

26-2060

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

NEW YORK STATE BOARD OF ELECTIONS, KRISTEN ZEBROWSKI
STAVISKY, in her official capacity as Co-Executive Director of the Board of
Elections of the State of New York, RAYMOND J. RILEY III, in his official
capacity as Co-Executive Director of the Board of Elections of the State of New
York, PETER S. KOSINSKI, in his official capacity as Commissioner of the Board
of Elections of the State of New York, HENRY T. BERGER, in his official
capacity as Commissioner of the Board of Elections of the State of New York,
ANTHONY J. CASALE, in his official capacity as Commissioner of the Board of
Elections of the State of New York, ESSMA BAGNUOLA, in her official capacity
as Commissioner of the Board of Elections of the State of New York, STATE OF
NEW YORK,

Defendants-Appellees,

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED
PEOPLE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE NEW YORK STATE CONFERENCE, LEAGUE OF
WOMEN VOTERS OF NEW YORK STATE,

Intervenors-Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF OF NAACP AND NAACP NEW YORK STATE CONFERENCE AS
INTERVENORS-DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Intervenor-Defendants-Appellees National Association for the Advancement of Colored People and the NAACP New York State Conference each hereby certifies that they have no parent corporation and that no publicly held corporation owns 10% or more of their stock.

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INTRODUCTION

In the last 18 months, the Department of Justice has embarked on an unprecedented campaign to collect the sensitive voter registration data of nearly every American. It began last year, when DOJ sent letters to election officials across the country demanding their State’s full, unredacted statewide voter registration list (“SVRL”). Many refused, and DOJ sued 30 States and the District of Columbia to obtain these lists. DOJ has lost *every single one* of these cases so far: 26 courts—including the Sixth Circuit and the district court below—have rebuffed DOJ’s demands. Not one has ruled for DOJ.

The district court is among the 26 courts to have dismissed DOJ’s lawsuit so far and its decision to do so should be affirmed. DOJ claims that it is entitled to demand New York’s SVRL under Title III of the Civil Rights Act of 1960 (“CRA”). However, as the district court correctly held, the CRA entitles DOJ only to inspect records that “come into [the] possession” of election officials, such as the application, registration, and poll-tax payment records that the CRA requires them to preserve and make available for inspection. 52 U.S.C. §20701. The CRA does not apply to internally-created records such as a State’s SVRL.

Numerous alternative grounds also support affirmance, including that DOJ failed to comply with the basic requirements for a CRA demand: that it provide a “statement of the basis and the purpose therefor.” 52 U.S.C. §20703. Here, DOJ

failed to provide any factual basis for its demand, and its stated purpose—that it seeks to use the CRA to enforce unrelated federal statutes (the Help America Vote Act (“HAVA”) and the National Voter Registration Act (the “NVRA”))—is improper. DOJ has also failed to show that the CRA preempts New York’s privacy laws, which protect against the disclosure of sensitive information DOJ seeks, and, in its hurry to obtain this data before the November 2026 elections, DOJ also failed to comply with its obligations under the federal Privacy Act.

Each of these grounds is fatal to DOJ’s case. This Court should join the unanimous set of decisions rejecting DOJ’s unprecedented and unlawful attempt to inject itself as a federal superintendent of state election procedures and affirm the district court’s order dismissing DOJ’s complaint below.

STATEMENT OF JURISDICTION

DOJ’s jurisdictional statement is incomplete. The district court had federal question jurisdiction under 28 U.S.C. §§1331, 1345, and 52 U.S.C. §20705, because DOJ alleges a violation of the Civil Rights Act of 1960, 52 U.S.C. §20703. This Court has appellate jurisdiction under 28 U.S.C. §1291. The district court entered final judgment on July 10, 2026. JA Vol. II at 430-62. The United States filed a timely Notice of Appeal on July 23, 2026. JA Vol. II at 463-65.

STATEMENT OF THE ISSUES

1. Whether the CRA requires New York to give DOJ New York’s SVRL, even though it is a state-created, dynamic database that does not “come into [election officials’] possession,” and that by law must be constantly updated, rather than “preserved” and left unaltered. *See* 52 U.S.C. §§20701-20703.

2. Whether DOJ made a valid demand for production of New York’s SVRL under Title III of the CRA, even though DOJ provided no “statement of the basis” for the demand. *See id.* §20703.

3. Whether DOJ made a valid demand under the CRA when it sought the SVRL for the purported purpose of investigating New York’s voter-list maintenance processes, rather than a purpose connected to protecting an individual’s right to vote. *See id.*

4. Whether DOJ’s demand for New York’s complete, unredacted SVRL as part of a national campaign to assemble voter lists from every State and territory violates the federal Privacy Act or New York’s voter privacy laws. *See* 5 U.S.C. §552a; N.Y. Elec. Law §3-220(1).

STATEMENT OF THE CASE

I. The Constitution and federal law commit voter registration practices to the States.

The Constitution “invests the States with responsibility for the mechanics” of elections, including federal elections. *Foster v. Love*, 522 U.S. 67, 69 (1997).

Congress may preempt state regulation of federal elections, but such preemption extends only “so far as it is exercised, and no farther.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013). Three federal election laws are implicated by this case: the CRA, the NVRA, and HAVA.

A. The Civil Rights Act of 1960

Congress enacted the CRA to address problems of proof that emerged from Southern resistance to the Civil Rights Act of 1957. The U.S. Commission on Civil Rights, created by the Civil Rights Act of 1957, was charged with “investigat[ing] allegations ... that certain citizens of the United States are being deprived of their right to vote.” Pub. L. No. 85-315, §104(a)-(b), 71 Stat. 634, 635 (1957). As part of its work, the Commission reviewed voting applications in Jim Crow jurisdictions to identify discriminatory registration practices. By comparing voter registration forms submitted by Black and White applicants, the Commission revealed that election officials in Southern States often imposed tests on Black applicants and not White applicants, *see Report of the U.S. Commission on Civil Rights* 87-88 (1959) (“*Comm’n Rep.*”), and denied registration to Black applicants “because of inconsequential errors which they made, whereas many white applicants who committed similar errors were permitted to register,” *id.* at 91.¹ The Commission

¹ The Commission Report is available at: <https://www.usccr.gov/files/historical/1959/59-001-U.pdf>.

thus concluded that reviewing voter “application forms” was “essential to any investigation of denials of the right to vote.” *Id.* at 137.

Yet the Commission found its investigatory work thwarted by efforts to destroy or restrict access to “[r]ejected applications.” *Id.* at 93. For instance, Alabama enacted legislation requiring the “destruction of the questionnaires of unsuccessful applicants for registration.” *Hearings Before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 86th Cong., 1st Sess. 212 (1959) (“*Hearings*”) (Statement of Att’y Gen. Rogers).² Compounding the problem, DOJ lacked any “power in civil proceedings to require the production” of registration records, rendering its ability to investigate denials of the right to vote “relatively ineffective.” H.R. Rep. No. 86-956, at 7 (1959). The Commission therefore recommended that Congress enact legislation requiring that election officials retain applications to vote and allow DOJ to inspect them. *Comm’n Rep.* at 137-38. DOJ likewise told Congress that comparing the voter applications of Black and White voters was essential to its civil rights work, explaining that, “[i]n many cases, discrimination in registration can be proved only by comparing the records of Negro applicants with those of white applicants.” *An Act to Enforce Constitutional Rights, and for Other Purposes: Hearings on H.R. 8601 Before the S. Comm. on the Judiciary*, 86th Cong., 2d Sess. 6 (1960) (Statement

² Available at <https://perma.cc/ET26-FKD9>.

of U.S. Att’y Gen. William P. Rogers).³ “Congress responded by passing the Civil Rights Act of 1960.” *Pa. State Conf. of NAACP v. Sec’y Commonwealth of Pa.*, 97 F.4th 120, 149 n.19 (3d Cir. 2024) (Shwartz, J., dissenting).

Congress tailored the CRA to the problem before it: the need to ensure the preservation and availability of the key evidence that DOJ and the Commission had identified as necessary to voting rights investigations. As explained by a principal drafter of the CRA, “[t]he purpose of title III is, first of all, to require that States preserve, for a reasonable length of time, the records upon which is based the decision of whether or not a person is a qualified elector.” *Hearings* at 700 (Statement of Rep. William M. McCulloch).⁴ The CRA thus “enable[s] the Attorney General to determine whether §1971 suits or similar actions should be instituted.” *Kennedy v. Lynd*, 306 F.2d 222, 228 (5th Cir. 1962).⁵ To that end, the CRA contains interlocking provisions that permit DOJ “to assemble all of the voter record information within the time-reach of the statute relating to all persons as to whom there is a question concerning infringement or denial of their constitutional voting rights.” *Id.*

³ Available at <https://perma.cc/46G6-GQZB>.

⁴ Available at <https://perma.cc/ET26-FKD9>.

⁵ Section 1971, as recodified, guarantees the right to vote “without distinction of race, color, or previous condition of servitude.” 52 U.S.C. §10101(a)(1).

The core provision of the CRA requires officials to “retain and preserve” the records most critical to a voting rights investigation:

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any [federal election] ... 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[.]

52 U.S.C. §20701. The CRA criminalizes “willfully fail[ing]” to comply with the statute’s command, *id.*, and threatens “imprison[ment]” for “[a]ny person ... who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 20701 of this title to be retained and preserved,” *id.* §20702. The CRA allows DOJ to inspect covered records after it makes a compliant pre-suit demand:

Any record or paper required by section 20701 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying[.]

Id. §20703. The written demand “shall contain a statement of the basis and the purpose therefor.” *Id.*

B. The National Voter Registration Act

Three decades after the enactment of the CRA, Congress passed the NVRA to “establish procedures that will increase the number of eligible citizens who register to vote” and “to ensure that accurate and current voter registration rolls are maintained.” *Id.* §20501(b). The NVRA’s requirements are aimed at ensuring

“simple means are available to register for federal elections and [that these] means are actively presented to voters by the states.” *Fish v. Kobach*, 840 F.3d 710, 721 (10th Cir. 2016). It also requires covered States to take steps to ensure their voter rolls are reasonably up to date. *See* 52 U.S.C. §20507(a)(4). But in doing so, it reaffirms the principal role of States in managing registration lists, requiring only that States “conduct a general program” that “makes a reasonable effort” to remove persons that are ineligible because of either (1) their death or (2) a change in their residence. *Id.* The NVRA also tempers this modest list-maintenance obligation with a series of safeguards designed to prevent erroneous or rushed cancellation of voters’ registrations. *Id.* §20507(a)(3), (b)-(e).

The NVRA expressly addresses enforcement and disclosure of records related to state compliance. It requires covered States to “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.” *Id.* §20507(i). Courts hold either that this inspection provision does not reach SVRLs, *e.g.*, *Pub. Int. Legal Found., Inc. v. Nago*, 174 F.4th 664, 678-83 (9th Cir. 2026), *petition for cert. filed*, No. 26-98 (U.S. July 17, 2026), or that it permits States to redact sensitive personal information about voters before disclosing SVRLs, *e.g.*, *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1083 n.14 (10th Cir. 2025); *Pub. Int. Legal Found., Inc. v. Bellows (“PILF”)*, 92 F.4th 36, 56

(1st Cir. 2024). The NVRA authorizes DOJ and private parties to sue to address alleged violations. *See* 52 U.S.C. §20510.

C. The Help America Vote Act

A decade after the enactment of the NVRA and more than four decades after the enactment of the CRA, Congress enacted HAVA to “improve voting systems and voter access.” *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 394 (4th Cir. 2024). Among other things, HAVA for the first time required States to create a “single, uniform, official, centralized interactive computerized statewide voter registration list.” 52 U.S.C. §21083(a)(1).

The list is dynamic by design. HAVA directs that “[a]ll voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.” *Id.* §21083(a)(1)(A)(vi). The State’s chief election official must ensure “local election officials are able to enter [that] information,” and the list is “coordinated with other agency databases within the State.” *Id.* §21083(a)(1)(A). HAVA also requires States to take steps to ensure that “voter registration records” are “accurate and updated regularly.” *Id.* §21083(a)(4). In other words, HAVA charges States with regularly changing their SVRLs so that they reflect the current snapshot of each State’s registered voters.

HAVA gives DOJ authority to sue to address violations of the statute, *see id.* §21111, but it does not grant DOJ the right to demand SVRLs or otherwise empower DOJ to superintend or audit States’ voter list maintenance practices. To the contrary, HAVA reaffirms the preeminent role of States in managing SVRLs, instructing that each State’s list be “defined, maintained, and administered at the State level,” *id.* §21083(a)(1)(A), and committing “[t]he specific choices on the methods of complying with the requirements of [HAVA] ... to the discretion of the State,” *id.* §21085. The absence of any inspection provision in HAVA is a feature, not a bug—Congress viewed state authority over voter registration as central to preserving our democracy:

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must be preserved. *The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome.* This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country.

H.R. Rep. No. 107-329, pt. 1, at 31-32 (2001) (emphasis added).

HAVA also discusses list maintenance, but “[n]othing in HAVA broadens the scope of the NVRA’s list-maintenance obligations.” *Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019). Instead, HAVA relies on the NVRA’s list maintenance requirements to the computerized SVRL, charging most NVRA-covered States with “perform[ing] list maintenance” of the computerized voter lists “on a regular basis”

consistent with the requirements of the NVRA. 52 U.S.C. §21083(a)(2)(A). HAVA also requires that state law “include provisions” geared toward ensuring SVRLs are “accurate and are updated regularly.” *Id.* §21083(a)(4).

II. DOJ embarks on a nationwide campaign to collect private voter data on millions of Americans.

Last year, DOJ sent letters to at least 48 States demanding States’ SVRLs, which include sensitive information about each registered voter. Most States refused.⁶ DOJ sued 30 States and the District of Columbia to compel disclosure.

DOJ’s legal theories have shifted over the course of these lawsuits. DOJ initially framed the matter largely in terms of the NVRA and HAVA. *See* JA Vol. I at 23-40; *see also* Complaint, *United States v. Bellows*, No. 1:25-CV-468 (D. Me. Sep. 16, 2025), ECF No. 1. But in its more recent suits against other States, DOJ rested exclusively on the CRA. Each district court that has addressed DOJ’s CRA claims to date has dismissed them, *see United States v. Hobbs*, No. C25-6078, 2026 WL 2833713, at *1 n.3 (W.D. Wash. Sep. 22, 2026) (collecting 24 cases), and the Sixth Circuit affirmed the Michigan district court’s decision dismissing DOJ’s claims, *United States v. Benson*, 179 F.4th 470 (6th Cir.), *petition for reh’g en banc denied*, 187 F.4th 462 (6th Cir. 2026).

⁶ *See* Kaylie Martinez-Ochoa, Eileen O’Connor & Patrick Berry, *Tracker of Justice Department Requests for Voter Information*, Brennan Ctr. for Just. (Sep. 23, 2026), <https://perma.cc/J7F4-NYT4>.

DOJ has also recast its factual allegations. In its early complaints, DOJ alleged that its demands were prompted by state-specific concerns with voter list maintenance statistics. *See United States v. Bellows*, No. 1:25-CV-468 (D. Me. Sep. 16, 2025), ECF No. 5-4. Here, however, DOJ abandoned the pretext that its demands were prompted by individualized concerns with New York’s list maintenance program and instead argued that CRA demands require no factual basis at all. Br.41.

DOJ’s actions betray its true purpose: to take federal control of state voter list maintenance. The head of DOJ’s Civil Rights Division has confirmed that DOJ’s goal is to purge “hundreds of thousands of people” from voter rolls.⁷ DOJ intends to run the voter lists it obtains from States through the Department of Homeland Security’s (“DHS”) notoriously unreliable Systematic Alien Verification for Entitlements (“SAVE”) database to identify suspected noncitizens and then demand States remove them from voter rolls.⁸ DHS Secretary Mullin has threatened election officials with withheld grants, fines, and even criminal prosecution if they do not

⁷ AAG Harmeet Dhillon (@AAGHarmeetDhillon), X (Dec. 18, 2025, at 9:24 AM ET), <https://x.com/AAGDhillon/status/2001659823335616795>.

⁸ *See Authority to Obtain and Share Statewide Voter Roll Data*, 50 Op. O.L.C. ____ (May 12, 2026) (slip op. at 1, 5-7); Nicholas Kerr & Elise Spenner, *System That DHS Is Urging States to Use to Assess Voter Rolls Known to Return Faulty Results: Reports*, ABC News (July 19, 2026), <https://perma.cc/KQL4-F4DY>.

meet the administration’s voter removal demands.⁹ Those threats come even though a federal court recently found that the federal government had “haphazardly combined and repurposed the private information of millions of Americans, including citizenship data that they knew to be unreliable,” and that using SAVE for voter verification would risk removing “United States citizens from voter rolls based on inaccurate information.” *League of Women Voters v. DHS* (“*LWV I*”), 835 F.Supp.3d 79, 95 (D.D.C.), *stay granted sub nom. DHS v. League of Women Voters* (“*LWV III*”), No. 26A308, 2026 WL 2879700 (U.S. Sep. 25, 2026).¹⁰

III. DOJ sues New York to demand production of its protected voter data.

On June 30, 2025, DOJ sent a letter to the Co-Executive Directors of the New York State Board of Elections with a list of 15 inquiries, including a request that they produce a copy of “New York’s current statewide voter registration list.” JA Vol. I at 53-55. The list of inquiries included questions about New York’s list-maintenance processes and procedures, but the letter never mentioned the CRA. *Id.* The Board of Elections responded on July 24, 2025, stating that they anticipated

⁹ Rebecca Shabad, *Homeland Security Secretary Markwayne Mullin Threatens States Over Elections*, NBC News (July 17, 2026), <https://perma.cc/XE54-XUW2>.

¹⁰ Last week, the Supreme Court stayed an injunction entered by the district court in *LWV II*. In doing so, the per curiam majority opinion did not dispute the district court’s finding that data in SAVE is unreliable. For reasons discussed below, the Supreme Court’s stay is not relevant to the arguments in this appeal. *Infra* 53 n.14.

responding at the end of August. JA Vol. I at 57.

On August 14, 2025, DOJ sent another letter, this time demanding that the Board of Elections produce “an electronic copy of the statewide VRL” that contains “*all fields*.” JA Vol. I at 60 (emphasis in original). As authorization for its request, DOJ cited the NVRA’s disclosure provision, HAVA, and the CRA. JA Vol. I at 60-61. The letter stated that the “purpose of this request is to ascertain New York’s compliance with the list maintenance requirements of the NVRA and HAVA” and demanded that the SVRL produced include highly sensitive voter information. JA Vol. I at 61. The Board responded on August 29, 2025, answering in detail DOJ’s questions regarding New York’s list-maintenance practices, but because the bipartisan board did not reach a consensus to provide the unredacted list to DOJ, it declined to do so. JA Vol. I at 67. The Board, however, offered to provide a version of the SVRL after removing sensitive voter information (such as full or partial social security numbers). JA Vol. I at 72, 74.

DOJ sued on September 25, 2025. JA Vol. I at 23.

IV. The district court dismisses DOJ’s complaint.

DOJ’s complaint contained three claims, seeking the production of an unredacted copy of New York’s SVRL under the CRA, HAVA, and the NVRA. JA Vol. I at 35-38. The district court concluded that none of these statutes required production and dismissed the complaint. On appeal, DOJ does not challenge the

district court's rejection of its NVRA and HAVA claims, arguing only that the district court erred in dismissing the CRA claim. Br.3 n.2.

The district court first recognized that other courts had focused on whether DOJ's demands in parallel lawsuits had satisfied the CRA's statutory requirements by stating "the basis" and a proper "purpose" for the request in its demand letter. JA Vol. II at 447. The district court "observe[d] the same deficiencies" in DOJ's demand to New York that courts had identified in other States, noting that the demand "states no basis and the purported 'purpose' ... lacks any relation to the purposes for which [the CRA] was enacted." *Id.* However, the district court concluded it "need not even reach" those issues because the "CRA claim fails at the outset for an even more fundamental reason." JA Vol. II at 448. After carefully examining the CRA's text, the district court concluded (in accord with numerous other courts) that the SVRL does not "come into [the] possession" of election officials, as that term is used in the CRA, and therefore is not covered by the statute. JA Vol. II at 448-50. The district court further observed that if the SVRL *were* subject to the CRA, then that statute would prohibit the SVRL from being "altered," a result that would place the CRA into "conflict with the NVRA and HAVA," which require New York to regularly update its SVRL. JA Vol. II at 450-51. The district court dismissed the complaint. DOJ appealed.

SUMMARY OF THE ARGUMENT

1. The district court correctly reviewed DOJ's CRA claim under the Federal Rules of Civil Procedure, rejecting DOJ's argument that the CRA insulates its demand from judicial scrutiny. Nothing exempts CRA claims from review in the ordinary course, and the Supreme Court has made clear that judicial review of government document demands is necessary to ensure that any investigation will be conducted pursuant to a legitimate purpose, that the underlying statute has been satisfied, and that the court's process is not being abused. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964).

2. The district court also correctly dismissed DOJ's CRA claim for failure to state a claim. The district court correctly held that the CRA covers only static records—like voter applications—that “come into” the possession of election officials from an external source. 52 U.S.C. §20701. Dictionary definitions, common usage, and statutory context confirm that “come into” possession refers to receiving something from an outside source. The SVRL did not “come into” the possession of election officials, nor is it static; it is a dynamic database that is created, maintained, and continuously revised by election officials. Further, the CRA requires covered records to be retained, preserved, and not altered. That makes sense when applied to discrete documents submitted to election officials, but if extended to SVRLs, it

would place the CRA in irreconcilable conflict with HAVA, which commands election officials to continuously update and alter SVRLs.

3. This Court should also affirm on other grounds that the district court did not reach but nonetheless warrant dismissal. DOJ did not comply with the CRA's requirement that it state "the basis and the purpose" for its demand. 52 U.S.C. §20703. It failed to provide any factual basis at all, and its alleged purpose—assessing list-maintenance compliance—is beyond the scope of the CRA. The NVRA and HAVA specifically govern list maintenance, and fundamental principles of statutory interpretation preclude DOJ from repurposing the CRA to empower it to do what Congress chose not to authorize in the NVRA or HAVA. Further, New York law protects the sensitive voter data at issue here from disclosure, and there is no indication in the CRA that Congress intended to preempt state privacy laws. Finally, DOJ failed to comply with the notice requirements of the federal Privacy Act, and thus is not entitled to unredacted copies of the SVRL.

4. DOJ has failed to state a claim for myriad reasons, but even if the Court were to accept DOJ's arguments and reverse the ruling below, DOJ would not be entitled to the immediate production of the unredacted SVRL. The next proper step would be to remand and allow for discovery on, among other things, whether DOJ's stated purpose is pretextual.

STANDARD OF REVIEW

This Court “review[s] de novo the dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6).” *Darby v. Greenman*, 14 F.4th 124, 127 (2d Cir. 2021). This Court is “free to affirm on any ground that finds support in the record, even if it was not the ground upon which the trial court relied.” *Beijing Neu Cloud Oriental Sys. Tech. Co., Ltd. v. Int’l Bus. Machs. Corp.*, 110 F.4th 106, 113 (2d Cir. 2024) (quotation omitted).

ARGUMENT

I. The district court correctly held that DOJ’s CRA demand is subject to meaningful judicial review.

DOJ argues that a 64-year-old Fifth Circuit decision, *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962), largely exempts CRA claims from judicial review and that the tools available in the Federal Rules of Civil Procedure may not be used to challenge its CRA claim. See Br.37-39. According to DOJ, the CRA instead requires some unspecified “special statutory proceeding[s],” free of any inconvenient “procedural device[s] or maneuver[s]” questioning DOJ’s compliance with the statute it invokes. Br.38 (citing *Lynd*, 306 F.2d at 225-26). DOJ’s position is unfounded.

DOJ points to nothing in the Federal Rules or the CRA that exempts its claim from Rule 12(b)(6) analysis. The Federal Rules “govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule

81.” Fed. R. Civ. P. 1. This case is just such an action. Rule 81 provides a narrow set of prescribed cases that are exempt from the ordinary rules—such as certain admiralty or bankruptcy actions—but none involve the CRA. *See* Fed. R. Civ. P. 81(a).

Nor does anything in the CRA support the exemption DOJ seeks. The barrier DOJ faces here is high: the Federal Rules “are the default rules in civil litigation,” and while Congress may override that command, courts “do not lightly infer that Congress has done so; and silence on the subject is seldom enough.” *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 436 (2023). The CRA merely provides that federal district courts “shall have jurisdiction *by appropriate process* to compel the production of [a covered] record or paper.” 52 U.S.C. §20705 (emphasis added). That unremarkable jurisdictional language cannot be read to displace the Federal Rules or insulate CRA claims from routine judicial review.

In fact, just two years after the Fifth Circuit decided *Lynd*, the Supreme Court construed a statute with materially identical language to that found in the CRA (both refer to review by “appropriate process”) and held that, since it “contains no provision specifying the procedure to be followed in invoking the court’s jurisdiction, the Federal Rules of Civil Procedure apply.” *Powell*, 379 U.S. at 58 n.18. DOJ appears to recognize this: Despite suggesting the CRA supplants the

Federal Rules, DOJ explicitly invokes Rule 12(b)(6) as the standard of review for this appeal. Br.13-14.

Powell also recognizes the important role that meaningful judicial review plays in actions to enforce government document demands. *Powell* explains that a reviewing court must ensure, among other things, that the demand is made pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, and that the underlying statute authorizing the demand has been satisfied. *See* 379 U.S. at 58. It underscores that “[i]t is the court’s process which is invoked to enforce the administrative summons and a court may not permit its process to be abused.” *Id.* That more than authorizes all the judicial review Appellees seek here. Courts evaluating DOJ’s recent CRA demands have consistently held that “[t]he Supreme Court’s holding in *Powell* squarely rejects [DOJ’s] contention[s] and reliance on *Lynd*.” *United States v. Oregon*, 828 F.Supp.3d 1092, 1102 (D. Or. 2026), *appeal docketed*, No. 26-1231 (9th Cir. Mar. 3, 2026); *see also* JA Vol. II at 442-43 (collecting cases).

DOJ nonetheless claims that *Lynd* is “consistent” with the Supreme Court’s decision in *Donaldson v. United States*, 400 U.S. 517, 529 (1971). *See* Br.39. But as DOJ admits, *Donaldson* held the “Civil Rules, of course, do have an application” to suits to enforce governmental demands. 400 U.S. at 528; *see* Br.39. *Donaldson* simply denied a taxpayer’s attempt to intervene in enforcement proceedings directed

toward a different entity; it did not say anything about the required scope of such proceedings. 400 U.S. at 527-31. Moreover, the Court confirmed that Federal Rule 24(a)(2)—regarding intervention—continues to apply in a civil action to enforce a tax summons, reinforcing the general applicability of the Federal Rules in such actions. *See id.*

Lynd itself does not help DOJ, either. Unlike here, the *Lynd* court had no reason to doubt that DOJ invoked the CRA for a valid purpose and complied with the statute’s demand requirements. As it recognized, the CRA’s “clearest purpose[.]” is to permit investigations “concerning infringement or denial of ... voting rights”; there, “[t]he record establishe[d] without contradiction” that DOJ had “adequately stated the basis and the purpose” of its investigation based on evidence of racial discrimination “with respect to registration and voting.” *Lynd*, 306 F.2d at 228-29, 229 n.6. *Lynd* therefore never considered any of the issues currently before this Court and does not purport to foreclose judicial review of those issues. In any event, the Court confirmed that if there was a “genuine dispute” as to whether a “particular paper or record” is subject to the CRA, the court would “be open for ... determination” of that question. *Id.* at 226.

Finally, DOJ suggests judicial review is improper because the CRA contains no “meaningful standards” against which courts could ascertain the sufficiency of the Attorney General’s stated basis and purpose. Br.40. But the CRA itself provides

the standard—it requires that DOJ state “the basis and the purpose” for the demand, and it specifies what records fall within its scope.

II. The district court correctly held that the CRA does not cover state-created, dynamic records like New York’s SVRL.

The district court correctly held that an SVRL “is not a record or paper that a state must produce to the Government under [the CRA].” JA Vol. II at 454. That conclusion is required by the CRA’s plain text and accepted rules of statutory construction. Further, extending the CRA’s requirement that covered records remain unaltered to New York’s dynamic SVRL would put the CRA into conflict with HAVA, which requires *constant* changes to SVRLs. DOJ’s counterarguments are not persuasive and have been unanimously rejected by every court to consider them to date. *See Hobbs*, 2026 WL 2833713, at *6 (collecting decisions of 18 district courts and one court of appeals holding that the CRA does not cover SVRLs).

A. New York’s SVRL was created by New York election officials and therefore did not “come into” their possession.

The CRA requires election officers to “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. Only records that “come into” election officials’ possession are subject to inspection upon a proper demand by the Attorney General. *Id.* §20703. Here, all

interpretive tools point in the same direction: that the SVRL did not “come into” possession of New York election officials within the meaning of the CRA.

First, begin with ordinary meaning. The CRA does not define what it means for a record to “come into” possession of an election officer. But dictionaries from around the time Congress enacted the CRA equated “coming into” possession of something with acquiring, obtaining, or receiving the thing. *Come into*, *Webster’s Third New International Dictionary* 453 (1966) (“to enter upon or in possession of: acquire esp. as an inheritance”); *Acquire*, *Webster’s Third New International Dictionary* 18 (1966) (“to come into possession, control, or power of disposal of”); *Obtain*, 7 *Oxford English Dictionary* 37 (1933) (“to come into the possession or enjoyment of (something)”; *Receive*, *Webster’s Third New International Dictionary* 1894 (1961) (“to come into possession of: acquire”). This same understanding endures six decades later. *See, e.g., Receive*, *Black’s Law Dictionary* (12th ed. 2024) (defining “receive” as “to come into possession of or get from some outside source”).

Common usage confirms what the dictionaries make clear. Consider, as the Sixth Circuit did, a cake. “A baker may purchase ingredients from a grocery store (flour, eggs, etc.) and then proceed to bake cakes.” *Benson*, 179 F.4th at 479. The baker might have “come into” possession of the purchased ingredients, but it would be “rather strange to say” she has “‘come into’ possession” of a cake she baked with

those ingredients. *Id.* By the same principle, “an ordinary English speaker would not say” that New York came into possession of an SVRL that it “created.” *Id.*; *see also United States v. Evans*, No. 25-4403, 2026 WL 2267774, at *6 (D.D.C. Aug. 6, 2026) (drawing similar analogy). The district court’s definition of “come into possession” is accordingly the “natural” and “ordinary” meaning of the phrase. *See Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004). Because New York election officials internally generate and continuously update the SVRL, it does not “come into” their possession and thus is not a record subject to inspection under the CRA. *See* JA Vol. II at 451; N.Y. Elec. Law §5-614.

Second, other text within the CRA confirms that the statute’s use of “come into ... possession” does not reach an internally-created, dynamic database like the SVRL. *See Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003) (“The text’s plain meaning can best be understood by looking to the statutory scheme as a whole and placing the particular provision within the context of that statute.”). For example, §20701 explains that the relevant “records” are those “relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” Those are the sort of records that officials “obtain ... from third parties,” such as a prospective voter, rather than create themselves. *Benson*, 179 F.4th at 479; *see Yates v. United States*, 574 U.S. 528, 543 (2015) (plurality opinion) (“[A]ccompanying words” are key context because “a word is known by the

company it keeps.”). As the Sixth Circuit recounted, even the reference to records related to “payment of poll tax” reveals the narrow category of documents captured in this language. *Benson*, 179 F.4th at 479. When the CRA was enacted, voters would pay poll taxes to their sheriff, who would provide a receipt for the voter to present to election officials. *Id.* The CRA thus requires that officers “would have to retain and preserve the poll-tax receipts submitted by voters, as these were often the only voter-registration documents these States had.” *Id.*

Other provisions of the CRA further confirm that the statute covers only documents provided to election officials from an outside source. When a covered record “comes into” possession of an election official, the CRA initially requires the receiving official to “preserve” (and not “alter”) the record for 22 months. 52 U.S.C. §§20701-20702. However, the CRA specifies that “when required by law,” covered records “may be delivered to another officer of election,” or may be “deposited with” a State-designated custodian who will “retain and preserve these records and papers at a specified place,” at which point the retain-and-preserve requirement “devolve[s] upon” the new custodian. *Id.* This regulation makes sense when applied to records that are submitted to state election officials from an external source (such as applications for voter registration), since those are documents that *can* be “delivered to” or “deposited with” another person. But that is *not* true for New York’s SVRL, which is a “centralized” and “interactive” computer database. That database is not

transferred from one person to another; election officials across New York have simultaneous access to it and may continuously and independently change the information contained within it. 52 U.S.C. §21083(a)(1); N.Y. Elec. Law §5-614. Such a list is not being “delivered to” or “deposited with” any individual so that they can “retain and preserve” it in an unaltered format. 52 U.S.C. §§20701-20702.

A similar conclusion follows from §20701’s statutory time limit. A record covered by §20701 must be “retain[ed] and preserve[d]” only “for a period of *twenty-two months*” “*from the date of any [federal] election.*” *Id.* §20701 (emphasis added). This provision applies naturally to records received from an external source: a prospective voter submits an application for voter registration to an election official, and then the election official must retain that application (unaltered) for the 22-month period following the election, after which the election official is free to discard it. *Id.* §§20701-20702. In contrast, this statutory text simply does not fit an internally-generated record like New York’s SVRL, which was created decades ago, compiles voter information across many elections, and is intended to be perpetually maintained and updated. Applying the CRA to such a record would render the CRA’s 22-month time limit ineffective and inoperative. *See Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 156 (2d Cir. 2013) (“[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

Third, if Congress had intended for the CRA to cover dynamic documents created by election officials, such as SVRLs, it had “obvious alternative” language at its disposal. *United States v. Bellows*, 834 F.Supp.3d 113, 123 n.10 (D. Me. 2026) (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 16 (2014)). It could have written the CRA to simply encompass “all records” that met the subsequent statutory criteria, without any qualifier regarding possession, as it did in the NVRA. *United States v. Koski*, No. 3:26-CV-42, 2026 WL 2032532, at *5 (E.D. Va. July 14, 2026) (quoting 52 U.S.C. §20507(i)(1)). Or “Congress could have required the retention and production of all election-related records and papers ‘in the possession of’ the state election official.” *Bellows*, 834 F.Supp.3d at 123 n.10 (emphasis added). Indeed, Congress frequently employs the phrase “in the possession of” when it means to do so. *See, e.g.*, 30 U.S.C. §1732(b); 6 U.S.C. §1502(a); 18 U.S.C. §§3500(a)-(b), 1968(f)(3)-(4); 7 U.S.C. §12(e); 49 U.S.C. §47124a(b)(1). But Congress “chose not to use this broader formulation in Section 20701 and, having done so, the court must give meaning to the words ‘come into.’” *United States v. Scanlan*, No. 25-CV-371, 2026 WL 1864054, at *6 (D.N.H. July 29, 2026).

DOJ seeks to collapse the distinction between these alternative phrases, reading “come into ... possession” to reach all documents “in” an election official’s possession. But this renders the statute’s inclusion of “come into ... possession” meaningless. Indeed, the CRA’s text would align with DOJ’s proposed interpretation

only if the Court were to delete the phrase “which come into his possession” as follows:

Every officer of election shall retain and preserve ... 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[.]

52 U.S.C. §20701. But “[c]ourts are required to give effect to Congress’ express inclusions and exclusions, not disregard them.” *Nat’l Ass’n of Mfrs. v. Dep’t of Def.*, 583 U.S. 109, 126 (2018). As the district court recognized, DOJ’s interpretation would render “come into ... possession” as “surplusage,” JA Vol. II at 450, violating accepted canons of construction, *see Comm. to Stop Airport Expansion v. FAA*, 320 F.3d 285, 288 (2d Cir. 2003) (“We disfavor an interpretation of a statute that renders statutory language superfluous.”).

Fourth, the CRA also “draw[s] meaning from related provisions.” *Rucho v. Common Cause*, 588 U.S. 684, 716 (2019). Echoing language in the CRA, the materiality provision in the Civil Rights Act of 1964 prohibits the denial of the right to vote based on “an error or omission on *any record or paper relating to any application, registration, or other act requisite to voting*, if such error or omission is not material in determining whether such individual is qualified under State law to vote.” 52 U.S.C. §10101(a)(2)(B) (emphasis added); *see also* 52 U.S.C. §20701. The materiality provision concerns “errors or omissions on ... application forms,”

Schwier v. Cox, 340 F.3d 1284, 1294 (11th Cir. 2003), just as the 1960 CRA concerns application forms and similar materials submitted by voters.

Fifth, DOJ’s contrary reading would ascribe “a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.” *Yates*, 574 U.S. at 543. If DOJ were correct that the CRA reaches internally-generated documents, every email, memo, handwritten note, or any other record created by *any* election official in New York—including drafts—would need to be “retained and preserved” and not “altered,” so long as it “relat[es] to” a voter’s application, registration or other voting prerequisite in a particular election. 52 U.S.C. §§20701-20703. Those unlikely consequences, however, are avoided if “come into ... possession” is given its more natural reading of reaching only records obtained from an external source. *See United States v. Benson*, 819 F.Supp.3d 753, 770 (W.D. Mich. 2026) (“[N]othing in the CRA’s text implies an intent to require states to preserve every election-related record that they *create*.”).

B. Applying the CRA to New York’s SVRL would require it to be preserved without alteration, but federal law requires constant updates.

The CRA’s preservation requirement confirms that the statute does not apply to New York’s SVRL. Any record covered by the CRA must be “retain[ed] and preserv[ed]” and may not be “alter[ed].” 52 U.S.C. §§20701, 20702. If Section 20701 is read to cover New York’s SVRL, it would “effectively require election

officials to simultaneously preserve and modify the same record by creating a new, static version of the database with every single edit, which, per the state, would be ‘impractical to the point of impossible.’” *Scanlan*, 2026 WL 1864054, at *5 (quoting representations from the State of New Hampshire); *see* N.Y. Elec. Law §5-614(4) (requiring that “[a]dding, changing, canceling or removing voter registration records shall be conducted only by local boards of election”). It is implausible that “Congress was attempting to require the impossible.” *Anniston Mfg. Co. v. Davis*, 301 U.S. 337, 355 (1937).

The command to preserve and retain covered records is paired with Section 20702’s criminal penalties for those who willfully “alter” them. 52 U.S.C. §20702. HAVA, however, *requires* States to establish a dynamic SVRL “that is constantly being ‘altered’ as information is updated; voters are added; voters are removed; addresses changed; or any of the thousands of datapoints contained in the [list] otherwise require modification.” *United States v. Thomas*, No. 3-CV-21, 2026 WL 2070437, at *6 (D. Conn. July 17, 2026); 52 U.S.C. §21083(a). Adopting DOJ’s interpretation of the CRA would create an unavoidable clash with HAVA, and by extension, place election officials in the impossible bind of choosing which statute to honor—at risk of criminal penalty.

The Court should avoid an interpretation of the CRA that would introduce this legal discord. “The body of the law should make sense,” and “it is the responsibility

of the courts, within the permissible meanings of the text, to make it so.” Scalia & Garner, *Reading Law* 252 (2012). Accordingly, courts must “interpret Congress’s statutes as a harmonious whole rather than at war with one another.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018). Earlier-adopted statutes should be read “to contain that permissible meaning which fits most logically and comfortably into the body of both previously *and subsequently* enacted law.” *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 2165, 2177 n.8 (2026) (emphasis added) (citation omitted). This Court should join the Sixth Circuit and numerous district courts in declining to “adopt a reading that would place election officials in violation of one federal law for trying to comply with others.” *Benson*, 179 F.4th at 480.

C. DOJ’s interpretation of the CRA should be rejected.

DOJ lodges a host of objections to the district court’s conclusion, but none justify this Court departing from the chorus of judicial decisions holding that the CRA’s plain text does not extend to internally-generated, dynamic SVRLs.

First, DOJ misses the point in arguing that New York’s SVRL must be covered by the CRA because it “relates to voter registration” and the phrase “relating to” should be read “expansively.” Br.17. To be covered by the CRA, a record must not merely “relate to” voter registration—it must *also* “come into” the possession of election officials. Whether the SVRL *relates* to voter registration is irrelevant to

whether that dynamic, state-created list came into the possession of election officials.

Second, DOJ speculates Congress “likely used the term ‘comes into his possession’ precisely because it is broad enough to include both voter-generated and state-generated documents.” Br.18-19. But if reaching both categories of records were Congress’s objective, then as the district court recognized, simpler and more obvious language was available: “Congress could have referred simply to ‘records in the possession of’ election officials, or even just ‘records’ without any qualifier, but it did not.” JA Vol. II at 450 (cleaned up). To support its argument, DOJ cites a Fifth Circuit decision from the 1960s and a snippet of the CRA’s legislative history, both of which expressly use the phrase “*in* the possession” of election officials. Br.19 (quoting *Kennedy v. Owen*, 321 F.2d 116, 117 (5th Cir. 1963), and H.R. Rep. No. 86-956, 6 (1959) (emphasis added)). But those are not the words Congress wrote into the CRA, and, as discussed, DOJ’s proposed reading conflicts with the ordinary meaning of “come into ... possession” and renders that phrase surplusage.

Third, DOJ claims the Supreme Court “has demonstrated a similar understanding” of “come into ... possession,” citing *United States Department of Justice v. Tax Analysts*, 492 U.S. 136 (1989). See Br.20. But as the Sixth Circuit recognized, *Tax Analysts* “provides no insight” about “‘come into ... possession,’ as Title III uses it.” *Benson*, 179 F.4th at 481. In *Tax Analysts*, there was no dispute that

the relevant statutory term (“agency records”) would include self-created records; the Court’s analysis relied on a separate agency-recordkeeping statute that defined “record” to include materials “made *or received*” by an agency, 492 U.S. at 145-46 (emphasis added); and the phrase “come into ... possession” appears nowhere in the statute at issue in *Tax Analysts*.

Fourth, DOJ claims “courts have already rejected similar attempts to limit the scope of voting records under other statutes,” citing *PILF v. Bellows*. Br.21. In fact, that *NVRA* case undercuts DOJ’s reading of the CRA. *PILF* held that the NVRA’s inspection provision extends to (redacted) SVRLs because they “concern[] the implementation of programs and activities” relating to list maintenance. 92 F.4th at 47-49 (quoting 52 U.S.C. §20507(i)). But that language in the NVRA is targeted at internal, state-generated records about the “implementation” of state programs concerning SVRLs—quite unlike the CRA, which is focused on discrete and static records received from voters. Indeed, the phrase “come into possession” does not appear in the NVRA, and so it only makes sense that the scope of records covered would be different too. *See Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 279 (2018) (“We usually ‘presume differences in language like this convey differences in meaning.’” (citation omitted)).

Fifth, DOJ contends that the SVRL “c[ame] into possession” of New York election officials when they “aggregated” individual records received from voters

“into one new, single record.” Br.22. But this precisely illustrates the distinction drawn by the CRA: it is true the “individual records” sent by voters to election officials “c[a]me into [their] possession,” and thus are covered by the CRA, but no reasonable speaker of English would use that phrase to describe New York’s SVRL, which is a database created *by* election officials.

Sixth, DOJ proposes a “temporal” reading under which “come into” possession “cabins an election official’s liability to documents she received *during her tenure*.” Br.24 (quoting *Benson*, 179 F.4th at 487 n.8 (Nalbandian, J., dissenting) (emphasis added)). This interpretation is untethered from the CRA’s text, which does not contain the additional phrases that DOJ relies upon: “during her tenure” and “in the course of administering” an election. Br.24. As a result, the phrase “come into” does not, in the context of the CRA, support a reading that is limited to documents received during an official’s service.

DOJ also points to other statutes that use the phrase “come into possession,” Br.23 n.6, 25, but they only undercut DOJ’s “temporal” construction: Each confirms that Congress deliberately uses the phrase “come into possession” when referring to things *received* by someone. For example, 8 U.S.C. §1454(a) says that someone who “comes into” possession of a “lost” certificate of naturalization must return it to the Attorney General; in other words, “it presupposes receipt from an external source.” *Scanlan*, 2026 WL 1864054, at *5. DOJ’s other handpicked statutes also illustrate

that “come into” most naturally refers to receiving something from an outside source. *See, e.g.*, 44 U.S.C. §3572 (using phrase “comes into possession” in reference to statute regarding “information supplied by individuals or organizations to an agency”); 13 U.S.C. §214 (prohibiting disclosure of information that “comes into ... possession” of person by virtue of their employment with the Bureau of the Census, which collects data from U.S. citizens and residents); 10 U.S.C. §130c (using phrase “came into possession ... of the United States” in statute regarding information “provided by” a foreign government); 30 U.S.C. §1732(b) (providing States and Indian tribes access to oil and gas royalty information “as soon as practicable after it comes into the possession of the Secretary,” in a statute authorizing “cooperative agreement[s]” allowing States, Indian tribes, and the Secretary of the Interior “to share oil or gas royalty management information”). The district court’s construction of the CRA sits comfortably among these laws.¹¹

¹¹ Elsewhere, in a footnote, DOJ cites two instances in which Congress drafted statutes to reach certain records that were “created or made available for use by, obtained by, or otherwise came into the possession of” an agency. Br.19 n.4. DOJ argues this construction shows that Congress has used the phrase “came into ... possession” to “encompass both self-generation and receipt from an outside source.” *Id.* To the contrary, it demonstrates that Congress *distinguishes* between those two categories, making clear that a record is covered if it was “created” *or* “obtained” by an agency. There is no basis to read the residual clause containing “came into possession” as doing anything more than applying belt-and-suspenders language that reiterates the use of “obtained.”

Seventh, DOJ asserts that the “context” in which the CRA was enacted supports DOJ’s view. Br.26-28. In fact, it supports the opposite conclusion. The Civil Rights Commission found its investigation thwarted by Jim Crow officials’ efforts to destroy “[r]ejected applications” submitted by Black applicants, *Comm’n Rep.* at 93, and determined that comparing such applications to accepted applications submitted by White applicants was “essential to any investigation of denials of the right to vote,” *id.* at 137. That is why it recommended Congress enact legislation requiring voter applications to be preserved and subject to inspection. *Id.* at 138. The Attorney General agreed, explaining to Congress that, “[i]n many cases, discrimination in registration can be proved only by comparing the records of Negro applicants with those of white applicants.” *An Act to Enforce Constitutional Rights, and for Other Purposes: Hearings on H.R. 8601 Before the S. Comm. on the Judiciary, 86th Cong. 9 (1960)* (Statement of U.S. Att’y Gen. William P. Rogers). DOJ needed those *applications* specifically because “[w]ithout access to accepted and rejected registration materials, the Attorney General could not independently evaluate whether black voters had satisfactorily established their qualifications or had done all that was asked of white voters, such that their omission from the voter rolls could be attributed to race.” *Evans*, 2026 WL 2267774, at *9.

Unlike voter applications, voter lists would “not have enabled the Attorney General to conduct the sort of *comparative* analysis necessary to seek injunctive

relief.” *Id.* at *10 (emphasis added). Regardless, voter lists (although not SVRLs, with their detailed personal identifying information) were *already* available to DOJ in most states even before the CRA, because “voter rolls have long been treated as public records, which are made available to political parties, advocacy organizations, and members of the public.” *Id.* (citing Joseph P. Harris, *Registration of Voters in the United States*, Inst. for Gov’t Rsch. 44, 167, 179, 236, 259, 270, 272, 290 (1929)). That is why, “[i]n the years leading up to the passage of Title III, the Civil Rights Commission was able to obtain lists of qualified voters, even in jurisdictions hostile to its mission.” *Id.* It is no surprise that Congress drafted the CRA to cover records that were *not* already available, rather than ones that were.¹² In any event, New York *has* offered DOJ a version of its SVRL, with appropriate redactions to protect particularly sensitive voter information. JA Vol. II at 438-39.

Eighth, DOJ argues that the district court’s construction of the CRA should still cover the SVRL because the individual Defendants must have “received it from someone else in [their] office.” Br.31; *see also* Br.24-25. This again misunderstands

¹² DOJ also misses the mark with its complaint that the district court’s reading of the CRA would exclude “blatant evidence of discrimination” appearing in “internal memoranda.” Br.28. The fact that DOJ would find it convenient for the CRA to reach internally-created records cannot override the statutory text. Further, such evidence would be fully available to DOJ via civil discovery once it sets out a claim that survives a motion to dismiss and might also be reached by the NVRA’s inspection provision.

the nature of the SVRL. Unlike an individual document submitted from a voter to an election official, the SVRL is not an individual record that is transferred from one person to another. Rather, it is an “interactive” and “centralized” database that many persons can simultaneously access and change. 52 U.S.C. §21083(a)(1); N.Y. Elec. Law §5-614. Indeed, other language in the CRA emphasizes the difference between a dynamic database maintained and updated by multiple people and a static document that one election official passes along to another. 52 U.S.C. §20701 (providing that, if records are appropriately “deposited with” another custodian, then the duty to retain and preserve “devolve[s] upon such custodian”). It would be redundant if all the phrase “come into possession” did was address such situations.

It would also be strikingly odd for Congress to reach self-generated records in this way: under this theory, when an election official creates a new record, it would not be subject to the CRA until it was transmitted to a *different* election official. *See Evans*, 2026 WL 2267774, at *10 n.8 (rejecting DOJ’s argument that the CRA’s coverage would “turn on the staffing practices of state election bodies”). That is particularly true because if Congress had intended to reach internally-generated records, it could have done so “in a much more straightforward way.” *Azar v. Allina Health Servs.*, 587 U.S. 566, 577 (2019).

Ninth, DOJ argues that the district court incorrectly concluded that applying the CRA’s retain-and-preserve requirement to an SVRL would put that statute in

conflict with the NVRA's and HAVA's requirements that the SVRL be updated regularly. Br.32-37. DOJ relies on *Voter Reference Foundation* to suggest that DOJ's reading of the CRA can be harmonized with these statutes, but that is wrong. Br.33. In holding that a dynamic SVRL is a record under the *NVRA*, the Tenth Circuit interpreted the NVRA's directive to "*maintain*[]" records subject to disclosure. *Voter Reference Found.*, 160 F.4th at 1085 (quoting 52 U.S.C. §20501(b) (emphasis added)). Its holding hinged on the dictionary definition of "maintain": "to 'carry on' or 'keep up.'" *Id.* (quoting *Maintain, Oxford English Dictionary* (2d ed. 1989)). To "carry on" or "keep up" something stands in contrast to the CRA's command to "preserve," "retain," and not "alter" records. 52 U.S.C. §§20701-20702.

DOJ further attempts to paper over this conflict by asking the Court to ignore the plain meaning of the term "alter" in the CRA. Br.33-34. According to DOJ, a CRA-covered record is not altered unless it is destroyed or manipulated with ill intent. But "alter" simply means "to cause to become different in some particular characteristic." *Alter, Webster's Third New International Dictionary* 63 (1966). The very point of list maintenance is that the list will "become different" every time a voter registers, updates their registration, or is removed. DOJ also cites *Fischer v. United States* to suggest that the term "alter" applies only to actions that impair the document's evidentiary value, Br.34—but *Fischer* reached that conclusion because the obstruction-of-justice statute it construed in 18 U.S.C. §1512 contains an

additional mens rea requirement that the CRA does not: it criminalizes altering documents “*with the intent to impair the object’s integrity or availability for use in an official proceeding.*” 603 U.S. 480, 486 (2024) (emphasis added) (applying 18 U.S.C. §1512). And, depending on the issue being investigated, updating an SVRL *would* impair its evidentiary value—such as if an ineligible voter previously listed were removed. “Alter” “must be read in [its] context and with a view to [its] place in the overall statutory scheme.” *City & Cnty. of S.F. v. EPA*, 604 U.S. 334, 350 (2025) (citation omitted). Read together, the CRA’s requirements that covered records be retained and preserved, *and* not altered, are all consistent with an obligation to keep records in a static, identical form. It does not make sense to extend that obligation to a dynamic, constantly evolving SVRL.

Finally, DOJ turns to hyperbolic policy arguments, claiming that it would “paralyze” DOJ’s ability to enforce federal laws if the CRA did not reach SVRLs. Br.35. This is not credible. DOJ’s present campaign for *unredacted* SVRLs from nearly all States is unprecedented; DOJ has never before needed the sweeping and previously unasserted power it now claims is vital to enforcing federal law. Further, “policy concerns cannot trump the best interpretation of the statutory text.” *Patel v. Garland*, 596 U.S. 328, 346 (2022). If Congress thought it necessary for DOJ to

audit unredacted SVRLs to assess compliance with the NVRA or HAVA, it would have given DOJ the authority to do so *in the NVRA or HAVA*. It did not.¹³

III. The Court can also affirm the dismissal on other grounds.

DOJ's demand also fails for a multitude of independent reasons addressed by the parties below, each of which provides an independent basis to affirm.

A. The CRA demand is invalid because DOJ failed to state any "basis" for investigating New York's list maintenance program.

The district court correctly recognized that DOJ's demand letter failed to include any "basis" in its request. JA Vol II. at 447. That failure provides an additional ground for affirmance because the CRA requires the Attorney General to make a "demand in writing," and specifies that "[t]his demand shall contain a statement of the basis and the purpose therefor." 52 U.S.C. §20703. The inclusion of the word "shall" "imposes a mandatory command." *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). Requiring DOJ to articulate a factual basis for *why* it seeks the information it demands is an important check against bad-faith investigations. *See CFPB v. Accrediting Council for Indep. Colls. & Schs.*, 854 F.3d 683, 691 (D.C. Cir.

¹³ DOJ also asserts that, although the Sixth Circuit denied en banc review in *United States v. Benson*, a "nine-judge majority agreed with the United States on several significant points." Br.29. DOJ, however, overstates its case. In particular, Judge Murphy's concurrence in denial of rehearing (which two other judges joined in full and a third joined in part) is far more equivocal than DOJ suggests and does not clearly announce a definitive position on any of the issues raised by DOJ. *See United States v. Benson*, 187 F.4th 462, 463-69 (6th Cir. 2026) (Murphy, J., concurring in denial of rehearing en banc).

2017) (quashing civil investigative demand that failed to “adequately state ‘the specific conduct under investigation’”). Because DOJ failed to state the “basis” for its request in its demand letter, DOJ has not satisfied the CRA’s plain requirements.

DOJ alleges that its August 14, 2025, letter is its CRA demand, Br.41-42, but although that letter stated that the “*purpose* of the request is to ascertain New York’s compliance with the list maintenance requirements of the NVRA and HAVA,” it included nothing at all about DOJ’s *factual basis* for its demand. JA Vol. I at 61 (emphasis added). DOJ argues that a CRA demand does not require a “factual” basis, just a “legal one,” and thus that the mere fact that DOJ invoked potential violations of federal law in its letters was enough to comply with the “basis” requirement. Br.41; *see, e.g., United States v. Galvin*, 830 F.Supp.3d 122, 129 (D. Mass. 2026) (holding materially identical letter was “facially inadequate”), *appeal docketed*, No. 26-1657 (1st Cir. June 10, 2026). But “[r]eading ‘basis’ in the way [DOJ] suggests collapses its meaning with that of ‘purpose.’” *Oregon*, 828 F.Supp.3d at 1103. DOJ’s argument therefore fails as a matter of basic statutory interpretation. Under settled principles of statutory construction, courts “presume that Congress intended all words and provisions contained within a statute to have meaning and effect.” *United States v. Ahlers*, 305 F.3d 54, 58 (1st Cir. 2002). The conjunctive “and” in the CRA requires DOJ to state both “the basis” *and* “the purpose” for its demand; those two

requirements are distinct and independent from one another. *See United States v. Palomar-Santiago*, 593 U.S. 321, 326 (2021).

DOJ's attempt to conflate "basis" and "purpose" also ignores the plain meaning of "basis" as understood at the time of the CRA's passage. Dictionaries contemporaneous to the statute defined "basis" as "foundation" or "groundwork." *See, e.g., Basis, Black's Law Dictionary* (4th ed. 1968); *Basis, Webster's New World Dictionary of the American Language* 122 (college ed. 1959). That is very different from "purpose," which means "an end, intention, or aim, object, plan, project." *Purpose, Black's Law Dictionary* (4th ed. 1968). The CRA thus requires DOJ to state its aim in using the records demanded (its purpose) and *also* state its "factual basis for investigating a violation." *Oregon*, 828 F.Supp.3d at 1104; *see also United States v. Weber*, 816 F.Supp.3d 1168, 1184 (C.D. Cal. 2026) (holding that "basis" requires "specific, articulable facts pointing to the violation of federal law"). Accordingly, DOJ's attempt to reframe the inquiry as whether it provided New York with "notice" must be rejected. Br.42. The CRA does not tell DOJ to provide "notice"; it orders that DOJ "shall" include "the basis" for its demand. 52 U.S.C. §20703.

Demands made shortly after the passage of the CRA reveal that DOJ originally understood the CRA to require it to state its factual basis. *See, e.g., Lynd*, 306 F.2d at 229 n.6 ("This demand is based upon information in the possession of

the Attorney General tending to show that distinctions on the basis of race or color have been made with respect to registration and voting within your jurisdiction.”); *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) (similar). By contrast, DOJ’s demand to New York ignores this requirement.

Moreover, even if DOJ could rely on a “legal” basis, its purported “basis” here is disconnected from the information it seeks. A government document demand must be “reasonably relevant” to the matter under investigation. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *see also United States v. Sturm, Ruger & Co.*, 84 F.3d 1, 4 (1st Cir. 1996). But obtaining New York’s unredacted SVRL would shed little light on whether New York complied with its list-maintenance obligations, which only require “reasonable effort[s]” to remove voters who died or moved. 52 U.S.C. §20507(a)(4). The SVRL is just a snapshot of registered voters that becomes immediately outdated; it says next to nothing about New York’s *programs to remove* voters from the list. The unredacted list is thus not “reasonably relevant” to DOJ’s purported list-maintenance investigation.

B. DOJ’s purported purpose of investigating New York’s list-maintenance obligations is not a proper purpose under the CRA.

DOJ’s alleged purpose for its demand is “to ascertain New York’s compliance with the list maintenance requirements of the NVRA and HAVA.” JA Vol. I at 61. But as the district court recognized, investigating New York’s compliance with its

list maintenance obligations under those laws has no relation to the purpose of the CRA, JA Vol. II at 447, which Congress enacted to aid DOJ in the enforcement of civil rights laws (and specifically the Civil Rights Act of 1957).

It makes little sense to allow DOJ to use the CRA to investigate compliance with separate statutes—the NVRA and HAVA—that have detailed enforcement regimes of their own that do not include similar inspection authority. “The United States’ undertaking to obtain through the Civil Rights Act what it has all but conceded it cannot obtain under the specific statutes it is seeking to enforce is in direct contravention” of foundational principles of statutory interpretation. *Bellogs*, 834 F.Supp.3d at 126. When DOJ “wants to enforce HAVA and the NVRA, it must use the pre-suit investigation and enforcement mechanisms that Congress provided in those statutes—which do not contemplate production of the unredacted computerized list to the Attorney General so that he might loom over the shoulder of ... state election official[s].” *Id.*

- 1. A proper purpose for a CRA demand must relate to investigations into the denial of the right to vote and violations of civil rights laws.**

DOJ contends that the CRA “provides no limitation on the permissible purpose of” a Title III demand, such that the provision encompasses “investigating possible violations of [any] Federal statute.” Br.46. (quotation omitted). But the CRA’s text and overall context foreclose that expansive claim. Courts do not read

isolated fragments of statutory text to find previously undiscovered wellsprings of federal power. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) (explaining “a reviewing court should not confine itself to examining a particular statutory provision in isolation”). “Textualists—like all those who use language to communicate—do not interpret words in a vacuum. Instead, we use context, including ‘[b]ackground legal conventions,’ ‘common sense,’ and ‘constitutional structure,’ to ascertain a text’s ‘most natural meaning.’” *Learning Res., Inc. v. Trump*, 607 U.S. 229, 301 (2026) (Barrett, J., concurring) (quoting *Biden v. Nebraska*, 600 U.S. 477, 509, 511-12, 515 (2023)).

DOJ argues that Title III lacks specific language limiting it to violations of individuals’ voting rights. But the relevant statutory and historical context is rife with references to individual voting rights—and is not seriously disputed. *See supra* Statement §I.A. Congress enacted the CRA to bolster enforcement of a closely related statute, the Civil Rights Act of 1957. *See* Pub. L. No. 85-315, 71 Stat. 634 (1957). Title III’s “purpose is to enable the Attorney General to determine whether [§10101] suits or similar actions should be instituted.” *Lynd*, 306 F.2d at 228. But it was also undisputed that “[i]t [was] not the purpose of title III to supervise State elections.” *Hearings* at 700 (Statement of Rep. William M. McCulloch, a principal drafter of Title III). Rather, the “purpose of Title III” is to preserve records for cases where “reasonable cause is thought to exist that any person qualified to vote has been

improperly denied that right.” *Id.*; *see also id.* at 599 (Attorney General Rogers explaining Title III is meant to facilitate investigations into “complaints that qualified persons have been denied the right to vote in violation of Federal law”); 106 Cong. Rec. at 5086 (1960) (explaining Title III “requires the preservation of voting records and gives the Justice Department power to inspect them in enforcing the 1957 act” (Statement of Sen. Saltonstall)). Indeed, Representative Cramer, who proposed the relevant basis and purpose language, did so to ensure that any demand “have some relationship to the title and purpose of the bill, the title of the bill being ‘to enforce constitutional rights.’” 106 Cong. Rec. at 6392 (Statement of Rep. Cramer).

Buttressing this historical context are important “[b]ackground legal conventions,’ ‘common sense,’ and ‘constitutional structure.’” *Learning Res.*, 607 U.S. at 301 (Barrett, J., concurring) (quoting *Nebraska*, 600 U.S. at 509, 511-12, 515). The Constitution, in the first instance, “invests the States with responsibility for the mechanics of congressional elections.” *Foster*, 522 U.S. at 69. The Elections Clause empowers States to “provide a complete code for congressional elections, not only as to times and places, but in relation to ... registration.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932). And both the NVRA and HAVA supply important “background legal conventions” reinforcing that voter registration remains principally a state matter. *See supra* Statement §§I.B-C. These foundational

principles reinforce that Congress did not grant DOJ authority to demand inspection of unredacted state voter rolls on a whim and for any conceivable purpose.

Furthermore, the text of Title III itself is concerned with individuals' ability to register to vote and cast a vote freely. Its focus on "act[s] requisite to voting," 52 U.S.C. §§10101(a)(2)(B), 20701, demonstrates that its inspection provision is also rooted in an *individual's* right to vote. That unmistakable textual cue aligns with the CRA's history, which, as contemporary courts observed, "leaves no doubt but that [the CRA] is designed to secure a more effective protection of the right to vote." *Alabama ex rel. Gallion v. Rogers*, 187 F.Supp. 848, 853 (M.D. Ala. 1960). This Court should reject DOJ's attempt to convert the CRA, enacted to *protect* individuals' right to vote, into a tool to further its efforts to *remove* voters from States' voter rolls.

The Court also "must be guided to a degree by common sense," which reinforces that Congress did not haphazardly grant DOJ a power of such "political magnitude" in a six-decade-old civil rights law that no court has ever applied outside of voting rights investigations. *Brown & Williamson*, 529 U.S. at 133. In recent years, the Supreme Court has emphatically rejected the notion that Congress accidentally grants sweeping power to the Executive Branch through obscure or opaque statutory provisions. Instead, it demands "clear congressional authorization," not "a merely plausible textual basis," when an agency like DOJ claims previously

“unheralded” power. *West Virginia v. EPA*, 597 U.S. 697, 722-23 (2022). Congress, after all, “does not ... hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

DOJ fails to grapple with the context, history, statutory framework, and constitutional presumptions above. Nor does DOJ advance any principled limitation on the permissible scope of CRA demands. It quotes legislative statements to the effect that the CRA may be marshaled for the purpose of “investigating *possible* violations of a Federal statute.” Br.46 (quoting *Coleman*, 313 F.2d at 868 (quoting 106 Cong. Rec. at 7767 (Statement of Sen. Keating))) (emphasis added). But just beforehand, Senator Saltonstall made clear that Title III was intended “to add essential features to the laws already on the statute books toward ending discrimination in the voting privileges of our citizens.” 106 Cong. Rec. at 7767.

Ultimately, DOJ argues that Title III can be used to “investigat[e] possible violations” of *any* federal statute. But just as a parent’s instruction to “[m]ake sure the kids have fun” does not mean a babysitter may take the kids on a multi-day jaunt to a rollercoaster park, *Nebraska*, 600 U.S. at 513 (Barrett, J., concurring), the CRA’s instruction that DOJ state the “purpose” for its demand does not give DOJ carte blanche to invoke the CRA for whatever purpose it desires.

2. Ensuring compliance with the NVRA and HAVA is not a proper purpose under the CRA.

DOJ claims that even if “the purpose required in a demand for records under Title III must relate to a purpose of investigating violations of individuals’ voting rights,” it has done so because “ensuring compliance with the NVRA and HAVA” satisfies that requirement. Br.49 (quoting *Oregon*, 828 F.Supp.3d at 1105) (cleaned up).

To start with, a core problem with DOJ’s invocation of the CRA as a tool for disclosure of list maintenance records is that Congress has spoken to that issue in a different statute. The NVRA grants DOJ the right to inspect “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.” 52 U.S.C. §20507(i)(1). DOJ cannot supplant the tools Congress *did* provide for federal list maintenance supervision—including an inspection provision—with the one DOJ *wishes* Congress provided. Allowing DOJ to invoke another statute’s disclosure tool because it finds the NVRA unsatisfactory would result in “the superfluity of a specific provision that is swallowed by the general one.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). In such cases it is “[t]he terms of the specific authorization [that] must be complied with.” *Id.*; see also Scalia & Garner, *Reading Law* 184 (explaining the general provision is “suspended” as “to cases covered by the specific provision”).

DOJ argues for the first time on appeal that its purpose in monitoring New York's NVRA and HAVA compliance relates to voting rights. Br.48. This pivot fails immediately, as DOJ never stated such a purpose in the August 14 letter or DOJ's briefing in the district court. JA Vol. I at 92-94. And even if DOJ had made this assertion earlier, it cannot use the specter of supposedly "invalid votes" to transform an NVRA and HAVA list-maintenance investigation into a CRA-permissible civil rights investigation. Br.50. The authority DOJ relies on makes clear that list-maintenance issues such as "failures to purge voters who have moved away or have died" do not "bear any particular importance" to a CRA inquiry. *Kennedy v. Bruce*, 298 F.2d 860, 863 n.2 (5th Cir. 1962).

DOJ's attempt to shoehorn the CRA into a voter list inspection tool would also upset the "comprehensive scheme for the creation and upkeep of states' computerized SVRLs" Congress created in HAVA and the NVRA. *Bellows*, 834 F.Supp.3d at 125. Indeed, HAVA contains no inspection provision at all, and courts have concluded that the NVRA does not mandate the disclosure of the sensitive voter information DOJ seeks. *See PILF*, 92 F.4th at 56; *Voter Reference Found.*, 160 F.4th at 1083 n.14. And DOJ has abandoned its initial NVRA and HAVA claims on appeal, effectively conceding that neither the NVRA nor HAVA grants this freestanding authority. Br.3 n.2.

C. The CRA does not preempt New York’s voter privacy protections.

New York law prohibits the disclosure of sensitive information contained in one’s voter file, including the “voter’s driver’s license number, department of motor vehicle non-driver photo ID number, [and] social security number.” N.Y. Elec. Law §3-220(1). DOJ does not contest that New York law prohibits the disclosure of such information and now appears to concede that it will accept some redactions on the SVRL. *See* Br.55. Because DOJ has failed to demonstrate that the CRA preempts New York’s voter privacy laws, it is not entitled to New York’s full, unredacted SVRL.

Nothing in the CRA’s text specifically extends to sensitive voter information, and the early case law confirms it was not meant to. As *Lynd* recognized, the CRA was intended to reach only “public records which ought ordinarily to be open to legitimate reasonable inspection,” *not* “confidential, private papers and effects.” 306 F.2d at 231. Indeed, since driver’s license numbers and partial social security numbers were not required to be provided on registration forms until 2002, *see* 52 U.S.C. §21083(a)(5)(A)(i), Congress’s purpose in enacting the CRA could not possibly have extended to requiring the disclosure of such information. *See also Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (“[T]he purpose of Congress is the ultimate touchstone of pre-emption analysis.” (cleaned up) (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978))). Further, courts have held

that “nothing in the text of the NVRA prohibits the appropriate redaction of uniquely or highly sensitive personal information in [state voter files].” *PILF*, 92 F.4th at 56. Just like the NVRA, the CRA is devoid of any language prohibiting redactions.

D. The Privacy Act prohibits DOJ from collecting New York’s voter list.

The Court should also affirm because the mass data collection DOJ seeks would violate the Privacy Act. *See Weber*, 816 F.Supp.3d at 1192-94 (dismissing DOJ’s demand for California’s unredacted SVRL on this ground).

The Privacy Act “offers substantial protection[] regarding governmental use and retention of identifiable personal information.” *League of Women Voters v. DHS*, No. 25-CV-3501, 2025 WL 3198970, at *1 (D.D.C. Nov. 17, 2025), *stayed on other grounds*, *LWV III*, 2026 WL 2879700, at *2-3.¹⁴ One such requirement is that, before

¹⁴ On September 25, the Supreme Court stayed an injunction granted in *League of Women Voters* that would have prevented the federal government from allowing States to compare their voter files against the federal SAVE database. *See LWV III*, 2026 WL 2879700, at *2-3. The Court’s basis for granting the stay rested on 8 U.S.C. §1373, which (as relevant here) limits the ability of a State to “prohibit” or “restrict” its governmental entities from providing information regarding “citizenship” or “immigration status” to the federal government. *See* 8 U.S.C. §1373(a)-(b). That statute and the Court’s analysis in *LWV III* are not applicable here, for several reasons, including that §1373(b) only covers instances where the information to be provided regards “the immigration status, lawful or unlawful, of any individual.” Providing an SVRL—which is a snapshot of a State’s registered voters—is not providing information regarding whether an individual’s immigration status is lawful or unlawful.

an agency may “establish or revise any ‘system of records,’ it must ‘publish in the Federal Register ... a notice of the existence and character of the system of records.’” *Id.* at *2 (alterations omitted) (quoting 5 U.S.C. §552a(e)(4)). The System of Records Notice or “SORN” must include a defined set of information about the records stored in the system—including the “purposes for which the information is intended to be used,” whose records are at issue, and the types of records covered. 5 U.S.C. §552a(e).

DOJ does not contest that New York’s SVRL qualifies as a “system of records” under the Act. *See Schwier v. Cox*, 412 F.Supp.2d 1266, 1271-72 (N.D. Ga. 2005) (holding a voter list is a system of records), *aff’d*, 439 F.3d 1285 (11th Cir. 2006). DOJ must, therefore, issue a compliant SORN “*before*” it engages in activity covered by the Act. *LULAC v. Exec. Off. of the President*, 818 F.Supp.3d 34, 115-16 (D.D.C. 2026).

DOJ points to a SORN identified as “JUSTICE/CRT – 001,” the “Central Civil Rights Division Index File and Associated Records.” Br.55-56. But this SORN fails to support DOJ’s attempt to collect voter data here several times over. *First*, it does not disclose what DOJ intends to do with the voter data—indeed, it does not even *mention* the NVRA, HAVA, or the CRA. DOJ seeks to excuse this omission because the SORN refers to the Civil Rights Division’s website, which in turn mentions the statutes, Br.56 n.16, but the Privacy Act requires information in the

SORN to be “publish[ed] in the Federal Register”—not on an agency’s webpage. 5 U.S.C. §552a(e)(4). And the Division’s website merely lists the statutes enforced by the Voting Section—it does not disclose the intended “routine use[s]” of the mass data collection DOJ seeks here, and so does not satisfy the Privacy Act. 5 U.S.C. §552a(e)(4)(D).

Second, the SORN says DOJ may maintain information about the “[s]ubjects of investigations, victims, [and] potential witnesses.” 68 Fed. Reg. 47610, 47611 (Aug. 11, 2003). DOJ insists this language covers its demand because every one of the more than *ten million* registered voters in New York is simultaneously a “subject” and “victim” in its “investigation into ... voter fraud.” Br.56-57. New York’s voters would be aghast to learn that DOJ views each and every one of them as a “subject”—a term that, as DOJ recognizes, means that the individual’s “conduct” is under “investigation,” *id.*, a designation serious enough that it would normally trigger a well-advised recipient to seek criminal defense counsel. And it is similarly implausible to call every registered voter in New York a “victim” in an investigation purportedly about the sufficiency of the State’s voter roll maintenance. Reading those terms as capaciously as DOJ urges would make a mockery of the Privacy Act’s notice requirements.

Third, the SORN describes the categories of covered records as “case files, matters, memoranda, correspondence, studies, and reports relating to enforcement

of civil rights laws and other various duties of the Civil Rights Division.” 68 Fed. Reg. at 47611. Although this language may cover run-of-the-mill files maintained for specific investigations and litigation, it would be remarkable to conclude—as DOJ insists—that these terms extend to permit proactively seizing each State’s full, unredacted voter list.

For all these reasons, this SORN does “nothing to put a member of the American public on notice that specifically, their voter registration data is going to be collected on [such] an unprecedented level.” *Weber*, 816 F.Supp.3d at 1193-94. “Because the DOJ has not fulfilled its requirements under the Privacy Act, it cannot collect the sensitive, unredacted voting records of millions of” New York residents. *Id.* at 1194.¹⁵ And, contrary to DOJ’s invitation to ignore this Privacy Act violation and order production of New York’s SVRL anyway, Br.53-54, courts may not “command[] unlawful conduct.” *Bartch v. Barch*, 111 F.4th 1043, 1063 n.23 (10th Cir. 2024) (quoting *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 79-80 (1982)); see *Ind. Prot. & Advocacy Servs. Comm’n v. Ind. Family & Soc. Servs. Admin.*, 149 F.4th 917, 939 (7th Cir. 2025) (“Needless to say, courts are not authorized to issue

¹⁵ The “law enforcement” exception DOJ references means only that DOJ is not *categorically* barred from collecting First Amendment information. See 5 U.S.C. §552a(e)(7). There is no law enforcement exception to the Act’s SORN requirement. *Id.* §552a(e)(4).

injunctions that authorize or direct people to violate valid federal statutes.” (cleaned up)).

IV. If the Court vacates the dismissal, it should remand for additional proceedings.

Even if the Court were to reverse, it should reject DOJ’s audacious request to “remand with instructions to order the BOE to immediately produce the requested unredacted SVRL” and to immediately issue its mandate. Br.66. The appropriate next step would be for the matter to proceed to discovery, including as to whether DOJ’s purpose in seeking New York’s SVRL was pretextual. *See United States v. Clarke*, 573 U.S. 248, 254 (2014) (permitting discovery into government’s motive in issuing document demand upon “a showing of facts that give rise to a plausible inference of improper motive”). The CRA requires DOJ to state “the purpose” for its demand, so it matters whether the asserted purpose is the true one.

The district court recognized that multiple other courts have expressed concern regarding DOJ’s “potential ulterior motives for seeking sensitive voter data.” JA Vol. II at 447 n.7; *see, e.g., Weber*, 816 F.Supp.3d at 1182-86 (concluding DOJ’s stated purpose in demanding California’s SVRL was “pretextual” and “contrived”); *Oregon*, 828 F.Supp.3d at 1107 (expressing “serious doubt as to the true purposes for which [DOJ] is seeking voter registration lists in this and other cases, and what it intends to do with that data”). The district court “d[id] not take [these concerns] lightly,” but concluded that they could not be considered at the

motion-to-dismiss stage. JA Vol. II at 447 n.7. If this Court were to vacate the district court's dismissal, the appropriate next step would be to allow the district court to consider factual evidence related to the true purposes of DOJ's unprecedented investigation into New York's voter file, after appropriate discovery, to determine if the investigation is being done for an "improper motive." *Clarke*, 573 U.S. at 254.

CONCLUSION

The Court should affirm.

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 32(a) and Second Circuit Local Rule 32.1(a)(4)(A) because it contains 13,994 words, excluding the parts exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) because it was prepared in Times New Roman 14-point font using Microsoft Word for Microsoft 365.

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