

No. 26-2217

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

WISCONSIN ELECTIONS COMMISSION, *et al.*

Defendants-Appellees

COMMON CAUSE, *et al.*,

Intervenor-Defendants-Appellees.

On Appeal from the United States District Court for the

Western District of Wisconsin

Case No. 3:25-cv-1036-JDP

The Honorable Judge James D. Peterson

**BRIEF OF INTERVENOR-DEFENDANTS-APPELLEES COMMON
CAUSE, MELISSA ADAMS, AMANDA MAKULEC, AND JAIME RIEFER**

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-2217

Short Caption: United States v. Wisconsin Elections Commission

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

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Appellate Court No: 26-2217Short Caption: United States of America v. Wisconsin Elections Commission, et al

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N/A

Attorney's Signature: /s/ Douglas M. Poland Date: June 9, 2026Attorney's Printed Name: Douglas M. PolandPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☒ No ☐Address: Law Forward, Inc., 222 West Washington Ave., Suite 680, Madison, WI 53703Phone Number: (608) 283-9822 Fax Number: N/AE-Mail Address: dpoland@lawforward.org

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Attorney's Signature:  Date: 6/10/2026

Attorney's Printed Name: Sophia Lin Lakin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☐ No ☐

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: Theresa J. Lee Date: 6/11/2026

Attorney's Printed Name: Theresa J. Lee

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Ryan V. Cox

Date: 6/12/2026

Attorney's Printed Name: Ryan V. Cox

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Attorney's Signature: /s/ Scott B. Thompson Date: June 10, 2026Attorney's Printed Name: Scott B. ThompsonPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

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PRELIMINARY STATEMENT

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Common Cause Ind. v. Individual Members of the Ind. Election Comm’n*, 800 F.3d 913, 916 (7th Cir. 2015) (quoting *Burdick v. Takushi*, 504 U.S. 428, 441 (1992)). The right to vote is “preservative of all [other] rights” because it serves as a check against tyrannical rule while simultaneously ensuring the competition of ideas amongst our elected officials. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Congress has repeatedly legislated to protect the franchise, including through Title III (Title III) of the Civil Rights Act of 1960 (CRA), 52 U.S.C. § 20701 *et seq.*, as well as the Help America Vote Act (HAVA), 52 U.S.C. § 20901 *et seq.* These statutes were enacted for the purpose of ensuring that all eligible Americans—especially racial minorities and voters with disabilities—have the opportunity to participate in free, fair, and secure elections.

This action concerns Appellant the United States’ attempt to compel the disclosure of personal voter data to which it is not entitled, using these civil rights laws as a sword. In an exceedingly rare demonstration of judicial unanimity, twenty-four federal courts have dismissed Appellant’s attempts to compel unwilling states such as Wisconsin to turn over their unredacted statewide voter registration lists (SVRL) that contain the sensitive information

of every voter in the state. No court has gone the other way. That these courts have dismissed Appellant's claims on a wide range of legal theories shows just how comprehensively lawless these demands are. Some courts, including the district court here, have correctly held that SVRLs are not records covered by Title III. Others have correctly held that even if SVRLs qualified as records required to be preserved and produced under Title III, Appellant has failed to comply with the statute's requirement that the United States Department of Justice (USDOJ) set forth a "demand in writing" that "shall contain a statement of the basis and the purpose therefor." 52 U.S.C. § 20703. Still others have held that USDOJ failed to comply with Title III's basis and purpose requirements because its stated basis and purpose were mere pretext, in service of its undisclosed purpose of creating an unprecedented and unlawful national voter database.

The United States casts this Court's role as a rubber stamp, claiming Title III of the CRA entitles it to whatever materials it wants, whenever it wants, no matter how thin of a justification it gins up. As more than twenty courts have found, this is not the law, particularly here, where the USDOJ seeks to pervert the CRA to weaponize voters' data against them on the basis of a facially deficient pleading and a pretextual rationale. This Court should affirm the district court's order of dismissal.

APPELLEES' JURISDICTIONAL STATEMENT

The jurisdictional summary provided in Appellant's brief is complete and correct.

STATEMENT OF THE ISSUES

1. Did the district court correctly conclude that Wisconsin's statewide voter registration list is "not a record that can be demanded under Title III" of the CRA, SA2, such that Appellant's case should be dismissed?
2. Did Appellant fail to set forth a "demand in writing" that "shall contain a statement of the basis and the purpose therefor," 52 U.S.C. § 20703, thus constituting an alternative justification for dismissal of Appellant's case?

STATEMENT OF THE CASE

I. Statutory Background: Title III of the Civil Rights Act of 1960.

Congress enacted Title III of the CRA to protect Black Americans' constitutional right to vote and stop former Confederate states from denying thousands of citizens the ability to register to vote. *See, e.g.*, H.R. Rep. No. 86-956, at 7 (1959). The CRA followed the Civil Rights Act of 1957, Congress's first attempt since Reconstruction to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments. *United States v. Mayton*, 335 F.2d 153, 159 (5th Cir. 1964). However, Congress "found it necessary to legislate

again in 1960 with respect to this problem of assuring full rights of suffrage to all Americans.” *Id.* Title III sought to empower USDOJ “to require the production of [election] records during any investigation it conducts as to complaints that qualified persons have been denied the right to vote in violation of Federal law.” *United States v. Oregon*, 828 F. Supp. 3d 1092, 1097 (D. Or. 2026). The statute requires that state and local elections officials retain and preserve “all records and papers which come into [their] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” 52 U.S.C. § 20701. These records “shall, upon demand in writing by the Attorney General or his representative . . . be made available for inspection, reproduction, and copying at the principal office of [the] custodian.” 52 U.S.C. § 20703.

While Congress intended that the Attorney General investigate violations of constitutional rights, some, including Florida Congressman William Cramer, were also concerned about USDOJ using the powers granted by Title III for “fishing expedition[s].” 106 Cong. Rec. 5,326 (1960). To address these concerns, Congress adopted Representative Cramer’s amendment to Title III, which added a requirement that the Attorney General’s demand for records include “a statement of the basis and the purpose therefor.” 52 U.S.C. § 20703; *see also* 106 Cong. Rec. 5,326 (1960). And Congress expressly authorized judicial review over such statements of basis and purpose by

specifying that “[t]he United States district court for the district in which a demand is made pursuant to section 20703 of this title, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.” 52 U.S.C. § 20705.

The federal government initially used Title III as intended, to investigate jurisdictions that had effectively denied Black Americans the right to register to vote. *See, e.g., Alabama v. United States*, 304 F.2d 583, 585–86 (5th Cir. 1962), *aff’d sub nom.* 371 U.S. 37 (1962) (registration records subject to the CRA showed that discriminatory registration practices led to less than 10% of Black citizens being registered to vote while nearly 100% of white citizens were registered); *see also United States v. Cartwright*, 230 F. Supp 873, 875 (M.D. Ala. 1964) (reviewing data from an investigation pursuant to Title III which revealed that voting registrars engaged in racially discriminatory practices resulting in 89% of white citizens being registered to vote but only 7.5% of Black citizens being registered). And in conducting those investigations, USDOJ adhered to the statutory requirement to set forth in writing “the basis and the purpose” for its records demands, 52 U.S.C. § 20703—that is, the factual basis for why USDOJ suspected a potential legal violation as well as its investigatory purpose of how the requested records would bear upon that suspicion. *See, e.g., Kennedy v. Lynd*, 306 F.2d 222, 229 n.6 (5th Cir. 1962); *In*

re Coleman, 208 F. Supp. 199, 199–200 (S.D. Miss. 1962), *aff'd sub nom. Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963).

This robust use of Title III of the CRA was short lived. Only a few years later, Congress passed the Civil Rights Act of 1964, which outlawed racial segregation. Then, in 1965, Congress passed the Voting Rights Act, the crown jewel of the civil rights movement, which established broad new voter protections, eliminated literacy tests, and led to the enfranchisement of millions of Black citizens. Because Congress enacted more effective voting rights laws, federal court assessment of Title III has largely been silent since 1965. Until the past year, all jurisprudence analyzing the CRA arose during the 1960s in former Confederate states and pertained to investigations into state and local officials unlawfully denying Black citizens their right to register to vote.

II. Factual Background: USDOJ's Demand for Wisconsin's Unredacted Voter File.

Six decades later, USDOJ began an unprecedented campaign to use Title III to demand the sensitive, personal data of nearly every registered voter in the country. Starting in May 2025, for the first time in history, USDOJ sent letters to election officials in at least 40 states, making escalating demands that the state produce their complete, unredacted voter registration databases, with plans to gather data from all 50 states. *See* Kaylie Martinez-Ochoa, Eileen

O'Connor, & Patrick Berry, *Tracker of Justice Department Requests for Voter Information*, Brennan Ctr. for Just. (updated Aug. 6, 2026), <https://www.brennancenter.org/our-work/research-reports/tracker-justice-department-requests-voter-information>. Appellant has now sued 30 states and Washington, D.C., in federal courts across the country, demanding access to sensitive state-held unredacted voter data without explaining its intended use of this data. *See id.* Wisconsin is one of those states, and this appeal comes from one of these 31 similar suits the United States has filed.

On June 17, 2025, USDOJ sent a letter to the Wisconsin Elections Commission (WEC or the Commission) Administrator, Meagan Wolfe (the Administrator), requesting, among other things, that the Administrator provide a copy of Wisconsin's "current voter registration list" that includes "both active and inactive voters." R.3-1 at 3, Ex. 1 to U.S. Mot. to Compel, Letter of Acting Chief Maureen Riordan to the Administrator dated June 17, 2025 (June 17 USDOJ Letter); *see also* R.1 Compl. ¶¶ 19–20.¹ USDOJ asked the Administrator to respond within 20 days. June 17 USDOJ Letter at 3.

On July 2, 2025, WEC responded to USDOJ, "offer[ing] the publicly available" voter registration list and noting that "Wisconsin law requires the Commission to charge a fee for access to voter registration data," without any

¹ In this Brief, "Dkt." refers to items as they are numbered in this Court's docket and "R." refers to items as they are numbered in the district court docket.

“exceptions for elected officials, government agencies, journalists, non-profits, academics, or any other group.” R.1 ¶ 22; R.3-1 at 9, Ex. 2 to U.S. Mot. to Compel, Letter of WEC to Acting Chief Maureen Riordan dated July 2, 2025 (July 2 Letter).

USDOJ did not respond for five months. On December 2, 2025, USDOJ sent an email to WEC, directing WEC to “consider this email a demand to provide . . . [a]n electronic copy of the full Wisconsin statewide voter registration list.” R.3-1 at 11, Ex. 3 to U.S. Mot. to Compel, Letter of Eric Neff, Trial Attorney, DOJ Civil Rights Division, to WEC dated Dec. 2, 2025 (December 2 Letter). USDOJ also attached a proposed memorandum of understanding to its email. R.1 ¶ 24. That memorandum indicated that the “purpose” of USDOJ’s request for data was to “test, analyze and assess states’ [voter registration lists] for proper list maintenance and compliance with federal law.” *Id.*

On December 11, 2025, the WEC Chair and Commissioners responded, explaining that WEC is “willing to provide any non-confidential voter registration data or records” to USDOJ, but that “Wisconsin law explicitly prohibits the Commission from providing the full unredacted voter registration list.” R.3-1 at 13, Letter from WEC to Eric Neff, Trial Attorney, DOJ Civil Rights Division dated Dec. 11, 2025 (December 11 Letter). The Commissioners set out controlling Wisconsin law’s limitations on disclosure of certain

personally identifiable information—including a voter’s driver’s license number and social security number—and explained why nothing in federal law contradicts or overrides the governing state law. *Id.* at 13–15. And they described the “broader framework of list maintenance practices in Wisconsin,” including a description of each of Wisconsin’s eleven major voter list maintenance processes. *Id.* at 15–17.

III. Procedural Background

On December 18, 2025, USDOJ filed a lawsuit in the Western District of Wisconsin, seeking to compel Wisconsin to turn over the unredacted voter file. R.1. On May 21, 2026, the district court issued an opinion and order dismissing USDOJ’s suit with prejudice, holding that “a voter registration list is not a record subject to production under Title III.” SA5. The district court entered judgment in the case on May 27, 2026. SA11–12. USDOJ filed a notice of appeal on June 5, 2026. R.91.

SUMMARY OF ARGUMENT

This Court should affirm the district court’s dismissal because no viable Title III claim has been made. This is the same conclusion reached by twenty-three federal district courts and one federal appellate court in dismissing Appellant’s cookie-cutter suits across the country, with no courts going the other way. *See United States v. Benson*, 179 F.4th 470 (6th Cir. 2026); Order,

United States v. Simon, No. 25-cv-3761, Dkt. No. 210 (D. Minn. Aug. 17, 2026);² *United States v. Aguilar*, No. 25-cv-728, 2026 WL 2364502 (D. Nev. Aug. 14, 2026); *United States v. Evans*, No. 25-4403, 2026 WL 2267774 (D.D.C. Aug. 6, 2026); *United States v. Griswold*, No. 25-cv-3967, 2026 WL 2235374 (D. Colo. Aug. 3, 2026); *United States v. Matthews*, No. 25-cv-3398, 2026 WL 2212877 (C.D. Ill. July 31, 2026); *United States v. Caldwell*, No. 26-cv-2025, 2026 WL 2186515 (D.N.J. July 29, 2026); *United States v. Adams*, No. 3:26-cv-00019, 2026 WL 2123871 (E.D. Ky. July 23, 2026); *United States v. Thomas*, No. 3:26-cv-21, 2026 WL 2070437 (D. Conn. July 17, 2026); *United States v. Oliver*, No. 1:25-cv-01193, 2026 WL 2031479 (D.N.M. July 14, 2026); *United States v. Koski*, No. 3:26-cv-42, 2026 WL 2032532 (E.D. Va. July 14, 2026); *United States v. Warner*, No. 2:26-cv-156, 2026 WL 2018877 (S.D. W.Va. July 13, 2026); *United States v. Bd. of Elections of N.Y.*, No. 1:25-cv-1338, 2026 WL 1999921 (N.D.N.Y. July 10, 2026); *United States v. Scanlan*, No. 25-cv-371, 2026 WL 1864054 (D.N.H. June 29, 2026); *United States v. Schmidt*, No. 2:25-cv-01481, 2026 WL 1850016 (W.D. Pa. June 27, 2026); *United States v. DeMarinis*, No. SAG-25-3934, 2026 WL 1780586 (D. Md. June 18, 2026); *United States v. WEC*,

² The District Court of Minnesota's decision in *United States v. Simon*, No. 25-cv-3761, Dkt. No. 210 (D. Minn. Aug. 17, 2026), was issued on the same day that this response brief was due. Given the timing, Intervenor-Defendants-Appellees are citing the case without a Westlaw citation, given that none is yet available. Intervenor-Defendants-Appellees can supply a copy of the case to the Court as supplemental authority as soon as it is available.

No. 25-cv-1036, 2026 WL 1430354 (W.D. Wis. May 21, 2026) (and at SA1); *United States v. Bellows*, No. 1:25-cv-468, 2026 WL 1430481 (D. Me. May 21, 2026); *United States v. Fontes*, No. CV-26-00066, 2026 WL 1177244 (D. Ariz. Apr. 28, 2026); *United States v. Amore*, 831 F. Supp. 3d 149 (D.R.I. 2026); *United States v. Galvin*, 830 F. Supp. 3d 122 (D. Mass. 2026); *United States v. Benson*, 819 F. Supp. 3d 753 (W.D. Mich. 2026); *Oregon*, 828 F. Supp. 3d 1092; *United States v. Weber*, 816 F. Supp. 3d 1168 (C.D. Cal. 2026).

As an initial matter, the United States cannot evade its claim's legal deficiencies by arguing the federal civil action it initiated is actually a special statutory proceeding. The statute creates no special proceeding. *See* 52 U.S.C. § 20705. The United States' meritless assertion is inconsistent with the CRA's own text, the express requirements of the Federal Rules of Civil Procedure, binding Supreme Court precedent, basic notions of judicial independence and the rule of law, and Appellant's own actions in this case.

Applying Rule 12(b)(6) as required, dismissal was proper on several grounds, and this Court may affirm on any of them.

First, Title III does not reach the records the United States seeks. Title III covers only documents that "come into [the] possession" of election officials. 52 U.S.C. § 20701. Appellant demands Wisconsin's statewide voter file, which the State did not obtain from an external source but rather *created* itself. Under Title III's plain text, Wisconsin's statewide voter file is not a record that

comes into WEC's possession. To conclude otherwise would violate several canons of statutory construction, including the rule against surplusage and the harmonious reading canon, given that Appellant's strained interpretation of Title III runs headlong into Wisconsin's list maintenance responsibilities under HAVA.

Second, the United States failed to plead that it made a viable Title III demand because USDOJ did not provide a valid statement of "the basis and the purpose" for its demand for Wisconsin's unredacted voter list. 52 U.S.C. § 20703. Appellant has all but conceded throughout this litigation that it has no factual basis for its demand, and only halfheartedly attempts to conjure one for the first time at the appellate stage. Further, the generalized purpose USDOJ offers does not match the records demanded. Even if this purpose were otherwise valid, the United States' own public statements and other public records strongly suggest that it is pretextual, and thus it fails to comply with the statutory requirements of the CRA for that reason as well. The United States' failure to provide a basis and failure to provide a valid purpose are each—independently and together—fatal to its CRA claim.

Finally, the relief sought by the United States—the complete statewide voter registration list without redactions—cannot be granted without trampling Wisconsin voters' constitutional and privacy rights. The federal seizure of the sensitive personal information of millions of Wisconsin voters

would unconstitutionally chill their right to vote. As courts have consistently held, redacting such information is appropriate and even sometimes constitutionally required to ensure unnecessary disclosures do not burden citizens' fundamental right to vote or violate their privacy interests. Because Appellant seeks relief that cannot be granted, this Court can affirm the district court's dismissal on that ground as well.³

LEGAL STANDARD

The Seventh Circuit “review[s] a district court’s grant of a motion to dismiss for failure to state a claim *de novo*.” *Calderon-Ramirez v. McCament*, 877 F.3d 272, 275 (7th Cir. 2017). The Court “may affirm on any grounds present in the record,” *Freeman v. Chandler*, 645 F.3d 863, 870 (7th Cir. 2011), “even grounds not relied upon by the district court,” *United States v. Benitez*, 92 F.3d 528, 538 (7th Cir. 1996) (citation omitted); *see also Bontkowski v. United States*, 28 F.3d 36, 37 (7th Cir. 1994) (“[The Court] affirm[s] on different grounds.”).

Dismissal is proper when the allegations in the complaint fail to set forth facts that, if true, would entitle the plaintiff to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A court

³ The district court dismissed USDOJ’s case only on grounds “that a voter registration list is not a record subject to production under Title III,” and declined to consider these further arguments provided here. SA5. Nevertheless, these other arguments provide alternative bases for affirmance.

need not accept a complaint's legal conclusions. *Iqbal*, 556 U.S. at 678. Nor can “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” survive a motion to dismiss. *Id.* at 678–79. In assessing a motion for failure to state a claim, courts may take judicial notice of matters of public record, orders, items appearing in the record, and exhibits attached to the complaint. *See Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1080–81 (7th Cir. 1997); *see also Parungao v. Cmty. Health Sys., Inc.*, 858 F.3d 452, 457 (7th Cir. 2017) (“Courts may take judicial notice of court filings and other matters of public record when the accuracy of those documents reasonably cannot be questioned.”).

ARGUMENT

I. The United States Seeks Records Outside the Scope of Title III.

A. Title III does not cover Wisconsin's SVRL because the SVRL is self-generated.

The United States' Complaint should be dismissed because it seeks records that are not covered by Title III. Eighteen courts evaluating USDOJ's demand have held that dismissal was warranted because SVRLs are not covered under Title III. *Benson*, 179 F.4th at 480–81; Order, *Simon*, No. 25-cv-3761, Dkt. No. 210, at 20; *Aguilar*, 2026 WL 2364502, at *5; *Evans*, 2026 WL 2267774, at *5, *11; *Griswold*, 2026 WL 2235374, at *4–5; *Matthews*, 2026 WL 2212877, at *3–4; *Caldwell*, 2026 WL 2186515, at *6–8; *Adams*, 2026 WL

2123871, at *4–5; *Thomas*, 2026 WL 2070437, at *7; *Koski*, 2026 WL 2032532, at *6; *Bd. of Elections of N.Y.*, 2026 WL 1999921, at *11; *Scanlan*, 2026 WL 1864054, at *6; *Schmidt*, 2026 WL 1850016, at *2; *DeMarinis*, 2026 WL 1780586, at *5; *WEC*, SA5; *Bellows*, 2026 WL 1430481, at *7; *Fontes*, 2026 WL 1177244, at *5, *Benson*, 819 F. Supp. 3d at 770. None have gone the other way.

Section 301 of Title III requires elections officials to “retain and preserve, for a period of twenty-two months from the date of any” federal election, “all records and papers which come into [their] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,” with certain exceptions regarding delivery and designation of custodians. 52 U.S.C. § 20701. Section 303—the provision granting the Attorney General authority to request records—cabin’s an official’s obligation to turn over materials to “[a]ny record or paper required by [Section 301] to be retained and preserved,” *id.* § 20703; that is to say, the obligation attaches only to those records that have “come into [the official’s] possession,” *id.* § 20701.

While Section 301’s reference to “all records and papers” is sweeping, Title III is distinct from other statutory records provisions in that it provides an immediate textual limitation on that broad language. “Around the time that Congress enacted Title III, the phrase ‘come into . . . possession,’ meant to ‘acquire,’ ‘obtain,’ or ‘receive,’” rather than something a state “created themselves.” *Koski*, 2026 WL 2032532, at *5 (quoting *Benson*, 179 F.4th at

480); *see also Aguilar*, 2026 WL 2364502, at *4 (“Since the SVRL is compiled and updated by state officials, it does not come into their possession.”) (cleaned up); *Matthews*, 2026 WL 2212877, at *3; *Evans*, 2026 WL 2267774, at *6 (noting that “‘come into his possession’ employs an active verb,” which “captures the act of taking, receiving, etc., rather than the resulting state of possession”) (internal quotation marks and citation omitted)); *Scanlan*, 2026 WL 1864054, at *5 (“Congress has consistently employed the phrase ‘comes into possession’ to describe the process by which a person receives something from an external source.”); *accord Honeycutt v. United States*, 581 U.S. 443, 449 (2017) (defining “obtain” as “to get or acquire” and “to come into possession of” as a matter of 1960s and contemporary usage (internal quotation marks and citations omitted)). This accords with basic common sense: “[a]n ordinary English speaker would not say that she has come into possession of something that she created, established, and maintained.” *Benson*, 179 F.4th at 479; *see also Thomas*, 2026 WL 2070437, at *5 (finding “it is a fairly straightforward reading of Title III that compels this result”).⁴

This interpretation is “bolstered” by Title III’s subsequent language specifying that the records and papers at issue are those “relating to any

⁴ The court in *Evans* provided an instructive analogy: “As a matter of common usage, one might say, for example, that the Mona Lisa ‘came into the possession’ of the Louvre around 1797; one would not say that the painting ‘came into the possession’ of Leonardo da Vinci when he completed it around 1517.” 2026 WL 2267774, at *6.

application, registration, payment of poll tax, or other act requisite to voting”—all of which “refer[] to something that the voter submits or does as part of the registration process’ and thus refers to ‘records that election officials receive, rather than create.’” *Fontes*, 2026 WL 1177244, at *4 (quoting *Benson*, 819 F. Supp. 3d at 769); *see also Aguilar*, 2026 WL 2364502, at *4; *Matthews*, 2026 WL 2212877, at *3 (noting this language identifies “records obtained from voters or prospective voters”); *DeMarinis*, 2026 WL 1780586, at *4. A contrary interpretation that would “make[] all voting records and papers in the election officers’ possession subject to Title III would render ‘come into’ superfluous.” *Benson*, 179 F.4th at 480; *see also Griswold*, 2026 WL 2235374, at *5 (similar); *Matthews*, 2026 WL 2212877, at *3 (“If Congress had meant ‘come into possession’ to simply mean any record existing within the election official’s ‘possession,’ it would not have chosen to include the ostensibly extraneous language.”); *WEC*, SA6; *Evans*, 2026 WL 2267774, at *7 (finding Appellant fails to “offer any coherent response” to the question that “if Congress intended what [USDOJ] now maintains, why didn’t it simply refer to all records and papers that ‘are in [the Board’s] possession?’”); *see also generally Common Cause Ind. v. Lawson*, 937 F.3d 944, 962 (7th Cir. 2019) (“We are reluctant to treat statutory terms as surplusage in any setting. . . .” (internal quotation marks and citation omitted)).

Finally, this commonsense reading of Title III is the only harmonious way to read the CRA together with the National Voter Registration Act of 1993 (NVRA) and HAVA. It is a criminal violation for anyone “who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by [Title III] to be retained and preserved.” 52 U.S.C. § 20702. Yet the NVRA and HAVA affirmatively “*require* [state] election officials to alter the qualified voter file routinely as part of their ‘reasonable efforts’ to ensure accuracy.” *Benson*, 179 F.4th at 479 (cleaned up) (citing 52 U.S.C. § 20507(a)(4), in which the NVRA requires state officials to make a “reasonable effort to remove the names of ineligible voters,” and 52 U.S.C. § 21083(a)(4)(A), a similar provision under HAVA that requires that state voter registration records be “updated regularly”). In this way, “construing [Title III] in a manner that subjects the qualified voter file to Title III would place Title III on a collision course with the NVRA and HAVA,” which “runs afoul of the harmonious-reading canon of statutory interpretation.” *Id.* at 480; *see also Aguilar*, 2026 WL 2364502, at *5; *Evans*, 2026 WL 2267774, at *7; *Griswold*, 2026 WL 2235374, at *5; *Matthews*, 2026 WL 2212877, at *4; *Caldwell*, 2026 WL 2186515, at *8; *Thomas*, 2026 WL 2070437, at *6 (noting that “as required under the [NVRA] and HAVA, the [SVRL] is constantly being ‘altered’ as information is updated”); *Koski*, 2026 WL 2032532, at *5; *DeMarinis*, 2026 WL 1780586, at *5 (“The United States’s proposed interpretation of the CRA would therefore criminalize the same

conduct that the NVRA and HAVA require,” and declining to interpret Title III “to produce such an absurd result.”); *Fontes*, 2026 WL 1177244, at *4 (Appellant’s interpretation of Title III “conflicts with the very purpose of [S]VRLs and would place Title III in conflict with the NVRA and the HAVA.”); *Bd. of Elections of N.Y.*, 2026 WL 1999921, at *9 (similar).

As such, the records USDOJ seeks from Wisconsin officials are not ones that “come into [their] possession,” 52 U.S.C. § 20701; the statewide voter file is a record that WEC officials create themselves. USDOJ’s request therefore falls outside of the scope of Title III, so its demand fails as a matter of law. The district court can be affirmed for this reason alone.

B. Appellant’s counterarguments are meritless.

Appellants’ counterarguments defy Title III’s plain text and commonsense interpretation, which eighteen courts have adopted. *First*, and most centrally, Appellant tries to circumvent its surplusage problem by claiming that Title III’s use of “come into” is not designed to exclude self-generated records or documents but rather “to focus on *how* and *when* the officer gains possession of the records or documents in the first instance.” Dkt. No. 22 at 16, USDOJ Br.; *see also id.* at 17 (referring to Title III’s “come into” language as creating a “temporal” distinction rather than a distinction about records obtained “from an outside source and through self-generation”). This argument fails because, put simply, Title III’s “phrase ‘records and papers

which come into his possession’ says nothing about when or how the Board acquires the records and papers.” *Evans*, 2026 WL 2267774, at *7; *see also id.* (“The time at which or the character of the source from which a record is acquired . . . do not define the phrase ‘come into possession.’”); Order, *Simon*, No. 25-cv-3761, Dkt. No. 210, at 21–22.

Further, Title III “already has an explicit temporal component—a period of twenty-two months from the date of certain enumerated elections—so there is no reason to believe ‘come into possession’ is imbued with a hidden meaning about additional time restraints.” *Koski*, 2026 WL 2032532, at *6; *see also WEC*, SA7 (noting also that Title III’s explicit temporal requirement “runs from the date of the election, not the date that the records came into election officers’ possession.”).

Appellant’s supposed exemplar 8 U.S.C. § 1454(a) only further disproves its point. *See* USDOJ Br. at 18. Section 1454(a), which concerns a lost certificate of naturalization or declaration of intention, refers to the person “who shall have, or may come into possession of it. . . .” 8 U.S.C. § 1454(a). In this way, Section 1454(a) “draws an explicit distinction between possessing something and having something come into one’s possession.” *Benson*, 819 F. Supp. 3d at 768. Further, “the certificate of naturalization is a document issued by the federal government to the applicant; neither the applicant nor any third party who subsequently acquires it has created it.” *Scanlan*, 2026 WL 1864054,

at *5. So even assuming without conceding that Title III’s “come into” language contained some sort of temporal component, “it does nothing to displace the external-acquisition aspect of the phrase.” *Id.*

Second, Appellant argues that “[f]ederal courts have rejected similar attempts to limit the scope of voting records under other statutes.” USDOJ Br. at 13. It goes without saying that Appellant ignores the eighteen federal courts that have interpreted the *actual* voting statute at issue in the past year, all of which disagreed with Appellant’s interpretation. Regardless, the cases on which Appellant relies analyze the public disclosure provision in the NVRA, which—crucially—does *not* have a qualifier only for materials that “come into [their] possession.” *Compare* 52 U.S.C. § 20507(i)(1) (for the NVRA, “all records concerning the implementation of programs and activities. . .”) *with id.* § 20701 (for Title III, “all records and papers which come into [their] possession”). In this way, “Congress used . . . narrower language” for Title III than it did in the NVRA, *Benson*, 179 F.4th at 480; if anything, Appellees’ argument “is buttressed by the fact that Congress chose ‘all records’ without a qualifier in the context of the NVRA,” but included the “come into” qualifier for Title III, *Koski*, 2026 WL 2032532, at *5; *see also DeMarinis*, 2026 WL 1780586, at *5 (noting Appellant relies on cases interpreting “the records disclosure provision of the NVRA, which, unlike [Title III], does not include the qualifying language ‘come into his possession’”).

Third, Appellant attempts to argue that the SVRL is not *really* self-generated because it is comprised of individual voting records that WEC did acquire from voters. USDOJ Br. at 15. Yet USDOJ “has not requested the records or papers that [Wisconsin] obtained in creating the qualified voter file—[USDOJ] has requested the qualified voter file itself,” which Wisconsin created. *Benson*, 179 F. 4th at 480–81.⁵ Further, the SVRL “contains information from diverse sources, many of which have nothing to do with ‘act[s] requisite to voting.’” *Id.* at 481 (quoting 52 U.S.C. § 20701).

Finally, despite numerous courts expressly finding to the contrary, *see Benson*, 179 F.4th at 480; *Evans*, 2026 WL 2267774, at *7; *Griswold*, 2026 WL 2235374, at *5; *Koski*, 2026 WL 2032532, at *5; *Bd. of Elections of N.Y.*, 2026 WL 1999921, at *9; *DeMarinis*, 2026 WL 1780586, at *5; *Fontes*, 2026 WL 1177244, at *4, Appellant insists that there is “no conflict between Title III and HAVA,” USDOJ Br. at 23. Specifically, Appellant argues that: (i) in context, the term “alter” should mean something more pernicious than regular updating, given that the statute’s other verbs include “steals, destroys, conceals, mutilates”; and (ii) “Section 20702’s *willful* mens rea” requirements

⁵ The Sixth Circuit’s analogy to a baker of cakes is particularly instructive here. *Benson*, 179 F.4th at 479. While the baker may “‘come into’ possession of the ingredients she used to make the cakes,” such as flour or eggs, “[i]t would be rather strange to say that the baker has ‘come into’ possession of the cakes after pulling them out of the oven.” *Id.*

would preclude an election official for being charged for doing routine list maintenance under HAVA. *Id.* at 23–24.

As to Appellant’s first point, the plain meaning of the term “alter” does not mean to “impair the integrity or availability” of records or documents, *see id.* at 23, but rather to “modify,” *Sierra Club v. Marsh*, 907 F.2d 210, 212 (1st Cir. 1990), or more specifically, “to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected,” *United States v. Edwards*, No. 92-5539, 1993 WL 219830, at *2 (4th Cir. June 22, 1993) (citation omitted) (unpublished). While it is true that statutory context can affect how a word should be interpreted, it cannot change its definition entirely. Conversely, Appellant’s interpretation suffers from its own surplusage problem. What does it mean to alter an SVRL in a way that “impair[s] [its] integrity,” USDOJ Br. at 23, and why would that activity not be covered by the various other verbs included already in Section 20702? And regardless, “there is still tension in a statutory construction that applies Title III’s requirements to non-permanent records like voter registration lists,” *WEC*, SA9, in large part because Title III’s requirements to “‘retain’ and ‘preserve’” covered records does not map on well to an “SVRL, which is continuously updated,” *Koski*, 2026 WL 2032532, at *6.

Appellant’s second point fares no better. For one, Appellant’s tortured reading contemplates “a world in which the NVRA and HAVA demand ‘good’

SVRL alterations, while the CRA punishes ‘bad’ SVRL alterations,” *id.* at *6—a statutory scheme that sounds extremely difficult to administer. Who would be in charge of determining which alterations to the SVRL are “good” or “bad”? And why, for that matter, would an elections official risk criminal liability to make alterations that a tribunal or law enforcement officer could mistake as a “bad” alteration? This profoundly improbable statutory interpretation would in fact chill the very list maintenance that Appellant seems so keen on compelling. *See generally Evans*, 2026 WL 2267774, at *7 (noting Appellant’s interpretation would “subject officials to liability for taking the steps mandated by . . . HAVA—the very statute[] the government has asserted an interest in enforcing”). Further, by Appellant’s own definition, an election official could certainly “act[] with knowledge that his conduct is unlawful,” USDOJ Br. at 25 (quoting *Bryan v. United States*, 524 U.S. 184, 191–92 (1998)), if they conduct list maintenance that is compelled under HAVA but that they know is legally barred under Appellant’s interpretation of Title III.

As eighteen of the eighteen federal courts to address this issue have found, none of Appellant’s counterarguments are convincing. Based on the plain statutory language and canons of interpretation, Wisconsin’s SVRL is not a covered record under Title III and Appellant’s complaint was thus properly dismissed.

II. Appellant’s Request Is Legally Deficient Because It Offers an Inadequate and Pretextual Statement of Its Basis and Its Purpose.

Even if Wisconsin’s SVRL was covered under Title III—which it is not—USDOJ’s demand fails because it does not comply with Title III’s requirement that the Attorney General set forth a “demand in writing” that “shall contain a statement of the basis and the purpose therefor.” 52 U.S.C. § 20703. USDOJ’s failure to fulfill the requirements of Title III constitutes alternative bases for dismissal.

A. Appellant is not entitled to summary proceedings because the Federal Rules of Civil Procedure apply to this action.

As an initial matter, the Federal Rules of Civil Procedure govern this civil action. The text of Title III does not create any special exception from the Federal Rules. *See* 52 U.S.C. § 20705. Appellant relies almost exclusively on a decades-old, non-binding, and plainly distinguishable case, *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962), to assert that a Title III demand is “a special statutory proceeding” and that the district court erred in applying the Federal Rules to its federal civil action. USDOJ Br. at 28–32. This attempt to end-run the Federal Rules, including Rule 12, must be rejected. As eighteen federal courts have correctly concluded,⁶ the Rules must be followed here. *See Benson*,

⁶ Multiple federal courts, including the district court, declined to reach the issue because they held that USDOJ’s demand was so meritless that the case should be dismissed under *any* standard. *See WEC*, SA4–SA5; *Galvin*, 830 F. Supp. 3d, at 128–

179 F.4th at 483 n.2; Order, *Simon*, No. 25-cv-3761, Dkt. No. 210, at 16; *Aguilar*, 2026 WL 2364502, at *2–3; *Griswold*, 2026 WL 2235374, at *3; *Matthews*, 2026 WL 2212877, at *2; *Caldwell*, 2026 WL 2186515, at *5; *Adams*, 2026 WL 2123871, at *3–4; *Oliver*, 2026 WL 2031479, at *7; *Koski*, 2026 WL 2032532, at *1 n.2; *Warner*, 2026 WL 2018877, at *2; *Bd. of Elections of N.Y.*, 2026 WL 1999921, at *6–7; *Scanlan*, 2026 WL 1864054, at *1 n.2; *DeMarinis*, 2026 WL 1780586, at *3; *Bellows*, 2026 WL 1430481, at *5; *Fontes*, 2026 WL 1177244, at *1 & n.1; *Amore*, 831 F. Supp. 3d at 154–55; *Oregon*, 828 F. Supp. 3d at 1102–03; *Weber*, 816 F. Supp. 3d at 1182. Statutory text and controlling Supreme Court precedent also compel this conclusion.

Start with the text. Title III provides: “The United States District Court for the district in which a demand is made pursuant to section 20703 of this title, or in which a record or paper so demanded is located, shall have jurisdiction *by appropriate process* to compel the production of such record or paper.” 52 U.S.C. § 20705 (emphasis added). This “appropriate process” is set forth in the Federal Rules of Civil Procedure, which “govern the procedure in *all* civil actions and proceedings in the United States district courts,” Fed. R. Civ. P. 1 (emphasis added), subject to a narrow set of express exceptions which

29 & n.8; *see also Oliver*, *7 n.17 (holding that the Federal Rules apply but finding that “[w]ere the Court to conclude otherwise, its analysis of the dispositive issue” in the case “would be the same”).

does not include Title III requests, Fed. R. Civ. P. 81. *See Griswold*, 2026 WL 2235374, at *3 (“The CRA says nothing suggesting the inapplicability of the Federal Rules of Civil Procedure.”); *Caldwell*, 2026 WL 2186515, at *5 (“Nothing in the CRA displaces the [Federal Rules of Civil Procedure] or precludes the Court from determining whether the [US]DOJ’s demand complies with all applicable statutory requirements.”). Under the canon of construction *expressio unius est exclusio alterius*—when one is mentioned, the other is excluded—the fact that Rule 81 enumerates specific exceptions to the applicability of the Rules implies that there are no other proceedings under which the Rules are not applicable. *See Johnson v. Amazon.com Servs. LLC*, 142 F.4th 932, 940 (7th Cir. 2025) (discussing statutory interpretation canon).

The Supreme Court’s binding decision in *United States v. Powell*, 379 U.S. 48 (1964)—decided *after Lynd*, 306 F.2d 222, the non-binding case on which Appellant principally relies—requires the same conclusion. Like Title III, the statute at issue in *Powell* confers jurisdiction on district courts “by appropriate process to compel” compliance with federal document demands. *See* 26 U.S.C. § 7604(a). Interpreting that statute, the Supreme Court explained that “[b]ecause [§] 7604(a) contains no provision specifying the procedure to be followed in invoking the court’s jurisdiction, the Federal Rules of Civil Procedure apply” and the court may “inquire into the underlying

reasons for the examination [of records].” *Powell*, 379 U.S. at 58 & n.18.⁷ The same dispositive language in Section 7604(a) is included also in the CRA: “[t]he United States district court . . . shall have jurisdiction *by appropriate process*.” 52 U.S.C. § 20705 (emphasis added). In other words, the Supreme Court held in *Powell* that the Federal Rules of Civil Procedure apply due to statutory language that appears, in identical form, in the CRA. *See Griswold*, 2026 WL 2235374, at *3; *Matthews*, 2026 WL 2212877, at *2.

To the extent *Powell* leaves any ambiguity—which it does not—the Supreme Court further confirmed this interpretation in subsequent cases. *See Donaldson v. United States*, 400 U.S. 517, 528 (1971) (“The Civil Rules, of course, do have an application to a summons proceeding.” (citing Fed. R. Civ. P. 81)), *superseded by statute on unrelated grounds sub nom. Polselli v. IRS*, 598 U.S. 432 (2023). The language quoted in *Donaldson*—from what was then Federal Rule of Civil Procedure 81(a)(3)—is materially identical to the language in current Federal Rule of Civil Procedure 81(a)(5), which governs this case today. Fed. R. Civ. P. 81(a)(5) (“These rules apply to proceedings to compel . . . the production of documents through a subpoena issued by a United

⁷ Tellingly, Appellant does not even *mention Powell* in its opening brief. In other cases, USDOJ erroneously claimed that the *Powell* Court held that the Federal Rules applied because of different language in 26 U.S.C. § 7605(b). But *Powell* itself makes clear that Section 7604(a) was the dispositive provision at issue. *See* 379 U.S. at 58 & n.18.

States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.”). Appellant provides no explanation for how it squares its interpretation with these decisions and the Federal Rules themselves. *See generally Aguilar*, 2026 WL 2364502, at *2 (“Neither the text of the statute nor the weight of precedent support the Government's position.”).

Finally, the United States affirmatively chose to commence this action by filing a Complaint. *See* R.1. The United States invoked the Rules to initiate this litigation and to defend its pleadings elsewhere, and it cannot now disclaim those choices because the results proved unfavorable. *See Bd. of Elections of N.Y.*, 2026 WL 1999921, at *7 (“[USDOJ] commenced the instant action by filing a complaint and proceeding through ordinary litigation. . . . The [c]ourt rejects [USDOJ]’s belated attempt to recharacterize this matter.”); *Oregon*, 828 F. Supp. 3d at 1102 n.1 (“Even if *Lynd* applied here, the [c]ourt doubts its applicability here where [the United States] made an affirmative choice to file a complaint and proceed through ordinary litigation.”); *Amore*, 831 F. Supp. 3d at 155 n.1 (similar).

B. Appellant’s demand fails to satisfy Title III’s basis-and-purpose requirements.

To comply with Title III, the Attorney General must set forth a “demand in writing” that “shall contain a statement of the basis and the purpose

therefor.” 52 U.S.C. § 20703. There are three particularly notable aspects of Title III’s text. *First*, Title III’s use of the phrase “*shall* contain” demonstrates that “the requirement that the Attorney General state ‘the basis’” and the purpose “is mandatory, not a mere formality with which the federal government or this Court is free to dispense.” *Galvin*, 830 F. Supp. 3d at 127; *see also Benson*, 179 F.4th at 483 (noting the word “shall” “creates an obligation impervious to judicial discretion” (quoting *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024))); *Warner*, 2026 WL 2018877, at *5 (similar).

Second, the demand must be made “in writing,” meaning that the basis and the purpose “must be made express.” *Galvin*, 830 F. Supp. 3d at 128. In this way, “[t]he statute therefore directs the Court to the Attorney General’s written demand—rather than the United States’ subsequent court filings—to determine whether that demand” satisfies the basis and purpose requirements. *Id.*

Third, the statute’s requirement that the demand “‘contain a statement of the basis and the purpose thereof,’ employ[s] the definite article ‘the’ before each noun and join[s] the two with the conjunctive ‘and.’” *Scanlan*, 2026 WL 1864054, at *6. As such, “[o]n its plain terms, this construction signals that ‘basis’ and ‘purpose’ are separate, non-overlapping requirements, each of which must independently be satisfied.” *Id.*; *see also Benson*, 179 F.4th at 483; *Aguilar*, 2026 WL 2364502, at *5; *Matthews*, 2026 WL 2212877, at *4; *Warner*,

2026 WL 2018877, at *5; *Galvin*, 830 F. Supp. 3d at 128 (finding that “the statutory text clearly conveys that ‘the basis’ and ‘the purpose’ are conceptually distinct.”); *Weber*, 816 F. Supp. 3d at 1182 (“The DOJ is required to offer a written statement of *both* the purpose and basis for its demands.”).

USDOJ’s written demand does not satisfy either of Title III’s separate requirements that the Attorney General state “the basis” and “the purpose” for the demand. Each is an independent reason to affirm dismissal.

1. Appellant Fails to Satisfy the Basis Requirement.

As many courts have recently held, “the ‘basis’ contemplated by Title III is a factual, not legal basis.” *Warner*, 2026 WL 2018877, at *5; *see also, e.g., Aguilar*, 2026 WL 2364502, at *5; *Matthews*, 2026 WL 2212877, at *5; *Amore*, 831 F. Supp. 3d at 156; *Scanlan*, 2026 WL 1864054, at *7 (noting this textual “reading also accords with the Attorney General’s own historical practice under Title III. . .”); *Galvin*, 830 F. Supp. 3d at 127 (noting dictionary definitions for “basis” include the “foundation” or “‘chief supporting factor’ ‘for’ the demand” (citation omitted)); *Oregon*, 828 F. Supp. 3d at 1103; *Weber*, 816 F. Supp. 3d at 1184. “To read ‘basis’ as meaning a legal basis would conflate that requirement with the required statement of the demand’s ‘purpose.’” *Amore*, 831 F. Supp. 3d at 156; *see also Matthews*, 2026 WL 2212877, at *5; *Galvin*, 830 F. Supp. 3d at 128.

Appellant has all but conceded throughout this litigation that it does not have a factual basis for its demand. In briefing at the district court, Appellant argued that “the basis for the demand was Title III of the CRA,” R.71 at 5, 17, USDOJ’s Mem. in Opp. to Mots. to Dismiss and in Suppl. of Mot. to Compel—which is USDOJ’s purported legal authority, not a factual basis. Further, after the courts in *Galvin* and *Amore* dismissed USDOJ’s materially identical suits, Appellant requested that if the district court agreed with those courts that a factual basis were required, “the [c]ourt provide leave for the United States to send the [Appellees] a curing elaboration letter rather than dismiss on the merits. . .” R.81, USDOJ’s Resp. to Notice of Suppl. Auth. In other words, USDOJ has already conceded that if a factual basis is required, the written demand it sent to WEC must be “cur[ed]” to provide it. *Id.*

Now, on appeal, USDOJ argues for the first time—in a solitary paragraph—that it actually *did* provide an adequate factual basis for its demand. USDOJ Br. at 32–33. That argument comes too late. It is axiomatic that “if an argument was not presented to the federal district court, it is forfeited in” the Seventh Circuit. *Frazier v. Varga*, 843 F.3d 258, 262 (7th Cir. 2016); *see also, e.g., Thomas v. Carmichael*, 164 F.4th 1058, 1066 (7th Cir. 2026) (“An argument not raised below is either waived or forfeited.” (cleaned up)). Moreover, USDOJ fails to adequately develop the argument in its brief, compounding the fatal flaws in its argument. *See, e.g., United States v.*

Cisneros, 846 F.3d 972, 978 (7th Cir. 2017) (“We have repeatedly and consistently held that perfunctory and undeveloped arguments . . . are waived.” (internal quotation marks and citation omitted)); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). As such, Appellant has waived or forfeited any argument that its demand contains a statutorily compliant factual basis. Accordingly, this Court should not consider this argument.

Regardless, USDOJ’s claim to a factual basis fails on the merits. Appellant points to different letters that it hopes to combine into a proper written demand. Appellant first points to a June 4, 2025 letter in which USDOJ states that it has “learned that [WEC] has refused to provide any administrative complaint process or hearing regarding HAVA complaints against the Commission.” USDOJ Br. at 32 (quoting R.5-5 at 3). Appellant then notes its June 17, 2025 letter, in which it stated that it had “received several complaints regarding [WEC’s] compliance with” HAVA, some of which purportedly “allege that WEC is failing to comply with the list maintenance procedure requirements of Section 303 of HAVA.” June 17 USDOJ Letter at 1.

USDOJ’s argument fails on the merits for two main reasons. *First*, as many federal courts have held, the plain text of Title III requires that *one* written demand contain *both* the basis and the purpose for the demand, rather than a basis and purpose spread across multiple letters. *See Benson*, 179 F.4th at 483 (Title III requires “that any [single] demand must contain both” a basis

and purpose); *Griswold*, 2026 WL 2235374, at *4; *Oliver*, 2026 WL 2031479, at *9 (“based on the CRA’s plain language, the measure of the [US]DOJ’s written demand is the Demand Letter alone,” rather than other letters or court filings); *Oregon*, 828 F. Supp. 3d at 1104 (rejecting USDOJ’s “patchwork and post hoc effort to stitch together a legally sufficient ‘statement of the basis’” by attempting to combine two letters that it sent to the state).

Even assuming the June 4 and/or the June 17 letters provided a sufficient factual basis, neither constitutes a single written demand that contains both the basis and the purpose therefor. The June 4 letter can easily be dismissed because it has nothing to do with any request for a voter file whatsoever. *See* R.5-5. The June 17 letter requests only that Wisconsin “send [the USDOJ] the current voter registration list,” without any specific request for an unredacted list. June 17 USDOJ Letter at 2. In response to that request, WEC complied, referring USDOJ to the publicly available voter registration list available through the state’s online portal. July 2 Letter at 5.

USDOJ only made a written demand for the *unredacted* voter file five months later, when a different USDOJ attorney—without reference to the June 4 or June 17 letters—demanded the “full voter roll” with unredacted personal information such as “the last four digits of the social security number, the driver’s license number, or both.” December 2 Letter. In this way, it is the December 2 email that is the “demand in writing” for the unredacted voter file,

not the June 17 letter. *See Matthews*, 2026 WL 2212877, at *5 (considering, for purpose of its “basis” analysis, the ultimate letter USDOJ sent requesting the unredacted voter file, rather than an initial earlier letter that had simply requested the statewide voter file); *Griswold*, 2026 WL 2235374, at *4 (similar). USDOJ does not even argue that its December 2 letter to WEC contains a factual basis, *see* USDOJ Br. at 32 (“Both the June 4 and 17 letters provided ample ‘basis’ for the demand.”)—nor could it, given that the December 2 letter contains no factual allegations anywhere in the short email, *see* December 2 Letter.

Second, even if multiple letters could be combined into one demand, the purported factual basis in the June 4 and June 17 letters is insufficient to constitute a factual basis. Stray, solitary references to anonymous and seemingly uncorroborated complaints about HAVA compliance—without any further specifics or factual details—are insufficient to constitute the “support,” “foundation,” or “[f]undamental principle” underlying the demand. *Galvin*, 830 F. Supp. 3d at 127 (quoting multiple dictionaries). Indeed, multiple federal courts have held that there was an insufficient factual basis even when USDOJ’s demand included more specific allegations about states’ purported inconsistencies and/or errors in their compliance with list maintenance requirements under federal law. *See* Supp. App. 2, *United States v. Weber*, No. 2:25-cv-9149, Dkt. No. 87-3, at 2 (C.D. Cal. Dec. 1, 2025) (claiming California’s

reported removal percentage for dead voters “was well below the national average,” as well as discrepancies in California’s data on the number of inactive voters); Supp. App. 6, *United States v. Schmidt*, No. 2:25-cv-1481, Dkt. 103-3, at 2 (W.D. Pa. Jan. 12, 2026) (claiming Pennsylvania’s reported percentage of duplicate was “nearly three times below the nationwide average”). If these specific data are insufficient to establish a factual basis, then surely USDOJ’s vague allegations to unspecific “complaints” supposedly registered in Wisconsin are also insufficient.⁸

2. Appellant Fails to Satisfy the Purpose Requirement.

Appellant’s demand is further deficient because it does not have a proper “purpose” as required by Title III. Appellant’s specified purpose was “ensuring compliance with minimum standards and routine voter registration list maintenance.” R.71 at 6, 17, 18 (quoting December 2 Letter). At least eight federal courts have held that this or a substantially similar purpose did not satisfy Title III in a request for states’ unredacted voter files. *See Griswold*, 2026 WL 2235374, at *4; *Matthews*, 2026 WL 2212877, at *5–6; *Warner*, 2026 WL 2018877, at *6–8; *Bellows*, 2026 WL 1430481, at *7–9; *Schmidt*, 2026 WL

⁸ Appellant, sensing its vulnerability on the “basis” issue, includes a footnote in its opening brief with some similar purported discrepancies in Wisconsin’s data that it pointed to in California and Illinois. USDOJ Br. at 27 n.6. Yet as noted *supra*, even if these discrepancies constituted a factual basis—which multiple courts apparently determined they do not—the factual basis must be included in the written demand itself, not subsequent court filings. USDOJ’s footnote and the supposed data therein have no bearing on the “basis” analysis in this case.

1850016, at *2; *Amore*, 831 F. Supp. 3d at 158; *Oregon*, 828 F. Supp. 3d at 1104–05; *Weber*, 816 F. Supp. 3d at 1183–84.

The statutorily required “purpose” is an explanation of how the requested records would help determine if there is a legal violation. *See, e.g., Lynd*, 306 F.2d at 229 n.6. Title III requires an “assessment of the sufficiency of . . . the purpose asserted,” *Bellows*, 2026 WL 1430481, at *7; otherwise, “[i]f any purpose . . . would suffice, then the requirement of stating the demand’s purpose would serve no function,” *Oregon*, 828 F. Supp. 3d at 1104; *see also Bellows*, 2026 WL 1430481, at *7.

USDOJ’s demand fails Title III’s purpose requirement for five main reasons. *First*, USDOJ’s demand is improper under Title III because it is designed “to investigate list maintenance procedures,” rather than “investigating violations of individuals’ voting rights.” *Oregon*, 828 F. Supp. 3d at 1105. As many courts have held, the CRA’s plain text, legislative design, and purpose—to “help end voting discrimination,” *Benson*, 179 F.4th at 474—means that any valid purpose for a Title III demand must constitute “an investigation into potential violations of an individual’s right to vote.” *Warner*, 2026 WL 2018877, at *7; *see also Matthews*, 2026 WL 2212877, at *5; *Amore*, 831 F. Supp. 3d at 157–58; *Oregon*, 828 F. Supp. 3d at 1105. USDOJ’s stated purpose of evaluating Wisconsin’s compliance with “with minimum standards and routine voter registration list maintenance,” R.71 at 6, 17, 18, “lack[s] any

reference or relation to the purposes for which Title III was enacted” and is thus deficient. *Oregon*, 828 F. Supp. 3d at 1105.

Second, it is *states*—not the federal government—who are tasked with list maintenance, *see* 52 U.S.C. § 21083(a)(2)(A) (stating that states must “perform list maintenance . . . on a regular basis”), and those states, such as Wisconsin, have significant discretion under federal law to conduct that maintenance. Under HAVA’s plain text, “[t]he specific choices on the methods of complying with” HAVA’s list maintenance procedures “shall be left to the discretion of the State.” 52 U.S.C. § 21085; *see also Matthews*, 2026 WL 2212877, at *1 (“The method of compliance with HAVA [is] left to the discretion of each State.”); *Bellows*, 2026 WL 1430481, at *7, *9; *Amore*, 831 F. Supp. 3d at 152; *Oregon*, 828 F. Supp. 3d at 1097.

Third, the requested records are not germane or necessary for determining Wisconsin’s compliance with HAVA because any voter file reflects just one point in time, whereas the voter file itself is constantly changing and iterating. USDOJ seeks a static voter list, whereas Wisconsin’s list is constantly evolving. *See* December 11 Letter at 3–5 (WEC explaining to USDOJ that “[t]he vast majority of list maintenance work consists of routine updates” and explaining the many checks WEC regularly conducts to ensure the voter roll is consistently up to date); Supp. App. 12, *United States v. Fontes*, No. 2:26-cv-66-SMB, Dkt. No. 8-4 at 4 (Arizona Secretary of State informing

USDOJ that the statewide voter file “alone does not provide evidence regarding Arizona’s compliance with” federal law and instead “merely captures a snapshot in time and provides little information about list maintenance activities.”).

Fourth, Appellant has not provided any evidence of anomalies or anything inconsistent with reasonable and lawful list maintenance efforts that Wisconsin has conducted. The closest things are the June 4 and 17 letters’ vague allusions to “complaints” about HAVA compliance. But again, as noted *supra*, these references to anonymous, uncorroborated, and non-specific complaints should be given next to no weight.

Fifth, far from indicating a purpose of ensuring compliance with federal list maintenance requirements under HAVA, USDOJ’s actions and desired outcome here would violate that very statute. In connection with its request for statewide voter files across the country, Appellant has sought states’ agreement to a memorandum of understanding. *See* R.34-1, USDOJ, C.R. Div., Confidential Mem. of Understanding (MOU). The MOU’s terms fly in the face of the requirements set forth in HAVA and the NVRA. For one, USDOJ’s MOU would place authority to identify supposedly ineligible voters in the hands of the federal government, directly contrary to HAVA’s aforementioned requirement that procedures for complying with the statute be “left to the discretion of the State.” 52 U.S.C. § 21085; *see* MOU at 2, 5; *see also* 52 U.S.C. §

21083(a)(2), (4). In addition, the MOU's substantive terms would allow USDOJ to compel states to remove supposedly ineligible voters "within forty-five (45) days," MOU at 5, in a manner that would violate multiple protections of the NVRA and HAVA, including the requirement to provide voters with notice prior to their removal from the rolls and the firm bar against systematic voter removals within 90 days of an election, 52 U.S.C. § 20507; *id.* § 21083(a)(2)(A). The MOU confirms that Appellant's stated purpose of ensuring compliance with list maintenance procedures in federal voting statutes is not accurate or plausible.

For all these reasons, Appellant's demand fails Title III's command to provide the purpose for the demand in writing, thus providing another basis for dismissal.

3. Appellant's Demand Separately Fails Because It Is Pretextual.

Three courts have held that USDOJ's demands for statewide voter lists separately fail Title III's requirements because USDOJ's stated purpose was contrived and directly contradicted by public representations. *See Schmidt*, 2026 WL 1850016, at *2; *Oregon*, 828 F. Supp. 3d at 1106–08; *Weber*, 816 F. Supp. 3d at 1184–86. A fourth court signaled its significant distrust of USDOJ's representations, stating: "Given the lack of an adequate basis or purpose, one is left to wonder what the real purpose was for [USDOJ] to go to

the trouble of filing civil actions like this one all around the nation.” *Warner*, 2026 WL 2018877, at *8 n.9 (also calling USDOJ’s actions “[t]roubling”).⁹

The courts in Pennsylvania, Oregon, and California all found that USDOJ’s purpose outlined in its written demands for states’ unredacted voter files was pretextual and that its true goal is “to gather the sensitive, private information of millions of Americans for use in a centralized federal database.” *Weber*, 816 F. Supp. 3d at 1184; *see also Schmidt*, 2026 WL 1850016, at *2 (“Public statements from government officials reveal its intentions: to create a nationwide voter-database, for potential weaponization in future elections; as a ‘fishing expedition,’ hoped to advance unsubstantiated claims of non-citizen voting; and as a tool for immigration enforcement.”); *Oregon*, 828 F. Supp. 3d at 1106, 1108 (USDOJ’s “statements that it intends to create a nationwide database of confidential voter information and use it in unprecedented ways, including immigration enforcement efforts, is chilling.”).

These courts have called USDOJ’s stated purpose “pretextual” and “contrived.” *Weber*, 816 F. Supp. 3d at 1184–86; *see also Oregon*, 828 F. Supp. 3d at 1106 (quoting *Weber*’s “pretextual” finding); *Schmidt*, 2026 WL 1850016, at *2 (same). They have found that the government has “sa[id] the quiet parts

⁹ A fifth court noted that “[t]he [US]DOJ’s contentions about its motivations to sue are inapposite,” finding that “[t]he paradox” of USDOJ’s conflicting statements “is obvious.” *Oliver*, 2026 WL 2031479, at *6 n.15.

out loud.” *Schmidt*, 2026 WL 1850016, at *2 (citation omitted). And they have held that “[t]he presumption of regularity that has been previously extended to [Appellant] that it could be taken at its word—with little doubt about its intentions and stated purposes—no longer holds.” *Oregon*, 828 F. Supp. 3d at 1107.

There is copious judicially noticeable evidence supporting these findings. In its litigation across the country, USDOJ has admitted in open court that it will use and share the gathered information with agencies such as the Department of Homeland Security, thus potentially facilitating immigration investigations. Supp. App. 62, 77–78, Mar. 26, 2026 Hr’g Tr. at 50:21–23, 65:1–66:18, *United States v. Amore*, No. 25-cv-639 (D.R.I. filed Dec. 2, 2025). This is plainly outside the purported purpose USDOJ put in writing. As noted *supra*, it is a matter of public record that USDOJ has demanded unredacted voter rolls from all 50 states and has initiated 31 lawsuits to force production from unwilling states—despite claiming to have state-specific reasons to request each state’s list. Earlier this year, USDOJ admitted that the federal government has shared state voter roll information with groups seeking to deny election results, as well as unknown amounts of social security data on an unapproved third-party server, in a “manner [that] is outside [the U.S. Social Security Administration’s] security protocols.” Supp. App. 131–32, Notice of Corr. to the Rec., Dkt. 197 at 5–6, *Am. Fed’n of State, Cnty. & Mun.*

Emps., AFL-CIO v. Soc. Sec. Admin., No. 1:25-cv-596 (D. Md. Jan. 16, 2026). As noted *supra*, USDOJ is actively soliciting states like Wisconsin to sign an MOU that violates the very federal voting statute that USDOJ is purporting to enforce. *See* MOU. Appellant has issued an executive order requiring the creation of a national voter registration list, *see* Exec. Order No. 14,399, 91 Fed. Reg. 17125 (Mar. 31, 2026), and former USDOJ employees have stated that they were tasked with procuring states' voter rolls for purpose of matching with data from the Department of Homeland Security.¹⁰ And the then-Attorney General herself wrote to the Minnesota Governor tying "Operation Metro Surge," which involves well-documented abuses by United States Immigration and Customs Enforcement against the civilian population in the state with, among other things, Minnesota's refusal to turn over its unredacted voter file.¹¹

Tellingly, Appellant does not deny *any* of these facts in its opening brief, claiming only that much of this evidence is "based on inadmissible hearsay" and claiming that showing pretext requires a "heavy burden." USDOJ Br. at 39–41. Yet none of the above is hearsay and USDOJ has no answer for any of it. *See also generally Parungao*, 858 F.3d at 457 ("Courts may

¹⁰ Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. Times Mag., Nov. 16, 2025, <https://perma.cc/L39A-S5VZ>.

¹¹ *Read Bondi's Letter to Minnesota's Governor*, N.Y. Times, Jan. 24, 2026, <https://perma.cc/H5GY-ZKBS>.

take judicial notice of court filings and other matters of public record when the accuracy of those documents reasonably cannot be questioned.”).

As noted *supra*, Title III requires that USDOJ provide in writing a statement of “*the* basis and *the* purpose” for its demand. 52 U.S.C. § 20703 (emphases added). By twice using the definite article, the statute requires not just a conceivable or possible basis or a purpose, but *the* complete basis and *the* complete purpose underlying the request. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165–66 (2021) (noting that the inclusion of a definite article with a singular noun implies that each noun is “a discrete thing”). Here, USDOJ’s written demand, when evaluated alongside the unrebutted evidence listed above, establishes the kind of “significant mismatch” between stated and actual reasons that the Supreme Court has held that courts need not accept. *Dep’t of Com. v. New York*, 588 U.S. 752, 755, 785 (2019) (rejecting agency’s “contrived” justification and refusing to “exhibit a naiveté from which ordinary citizens are free” (citation omitted)). That USDOJ did not disclose its true and complete motivations in seeking Wisconsin’s unredacted voter rolls further compels the conclusion that Appellant’s demand fails to comply with Title III.

III. Wisconsin Voters’ Constitutional Rights Require Redaction, so the Requested Relief Fails.

Even if Appellant had met all the statutory requirements necessary for disclosure of certain records under the CRA—which it has not—it would still

not be entitled to its requested relief. Indeed, courts have found that redaction may be required to prevent the disclosure of sensitive personal information that would create an intolerable burden on the constitutional right to vote. This concern is heightened here, given USDOJ’s admissions that federal government officials have improperly shared sensitive Social Security data with third-party election denier groups. *See supra* Argument Section II.B.3.

Cases interpreting Section 8(i) of the NVRA—the NVRA’s public disclosure provision—are instructive when interpreting Title III because both statutes use the same “all records” language. *Compare* 52 U.S.C. § 20507(i) (“Each State shall maintain for at least 2 years and shall make available for public inspection . . . *all records* concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” (emphasis added)), *with* 52 U.S.C. § 20701 (“Every officer of election shall retain and preserve, for a period of twenty-two months . . . *all records* and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” (emphasis added)). Courts must interpret the NVRA’s disclosure provisions in a manner that does not unconstitutionally burden the right to vote. *See United States v. Orona-Ibarra*, 831 F.3d 867, 876 (7th Cir. 2016) (applying “[t]he well-established canon of constitutional avoidance,” which instructs that “[w]here a statute is susceptible of two constructions, by

one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter” (quoting *Jones v. United States*, 529 U.S. 848, 857 (2000))).

Federal courts interpreting the NVRA’s public disclosure provision have consistently struck this balance, interpreting the “all records” language in Section 8(i) to permit—and sometimes require—redaction and the protection of confidential materials. As the First Circuit has noted, “nothing in the text of the NVRA prohibits the appropriate redaction of uniquely or highly sensitive personal information in the Voter File,” and such redaction “can further assuage the potential privacy risks implicated by the public release of the Voter File.” *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024); *see also Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 266–68 (4th Cir. 2021) (holding that the potential connection to ongoing criminal investigations and the possibility of erroneously labeling a voter as a noncitizen and subjecting them to public harassment warrants maintaining confidentiality). Other courts have consistently recognized that the NVRA does not compel the release of sensitive information otherwise protected by federal or state laws. *See, e.g., N.C. State Bd. of Elections*, 996 F.3d at 264; *Pub. Int. Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1015–16 (D. Alaska 2023); *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 942 (C.D.

Ill. 2022), *clarified on denial of reconsideration*, No. 20-cv-3190, 2022 WL 1174099 (C.D. Ill. Apr. 20, 2022).

Redaction also may be affirmatively required if the disclosure would “create[] an intolerable burden on [the constitutional right to vote] as protected by the First and Fourteenth Amendments.” *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012) (citation omitted). The Fourth Circuit, even while granting access to voter registration applications, affirmed the importance of redacting Social Security numbers, which are “uniquely sensitive and vulnerable to abuse.” *Id.* The court emphasized that the NVRA reflected Congress’ view that the right to vote was “fundamental,” and that the unredacted release of records risked deterring citizens from registering to vote and thus created an “intolerable burden” on this fundamental right. *Id.* at 334, 339; *cf. In re Coleman*, 208 F. Supp. at 200 (noting, in the context of a Title III records request, multiple considerations which could be “[s]ignificant,” including whether “official records are privileged, or exempt from discovery for any sound reason of public policy,” or “that an inspection of these records would be oppressive, or any unlawful invasion of any personal constitutional right”). As such, public disclosure provisions such as those in the NVRA and Title III must be interpreted to avoid this unconstitutional burden. *See Long*, 682 F.3d at 339; *Bellows*, 92 F.4th at 56.

The same privacy and constitutional concerns warranting redactions under the NVRA apply equally to requests under the CRA. *See Bellows*, 2026 WL 1430481, at *5 n.7 (noting that “the NVRA frames its disclosure requirement in very similar terms” to Title III and finding persuasive that the NVRA does not prohibit redaction); *cf. Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 281–82 (2024) (Gorsuch, J., concurring) (“[O]ur Constitution deals in substance, not form. However the government chooses to act, . . . it must follow the same constitutional rules.”). And the limited case law considering CRA records requests acknowledges that courts retain the “power and duty to issue protective orders,” *Lynd*, 306 F.2d at 230, such as the redaction of sensitive fields that courts have consistently determined are entitled to protection from disclosure. *See also Oregon*, 828 F. Supp. 3d at 1108 (“[T]he vast array of cases cited above addressing the propriety of redaction in the context of the NVRA confirm that such redaction is appropriate and permissible.”).

Consequently, at least four courts analyzing USDOJ’s requests for states’ voter files have held in particular that Appellant is not entitled to *unredacted* records because of the danger to voters’ constitutional and privacy rights. *See Warner*, 2026 WL 2018877, at *7–8 (finding USDOJ “does not provide any reasonable explanation” for why it needs “highly sensitive voter data” and noting that “[c]ourts have recognized that states are entitled to redact sensitive voter information . . . and that this information is not relevant

to the removal of ineligible voters from voting rolls.”); *Bellows*, 2026 WL 1430481, at *5 n.7, *9; *Oregon*, 828 F. Supp. 3d at 1107–08; *Weber*, 816 F. Supp. 3d at 1187–88 (noting that “[USDOJ] itself [has] acknowledged these privacy risks itself” in previous litigation, and finding that USDOJ “makes no persuasive argument for why this large amount of unredacted voter information is necessary to evaluate state policies”). There is no reason for this Court to conclude otherwise.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court’s decision to dismiss Appellant’s complaint and deny its motion to compel.

Dated: August 17, 2026

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STATEMENT REGARDING ORAL ARGUMENT

Intervenor-Defendants-Appellees Common Cause, Melissa Adams, Amanda Makulec, and Jaime Riefer respectfully request oral argument, given the importance of this case and the legal questions at issue. For reasons explained in their opposition to Appellant's emergency motion to expedite briefing, *see* Dkt. 19-1, Intervenor-Defendants-Appellees disagree with Appellant that expedited consideration of this case is necessary or warranted and object to oral argument being scheduled in September 2026.

Dated: August 17, 2026

Respectfully submitted,

/s/ Jonathan Topaz

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 11,890 words. This brief further complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Seventh Circuit R. 32(b) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 13-point Century Schoolbook Font.

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CERTIFICATE OF SERVICE

I certify that on August 17, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 17, 2026

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