ¶ 11. The basis for the demand was twofold:  
13 Title III of the CRA and several counties’ failure to provide accurate data for the Election  
14 Assistance Commission’s Election Administration and Voting Survey (EAVS). Doc. 8-1 at  
15 2, Doc. 8-3 at 1-2. The purpose was to “ascertain Arizona’s compliance with the list  
16 maintenance requirements of the NVRA and HAVA.” Doc. 8-3 at 2. The letter explained  
17 that the list is subject to federal privacy protections, specifically Section 304 of the CRA.  
18 *Id.* at 2. The Defendant responded on August 29, 2025, citing state and federal privacy  
19 concerns and stating that he would not provide a copy of the VRDB. *See* Doc. 8-4.

20 The record before the Court demonstrates that the United States has satisfied each  
21 of these requirements. Therefore, the United States’ Motion to Compel (Doc. 7) should be  
22 granted, the Motion to Dismiss (Doc. 25) should be denied, and this Court should enter an  
23 order compelling production of Arizona’s VRDB and other responsive federal election  
24 records.

### 25 III. ARGUMENT

26 Defendant misapprehends the nature of a CRA claim by erroneously suggesting the  
27 Court should apply the Federal Rules of Civil Procedure to the demand for records under  
28 the CRA. He incorrectly maintains that Title III of the CRA applies to only discrimination

1 claims and that State law displaces the CRA. He asks the Court to ignore caselaw under the  
2 CRA, focus only on selected provisions of the legislative history of the CRA, and allow an  
3 impermissible challenge to the basis and purpose of the Attorney General’s written demand.  
4 Finally, Defendant improperly cites the Privacy Act, the E-Government Act, and the  
5 Driver’s Privacy Protection Act (DPPA) as preventing disclosure of election records.  
6 Throughout his Motion, Defendant relies on three cases denying the United States state  
7 voting records. For the reasons discussed below, Defendant’s Motion to Dismiss (Doc. 25),  
8 should be denied.

9 **A. The FRCP Does Not Apply to Title III’s Summary Proceedings.**

10 The purpose of Title III “is to facilitate the investigation of the records *before suit is*  
11 *filed.*” *United States v. Ass’n of Citizens Councils of La.*, 187 F. Supp. 846, 847 (W.D. La.  
12 1960) (per curiam) (emphasis added). “[T]he function sought to be exercised by the  
13 Attorney General is ... purely investigative.” *Ala. ex rel. Gallion v. Rogers*, 187 F. Supp.  
14 848, 854 (M.D. Ala. 1960), *affirmed sub nom. Dinkens v. Attorney General*, 285 F.2d 430  
15 (5th Cir. 1961), *cert denied* 366 U.S. 913 (1961). The Attorney General’s authority allows  
16 her to evaluate “possible violations of a Federal statute,” *Coleman v. Kennedy*, 313 F.2d  
17 867, 868 (5th Cir. 1963) (per curiam) (“*Coleman IP*”), *cert denied* 373 U.S. 950 (1963).<sup>2</sup> It  
18 does not require known violations of federal law. In that manner, Title III enables the  
19 Attorney General to determine whether a federal lawsuit “should be instituted” and “to  
20 obtain evidence for use in such cases if and when filed.” *Lynd*, 306 F.2d at 228. Courts  
21 should treat an action brought under Title III as a “summary proceeding,” which the court,  
22 “with expedition, should grant the relief sought. *Lynd*, 306 F.2d at 228.

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25 <sup>2</sup> Title III invests the Attorney General with a power akin to a grand jury which “can  
26 investigate merely on suspicion that the law is being violated, or even just because it wants  
27 assurance that it is not.” *United States v. Bisceglia*, 420 U.S. 141, 148 (1975), *see also*  
28 *United States v. Powell*, 379 U.S. 48 (1964); *United States v. Morton Salt Co.*, 338 U.S.  
632 (1950).

1 When Defendant argues that the Federal Rules of Civil Procedure govern these  
2 proceedings, he repeats what the Fifth Circuit described as “a basic misconception...  
3 concerning a Title III proceeding.” *See* Def.’s Mot. at 1. *Lynd*, 306 F.2d at 225.

4 In structuring the CRA the way in which it did, Congress indicated that the Federal  
5 Rules of Civil Procedure are inapplicable. “Since it is a special statutory proceeding, it does  
6 not require pleadings which satisfy usual notions under the Federal Rules of Civil  
7 Procedure.” *Id.* at 225-26; *see also Gallion*, 187 F. Supp. at 854 (comparing CRA  
8 applications to compel to actions by the Securities and Exchange Commission in which  
9 procedural rules “are made specifically inapplicable to investigations”).

10 The summary, expedited approach makes sense. The United States cannot be  
11 expected to effectively enforce federal election laws such as the NVRA and HAVA if the  
12 Attorney General is required to allege facts from federal election records that state  
13 officers of election have denied to her. *See Lynd*, 306 F.2d at 227 (the Attorney General’s  
14 “right to records does not require that [she] show [she] could win without them”).

15 **B. Title III is Not Limited to Investigating Racial Discrimination.**

16 Nothing in Title III predicates its enforcement on racial discrimination. Instead,  
17 Congress deliberately omitted race, which entitles the Government to election records upon  
18 demand. Notwithstanding the CRA’s plain language, the Defendant argues that the only  
19 permissible basis for a Title III request is to investigate potential racial discrimination and  
20 maintains that assessing a State’s compliance with HAVA and the NVRA do not do so.  
21 Def.’s Mot. at 5-9. To support this proposition, which even the *Benson* court rejected,  
22 Defendant relies solely on selected quotes from the Civil Rights Act of 1960’s legislative  
23 history and irrelevant cases.<sup>3</sup>

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26 <sup>3</sup> “[I]t is not only... improper but also quite unnecessary to seek repeated support in the  
27 words of a Senate Committee Report—which, as far as we know, not even the full  
28 committee, much less the full Senate, much less the House, and much much much less the  
President who signed the bill, agreed with.” *Intel Corp. v. Advanced Micro Devices, Inc.*,  
542 U.S. 241, 267 (2004) (Scalia, J., concurring).

1 As the *Benson* court did, this Court should reject the Defendant’s invitation to  
2 engraft a racial component to Title III. That court concluded the CRA cannot be rewritten  
3 to restrict the statute’s scope, observing that “the CRA’s text includes no such limitation...”  
4 *Benson*, 2026 WL 362789, \*8. Further, the court noted, “[t]here is no rule of statutory  
5 interpretation that prevents a statute from interacting with, or being used in conjunction  
6 with, subsequently enacted statutes,” such as the NVRA and HAVA. *Id.*

7 Where, like with Title III, the language of an enactment is unambiguous, “the words  
8 employed are to be taken as the final expression of the meaning intended.” *United States v.*  
9 *Mo. Pac. R.R. Co.*, 278 U.S. 269, 278 (1929), *see also*, *Intel Corp.*, 542 U.S. at 267 (Scalia,  
10 J., concurring). Principles of statutory construction foreclose federal courts from rewriting  
11 a statute in a manner that better suits a litigant. As the Supreme Court explained, “[t]he  
12 judicial function to be exercised in construing a statute is limited to ascertaining the  
13 intention of the Legislature therein expressed. A *casus omissus* does not justify judicial  
14 legislation.” *Ebert v. Poston*, 266 U.S. 548, 554-55 (1925), *see also* *Bostock v. Clayton*  
15 *Cnty., Ga.*, 590 U.S. 644, 654-55 (2020).

16 Congress made clear in the CRA and other civil rights statutes where it intended a  
17 remedy to be limited to racial discrimination. *See, e.g.*, Section 601 of the CRA, P.L. No.  
18 86-449, 74 Stat. 90;<sup>4</sup> U.S.C. § 2000e-2;<sup>5</sup> 52 U.S.C. §§ 10301-10306, 10309;<sup>6</sup> 42 U.S.C. §§

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22 <sup>4</sup> Applying Title VI of the CRA to violations of rights “on account of race or color.” Codified  
as amended at 52 U.S.C. § 10101.

23 <sup>5</sup> Title VII of the CRA of 1964 prohibiting employment practices “because of such  
24 individual’s race, color.” The cases cited by the Defendant within Title VII’s or the Civil  
25 Rights Act of 1964’s rubric. *See* Def.’s Mot. at 6, *United Steelworkers of America, AFL-*  
*CIO-CLC v. Weber*, 443 U.S. 193, 197 (1979) (reciting Title VII of the CRA of 1964 as the  
26 statute central to the case), *Doe v. Kamehameha Sch./Vernice Pauahi Bishop Est.*, 470 F.3d  
27 827, 834 (9th Cir. 2006) (noting that the plaintiffs alleged defendants violated Title VII of  
the CRA of 1964).

28 <sup>6</sup> Voting Rights Act of 1965 prohibits discrimination “on account of race, color,” or  
language minority status.

1 3604-3606, 3617.<sup>7</sup> No such language limiting Title III of the CRA to voting rights violations  
2 based upon racial discrimination appears anywhere in the statutory text. *See* 52 U.S.C. §§  
3 20701-20706.

4 The long-accepted rules of statutory construction prohibit a court from adding  
5 conditions to federal law when Congress omitted those conditions. Consequently, the  
6 United States respectfully submits that the Court decline Defendant’s invitation to rewrite  
7 the CRA to add a requirement of racial discrimination that simply does not exist in Title  
8 III.

9 **C. Defendants cannot challenge the Attorney General’s basis and purpose to**  
10 **investigate Arizona’s HAVA and NVRA compliance.**

11 Defendant argues that the United States failed to provide a sufficient statement of  
12 the basis and purpose of its request for federal election records. He criticizes the Attorney  
13 General’s basis and purpose either as insufficient or as conflicting “with its stated purpose  
14 in demanding Arizona’s VRDB.” Def.’s Mot. at 9. The *Oregon* and *Weber* courts  
15 improperly found that the Government may be “laying the ground work to amass the  
16 personal information of millions of Americans in a centralized database,” relying on  
17 hearsay from some intervenors. *Weber*, 2026 WL 118807, \*11 (relying on “[r]eports from  
18 other agencies also point[ing] to the federal government laying the groundwork” for the  
19 alleged database). Nothing could be further from the truth.<sup>8</sup> The VRDB is necessary to  
20 perform an *individualized* assessment of the State’s compliance with NVRA and HAVA.  
21 2d Neff Decl. ¶ 6.

22 Defendant argues, in part, that NVRA and HAVA compliance could not form a  
23 basis for the request because state law already requires collection of documentary proof of  
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25 <sup>7</sup> Fair House Act of 1968 prohibits discrimination in housing or rentals “because of “race,  
26 color ... or national origin.”

27 <sup>8</sup> The U.S. District Court for the Eastern District of North Carolina found accusations that  
28 the Government is “developing a national voter file” to be “speculative and premature.”  
Order denying Reconsideration of Motion to Intervene, Jan. 12, 2026, attached as Ex. 6 to  
2d Neff Decl.

1 citizenship before being registered to vote. Def’s Mot. at 10. The United States has four  
2 responses to this last assertion: First, federal courts have determined that Section 303’s  
3 written demand requirement “contain a statement of the basis and the purpose therefor”  
4 “means only that the Attorney General [must] identify in a general way the reasons for  
5 [her] demand.” *Coleman II*, 313 F.2d at 868. “Clearly a sufficient statement would be the  
6 assertion that the demand was made for the purpose of investigating possible violations of  
7 a Federal statute” *Id.* (emphasis added). Second, the law applies only to state registration  
8 forms. Ariz. Rev. Stat. §§ 16-121.01, 16-123, 16-127(A). Third, the DPOC does not apply  
9 to elections for federal office. Ariz. Rev. Stat. §§ 121.01(C), 16-127(A), *Arizona v. Inter*  
10 *Tribal Council of Arizona, Inc.*, 570 U.S. 1, 17-20 (2013). Fourth, Defendant omits that the  
11 9th Circuit has enjoined Arizona law’s requirements for DPOC. *Mi Familia Vota v.*  
12 *Petersen*, 129 F.4th 691 (9th Cir. 2025), *pet. for cert. filed*, Nos. 25-1017, 25-109, 25-1022  
13 (U.S.). Because of these distinctions, the United States’ demand to inspect the VRDB is  
14 well-founded and the basis and purpose have been sufficiently stated.

15 With respect to the first response, the United States satisfied that requirement by  
16 stating, “[t]he purpose of the request is to ascertain Arizona’s compliance with the list  
17 maintenance requirements of the NVRA and HAVA.”<sup>9</sup> Doc. 8-3 at 1-2. Defendant’s  
18 references to Ninth Circuit cases are inapposite, citing to separate, irrelevant federal laws.  
19 Defendant’s motion to dismiss the CRA claim for not meeting an elevated showing of  
20 statement of “the basis and the purpose” fails under the plain language of the statute and  
21 the early cases addressing that very question.

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24 <sup>9</sup> Through HAVA, Congress required prospective voters to provide either their driver’s  
25 license number or last four digits of their social security numbers as identifiers to protect  
26 them, especially from allegations of duplicate registrations. *See* Nat’l Comm’n on Fed.  
27 Election Reform, *To Assure Pride and Confidence in the Electoral Process* 32-33 (Aug.  
28 2021) (discussing the potential differences between a “Joseph Smith” and “Joe Smith” in  
voter lists) (excerpts provided as Neff Decl., Ex.11). *See also*, H.R. Rep. 107-329, pt. 1, at  
36 (2001).

1           **D. Arizona’s VRDB falls within Section 301’s broad definition of “all records**  
2           **and papers” relating to registration to vote in federal elections.**

3           The scope of federal election records covered by Title III of the CRA is established  
4 by Congress. Section 301 of the Act provides that the retention and production requirements  
5 apply to “*all records and papers*” which “come into ... possession” of an election officer  
6 of election “relating to any application, registration, payment of poll tax, or other act  
7 requisite to voting” in a federal election. 52 U.S.C. § 20701 (emphasis added).

8           Federal courts that have applied Section 301 concluded that Congress meant what it  
9 said in the statute. Title III does not exclude production of electronic or non-public records  
10 or what a state may deem to be private or confidential information. One court explained in  
11 detail why a similar effort to impede the Attorney General’s enforcement of federal election  
12 laws failed:

13                     There is nothing uncertain about that part of the Act requiring  
14                     preservation and production of all records and papers which are in the  
15                     possession of an election official ... if those records and papers relate  
16                     to the acts requisite to voting.... Regardless of when these records  
17                     came into the possession of the election official, under Section 301  
                          they must be retained and preserved for a period of twenty-two  
                          months.

18           *Gallion*, 187 F. Supp. at 855 (quoting 52 U.S.C. § 20701). In *Lynd*, the Fifth Circuit likewise  
19 recognized that “the papers and records” covered by Section 301 “have been specifically  
20 identified by Congress.” 306 F.2d at 226. This requirement “is sweeping.” *Id.* It applies to  
21 “all records and papers,” as the statute provides, *id.*, and cannot be circumvented in the  
22 manner that Defendant suggest nor can he artificially narrow the scope of the request or  
23 qualify his production in any manner not specified in Title III. *Kennedy v. Lewis*, 325 F.2d  
24 210 (5th Cir. 1963), *cert. denied* 377 U.S. 932 (1964).

25           While the *Benson* court mostly agreed with the United States regarding the summary  
26 nature of a Title III proceeding, it reached a few atextual conclusions. Relevantly here, the  
27 court read Section 301 narrower than Congress intended. *Benson*, 2026 WL 362789 \*9-10.  
28 The United States respectfully disagrees; no other federal court has adopted such a

1 limitation. A court that addressed the scope of records to be produced similarly refused to  
2 impose an artificial limit. *Lewis*, 325 F.2d at 212. Such a reading carves out vast numbers  
3 of federal election records, which was plainly not Congress’s intent when passing Title III.  
4 *Lynd*, 306 F.2d at 226.<sup>10</sup>

5 Moreover, Federal courts addressing similar provisions of federal election law  
6 interpret election records expansively. The District of Maryland, for example, when asked  
7 by a private, nongovernment party, found that the “focus on the information sought” was  
8 significant “rather than the particular language used to characterize that information” when  
9 interpreting the NVRA. *Judicial Watch v. Lamone*, 399 F. Supp. 3d 425, 440 (D. Md. 2019)  
10 (citing *Project Vote v. Kemp*, 208 F.Supp.3d 1320, 1329 (N.D. Ga. 2016) (court rejected  
11 defendant’s argument that plaintiff could not obtain voter list). With that focus on the  
12 information sought, the state’s voter registration list qualified as election records. *Id.* at 434.  
13 *See also, Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 337 (4th Cir. 2012)  
14 (holding that “all records” under Section 8(i)(1) for request by private, third party included  
15 voter registration records).<sup>11</sup> A case Defendant cites also supports the expansive definition  
16 of election records. *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36 (1st Cir. 2024).<sup>12</sup>

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19 <sup>10</sup> According to the data that Arizona did report to the U.S. Election Assistance  
20 Commission, it is doubtful that hundreds of thousands of federal voter registration records  
21 exist in any medium other than electronic form. A large percentage of voter registration  
22 transactions were reported through online and Motor Vehicle methods. *See* U.S. Election  
23 Assistance Comm’n, EAVS Data Interactive 2024, *available at*  
<https://www.eac.gov/research-and-data/studies-and-reports/eavs-data-interactive> (last  
visited March. 13, 2026).

24 <sup>11</sup> During his discussion on the Privacy Act, Defendant seems to suggest – under State law  
25 – that the VRDB would qualify as an election record as otherwise defined by Title III of  
the CRA. Def.’s Mot. at 13 *citing* Ariz. Rev. Stat. 16-168(C), (F).

26 <sup>12</sup> Defendant cited for the proposition that he does not need to provide the unredacted  
27 VRDB. However, *Bellows* supports the proposition that Congress used the term “all  
28 records” to define the term expansively including VRDBs. 92 F.4th at 48. The case  
discussed NVRA enforcement under 52 U.S.C. § 20510(b) relating to private enforcement  
rather than subsection (a), enforcement by the Attorney General.

1 Def.'s Mot. at 17. Defendant primarily cites various state and federal privacy laws along  
2 with a single case addressing whether a *private entity* can access VRDBs under NVRA.

3 The *Benson* court misinterpreted the term “comes into possession,” referring to it as  
4 a “pedantic distinction” and faulting Congress for the confusion. *Benson*, 2026 WL 362789,  
5 \*9-11.<sup>13</sup> Contrary to the court’s opinion, the ordinary application of the term means that an  
6 election officer “come[s] into ... possession” of any record or document the moment that  
7 he “get[s]” or “acquire[s]” it and retains it within his control regardless of its source or  
8 creator. *Webster’s New World Dictionary of the American Language* 291, (8th coll. ed.  
9 1960) (8th coll. ed. 1960) *see id.* at 1140 (defining “possess” and “possession”).

10 The *Benson* court’s focus on the word “come” cannot create a carve-out for self-  
11 generated documents. Congress used the phrase “*come* into his possession” rather than “*are*  
12 in his possession,” not to impose an unwritten carve-out for records or documents that are  
13 self-generated, but to focus on *how* and *when* the officer gains possession of the records or  
14 documents in the first instance. *See Webster’s Third New International Dictionary* 453  
15 (1966 ed. unabridg.) (“to enter upon or into possession of: acquire esp. as an inheritance”).  
16 Following this focus on the *when* and *how* an individual gains possession of a record or  
17 paper, 52 U.S.C. § 20701 places a duty of retention and preservation only on those officers  
18 who acquire a record or paper in the course of administering one of the elections mentioned  
19 in that provision—and then only “for a period of twenty-two months from the date” of that  
20 same election.

21 This understanding of possession is consistent with previous efforts going back  
22 decades to obtain statewide voter registration lists under Title III, including in litigation.<sup>14</sup>

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24 <sup>13</sup> The court expressed some discomfort at its conclusion, acknowledging that it was  
25 possible that “the distinction between voter registration applications and voter registration  
26 lists is *overly* pedantic...”2026 WL 362789, \*10 (emphasis added).

27 <sup>14</sup> *See* Compl., *United States v. Georgia*, No. 1:06-cv-02442 (N.D. Ga. Oct. 12, 2006), Doc.  
28 1. The Court entered a consent decree in the Georgia case requiring production of the  
SVRL. *See Georgia, supra*, at Doc. 4 (filed Oct. 27, 2006). For the Court’s convenience,  
the two documents are provided herein as 2d Neff Decl. ¶¶ 8-10, Exs. 7 and 8.

1 To ascertain whether a jurisdiction engages in practices that violate federal law (whether  
2 HAVA, the NVRA, the Voting Rights Act or any other one), the Attorney General needs  
3 to examine both applications to register to vote *and* the final voting rolls, including the  
4 electronic VRDB, so as to assure herself that the applications are being properly processed  
5 and that reasonable list maintenance efforts have been practiced. *See* 2d Neff Decl. ¶¶ 3-4,  
6 Exs. 9-10. Limiting the Attorney General’s ability to anything other than *all records* would  
7 make it nearly impossible for her to carry out the duties assigned to her by Congress.

8 Nowhere does Title III limit the information the Attorney General may receive.  
9 NVRA allows the Attorney General to “bring a civil action in an appropriate district court  
10 for such declaratory or injunctive relief as is necessary to carry out this chapter” and  
11 provides that the “rights and remedies established by this section are in addition to all other  
12 rights and remedies provided by law.” 52 U.S.C. § 20510(a), (d)(1).

13 **E. Title III Provides for Its Own Enforcement and Does Not Include Language**  
14 **Protecting Taxpayers**

15 Through Title III, Congress provided the Attorney General with broad investigative  
16 powers unconstrained by limitations found in other statutes. When compared to at least one  
17 other statute, Title III’s enforcement mechanisms and the errors of the two Ninth Circuit  
18 district courts become clear. Defendant’s reliance on the cases is, thus, misplaced.

19 As discussed in *Powell*, because the Internal Revenue Code (IRC) fails to specify  
20 any procedure for its enforcement and prohibits the Government from subjecting a taxpayer  
21 “to unnecessary examination or investigations,” the FRCP applies and courts can examine  
22 the purpose for which a summons has been issued. *See* 26 U.S.C. § 7605(b), *Powell*, 379  
23 U.S. at 58, n. 18. Title III lacks similar language. It also specifies the procedure she must  
24 take to obtain a judicial order, with the only qualifying language requiring a written demand  
25 for records and its rejection prior to initiating legal process. *See* 52 U.S.C. §§ 20703, 20705.  
26 The CRA does not provide any process for election officers to object to Title III  
27 proceedings, unlike the IRC’s provisions protecting taxpayers. *Compare* 26 U.S.C. §  
28 7605(b) with 52 U.S.C. § 20705.

1           Despite the textual differences, *Powell* supports the Government’s position that the  
2 CRA, NVRA, and HAVA form adequate bases and purposes for Title III. Though IRC  
3 investigations are constrained to prevent abuse of the taxpayer, the Supreme Court deferred  
4 to the Government’s judgment both as to the necessity of the investigation and the category  
5 of records sought. The Government’s investigation ““does not depend on a case or  
6 controversy for power to get evidence but can investigate merely on suspicion that the law  
7 is being violated, *or even because it wants assurance that it is not.*” *Powell*, 379 U.S. at 57  
8 (quoting *Morton Salt*, 338 U.S. at 642-43) (emphasis added).

9           **F. The Civil Rights Act, NVRA, and HAVA Preempt State Law**

10           The Defendant argues that he is bound by state law to not comply with the Attorney  
11 General’s written demand. *See* Def.’s Mot., at 1-2, 13-17. He further argues that those laws  
12 supplant federal law or otherwise are not preempted by the CRA, NVRA, or HAVA. *Id.* at  
13 1, 17. His reliance on state law is misplaced as courts have long recognized that the  
14 Elections Clause of the Constitution allows Congress to preempt state law. *E.g. Arizona*,  
15 570 U.S. at 19-20 (holding that Arizona law requiring documentary proof of citizenship for  
16 registrations submitted using the federal form was preempted by the NVRA).

17           The Elections Clause provides, “The Times, Places, and Manner of holding Elections  
18 for Senators and Representatives, shall be prescribed in each State by the Legislature  
19 thereof; but the Congress may at any time by Law make or alter such Regulations.” U.S.  
20 Const. art. I, § 4, cl. 1. The Elections Clause occupies something of a unique space in the  
21 Constitution because it is a

22           default provision; it invests the States with responsibility for the mechanics  
23 of congressional elections, but only so far as Congress declines to preempt  
24 state legislative choices. Thus, it is well settled that the Elections Clause  
25 grants Congress the power to override state regulations by establishing  
26 uniform rules for federal elections, binding on the States... the regulations  
27 made by Congress are paramount to those made by the State legislature; and  
28 if they conflict therewith, the latter, so far as the conflict extends, ceases to  
be operative

1 *Foster v. Love*, 522 U.S. 67, 69 (1997) (citations omitted); *see also Arizona*, 570 at  
2 7-9 & n.1 (discussing the breadth of the Elections Clause).

3 Congress preempted Arizona’s state laws and Defendant’s arguments in the three  
4 statutes at issue in this litigation. Title III of the CRA imposes a “sweeping” obligation on  
5 election officials to preserve and, on request, to produce registration records pertaining to  
6 federal elections. *Lynd*, 306 F.2d at 226. HAVA requires states to implement a computerized  
7 VRDB and establish minimum standards for accurate VRDBs which includes use of a  
8 “system of file maintenance that makes a reasonable effort to remove registrants who are  
9 ineligible to vote from the official list of eligible voters.” 52 U.S.C. § 21083(a). Section 8(i)  
10 of the NVRA requires states to make available “all records concerning the implementation  
11 of programs and activities conducted for the purpose of ensuring the accuracy and currency  
12 of official lists of eligible voters....” 52 U.S.C. § 20507(i)(1). Thus, Title III, the NVRA,  
13 and HAVA preempt state laws interfering with the production of election records.<sup>15</sup>

14 **G. Federal Privacy Laws Do Not Prevent the United States from Procuring**  
15 **Election Records**

16 Defendant argues that various federal laws are a complete bar to the Government’s  
17 ability to procure election records under Title III. Def.’s Mot., Doc. 25, at 5. None of the  
18 statutes he cited prevent the Government from securing Arizona’s VRDB. Additionally,  
19 Arizona provides the full, unredacted data – the very data the United States seeks – to the  
20 Electronic Registration Information Center (ERIC), a private party for the purpose of list  
21 maintenance.<sup>16</sup> It strains credulity that Arizona can provide unredacted information to ERIC  
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24 <sup>15</sup> Congress enacted Title III because several states interfered with federal investigations  
25 into election practices and deleted records within 30 days of a voter’s rejected registration.  
26 *See* Testimony of Deputy Attorney General Lawrence E. Walsh, *Hearings Before the*  
27 *Committee on the Judiciary, United States Senate on H.R. 8601, March 28 and 29, 1960,*  
28 9-10.

<sup>16</sup> *See* ERIC, ERIC Overview, *available at* <https://ericstates.org/> (last visited March 10, 2026).

1 but not to the United States to verify that the State is, in fact, complying with the NVRA  
2 and HAVA.

3 *1. The United States is complying with the Privacy Act.*

4 The Defendant suggests that dismissal is appropriate because the allegations in the  
5 Complaint establish that DOJ has failed to comply with the Privacy Act. Def.'s Mot. at 12-  
6 15. Rather than acting as a proactive bar to obtaining the VRDBs, the Privacy Act and  
7 Section 304 of the CRA simply require that when protected information is obtained, it must  
8 be securely stored and not be subject to unauthorized dissemination or use.

9 The voter information that the United States is collecting is maintained according to  
10 the Privacy Act protections explained in the Department of Justice, Civil Rights Division's  
11 Privacy Policy, which it has published online. The full list of routine uses for this collection  
12 of information, which include investigations and enforcement actions, can be found in the  
13 Department of Justice's systems of records notices ("SORN"), most of which are identified  
14 with their citations in U.S. Dep't of Just., Privacy Act of 1974; System of Records, 82 Fed.  
15 Reg. 24147-01 (May 25, 2017), listed in a table at pages 24,148 to 24,151.

16 The statutes cited for routine use include the NVRA, HAVA, and the Civil Rights  
17 Act of 1960, as described in note 16 of the Department of Justice's Privacy Policy. The  
18 United States made its requests pursuant to those statutes. *See* Doc. 8-1, Doc. 8-3. The  
19 records in the system of records are kept under authority of 44 U.S.C. § 3101 and in the  
20 ordinary course of fulfilling the responsibility assigned to the Civil Rights Division under  
21 the provisions of 28 C.F.R. §§ 0.50, 0.51.

22 To the extent that Defendant is concerned about the transport of such data to the  
23 United States, the Department of Justice uses a secure file-sharing system, Justice  
24 Enterprise File Sharing ("JEFS"). That system implements strict access controls to ensure  
25 that each user can only access their own files and is also covered by SORNs.

26 The Privacy Act regulates federal agencies' collection, maintenance, and disclosure  
27 of information within their own systems of records—it does not restrict the ability of state  
28 actors to share information with federal agencies. The statute's plain language confirms that

1 it applies only to federal “agencies” as defined in 5 U.S.C. § 552a(a)(1). State and local  
2 entities fall outside that definition. There is no basis for the Defendant to fail or refuse to  
3 disclose information to a federal agency for law enforcement purposes, particularly here,  
4 where the United States is complying with the provisions of the Privacy Act.

5       2. *The E-Government Act does not prevent the United States from obtaining data*  
6 *supporting its HAVA and NVRA claims.*

7       The E-Government Act neither authorizes dismissal of this case nor limits the United  
8 States’ ability to bring suit. *See* Def.’s Mot. at 15. The E-Government Act is not applicable  
9 to the United States’ enforcement of HAVA and the NVRA. The United States is not  
10 initiating a new process whereby it is contacting individuals for information as  
11 contemplated by Pub. L. No. 107–347, § 208(b)(1)(A)(ii)(II). The request is made to the  
12 Defendant to provide a voter registration list already maintained pursuant to federal law to  
13 analyze Arizona’s federally required list maintenance. The VRDB would be kept on a  
14 system for which a Privacy Impact Assessment has been done.<sup>17</sup> Only when a new system  
15 is established—not when each new data request is made—is a Privacy Impact Assessment  
16 required.<sup>18</sup>

17       Defendant misplaced his reliance on *Elec. Priv. Info. Ctr. v. Presidential Advisory*  
18 *Comm’n on Elec. Integrity*, 266 F. Supp. 3d 297 (D.D.C. 2017). *See* Def.’s Mot. at 15. The  
19 U.S. Court of Appeals for the D.C. Circuit affirmed the district court’s denial of a  
20 \_\_\_\_\_

21 <sup>17</sup> An Initial Privacy Assessment (IPA) Determination was issued on October 12, 2012,  
22 showing that no Privacy Impact Assessment is required for the Justice Consolidated Office  
23 Network (JCON) system where personal identifying information associated with the United  
24 States’ CRA demand is stored. *See* 2d Neff Decl. ¶ 7.

25 <sup>18</sup> When the Civil Rights Division began using ServiceNow (SNOW), a FedRAMP High-  
26 compliant Software as a Service (SaaS) cloud-hosting provider offering a suite of natively  
27 integrated applications designed to support Information Technology Service Management  
28 (ITSM), resource management, and shared support services, it prepared a Privacy Act  
Assessment (“PIA”) as required by the E-Government Act. *See* Office of Privacy & Civ.  
Liberties, DOJ Privacy Impact Assessments, *available at* <https://www.justice.gov/opcl/doj-privacy-impact-assessments> (last visited March 10, 2026).



1 Respectfully submitted this 13th day of March, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2026, a true and correct copy of the foregoing document, the attached declaration, and all exhibits thereto were served via the Court’s ECF system to all counsels of record.

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