UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEAGUE OF WOMEN VOTERS, *et al*., Plaintiffs, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al*., Defendants.	Case No. 1:25-cv-03501 (SLS)

BRIEF OF CAMPAIGN LEGAL CENTER; CENTER FOR MEDIA AND DEMOCRACY; COMMON CAUSE; AND PROTECT DEMOCRACY PROJECT AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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RULE 26.1 CERTIFICATION

Pursuant to Local Civil Rule 7(o)(5) and Fed. R. App. P. 29(4)(A):

I, the undersigned, counsel of record for *amici curiae* Campaign Legal Center; Center for Media and Democracy; Common Cause; and Protect Democracy Project, hereby certify that *amici* do not have any parent companies, subsidiaries, affiliates, or companies that own at least 10% of the stock of *amici*. These representations are made in order that judges of this Court may determine the need for recusal.

/s/ Elizabeth D. Soltan
Elizabeth D. Soltan

Counsel for Amici Curiae

STATEMENT OF INTEREST[1]

Campaign Legal Center is a leading nonpartisan, nonprofit organization that has been working for more than 20 years to advance democracy through law. Campaign Legal Center engages in litigation, policy development, and advocacy to protect voting rights and ensure broad and equal access to the ballot.

Center for Media and Democracy is a nationally recognized nonpartisan watchdog organization that has been researching and exposing threats to democracy and the undue influence of powerful special interests for more than 30 years. The center's in-depth investigations, public information requests, and strategic litigation shine a light on manipulations of public policy and law that infringe upon our constitutional rights and freedoms, including the right to vote.

Common Cause is a nonpartisan, good-government organization dedicated to grassroots voter engagement. For decades, Common Cause has supported efforts to make voter registration more accessible, fought measures that inhibit voter participation, and helped Americans register to vote and update their registrations. It has an interest in protecting the voting and privacy rights of its members and an organizational interest in encouraging qualified voters to register and to participate in the political process. Common Cause's work requires trust, and the overhaul of SAVE imperils voter trust in the integrity of the electoral process and the government's desire and ability to safeguard their sensitive data.

[1] In accordance with Local Civil Rule 7(o)(5), Amici certify that (1) the attached brief was authored entirely by counsel for the amicus curiae and not by counsel for any party, in whole or in part; (2) no party or counsel for any party contributed money to fund preparing or submitting the attached brief; and (3) apart from *amici curiae*, their members, and their counsel, no other person contributed money to fund preparing or submitting the attached brief.

Protect Democracy Project ("Protect Democracy") is a nonpartisan, nonprofit organization dedicated to building more resilient democratic institutions and protecting free and fair elections. Protect Democracy uses litigation, policy advocacy, research, and data analysis to promote trust in elections and defend the fundamental right to vote of all eligible citizens.

Amici have an interest in this case because they promote democracy and help voters access the ballot. Defendants' actions at issue in this case are already jeopardizing the rights of qualified voters and making democratic participation more difficult. Amici have expertise in election law and an interest in defending voting rights.

INTRODUCTION

Amici, organizations dedicated to promoting democracy and increasing access to voting, object to the overhaul and repurposing of the Systematic Alien Verification for Entitlements Program ("SAVE") as an illegal effort to nationalize voter registration and disenfranchise qualified voters. The right to vote is fundamental to American democracy, and the Trump administration's overhaul of SAVE attacks that fundamental right on the flimsy pretext of rooting out supposed noncitizen voting—a phenomenon so rare as to be practically nonexistent. The problems the SAVE overhaul purports to address are not real, but the harms it creates are. The overhauled SAVE system, never designed or authorized for these purposes, relies upon incomplete citizenship data the government admits is riddled with errors. Nonetheless, the administration is using this faulty data to call into doubt eligible American citizens' right to vote by instructing states to cancel their valid voter registrations. Voters about whom the SAVE system has incorrect information, often naturalized and derived citizens, may be required to overcome burdensome and costly documentary proof of citizenship ("DPOC") requirements within short timeframes or lose their right to vote. In addition to violating numerous statutes, the

administration's use of SAVE for these purposes is also an unconstitutional usurpation of powers that the Constitution grants to the states and to Congress by an executive branch with disregard for any constraints imposed by law. The overhaul of SAVE is a flagrant attempt to undermine faith and participation in democracy.

ARGUMENT

I. The overhaul of SAVE burdens the right to vote.

The right to vote is at the heart of American democracy. It is "regarded as a fundamental political right" that is "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Making voting more accessible to qualified voters, rather than presenting more hurdles for them to jump, increases the effectiveness and representativeness of our democracy. "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)).

The overhaul of SAVE burdens the fundamental right to vote. As DHS and SSA have admitted, the overhauled SAVE system is rife with errors. When the government improperly attempts to use the system for voter verification—a purpose it was never designed for—these errors lead to qualified voters having to take burdensome steps to prove their citizenship status. According to USCIS guidance, "if . . . an individual with acquired citizenship [e.g. some foreign-born children of U.S. citizens] has not obtained a record of that citizenship, e.g., by applying for and receiv[ing] a Certificate of Citizenship from USCIS or a U.S. passport

from the Department of State, SAVE may not be able to confirm that individual's acquired citizenship." *Voter Registration and Voter List Maintenance Fact Sheet*, USCIS (last updated Feb. 2, 2026), https://www.uscis.gov/save/current-user-agencies/guidance/voter-registration-and-voter-list-maintenance-fact-sheet. Similarly, as DHS is aware, "[t]he lack of a common identifier, such as the SSN, between SSA and DHS means that information about foreign-born citizens contained in USCIS naturalization databases may not be locatable when SSA information is inadequate to confirm citizenship status." Westat Report to DHS, *Evaluation of the Accuracy of E-Verify Findings* (July 2012), https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf, at 34. Under the traditional SAVE system, an inconclusive result could lead to a second- and third-step manual review by USCIS to resolve the error. But in the overhauled version, DHS acknowledges that "the new request using Social Security numbers does not allow for a second and third step review," as USCIS "does not have direct access to the Social Security Administration system to support these additional steps"; states should do them, but USCIS cannot make them. DHS, *Privacy Impact Assessment for the Systematic Alien Verification for Entitlements "SAVE" Program*, DHS Reference No. DHS/USCIS/PIA-006(d) (Oct. 31, 2025), https://www.dhs.gov/sites/default/files/2025-10/privacy-pia-dhsuscis006d-save-october2025%20%28002%29.pdf, at 20. In some states, eligible voters, especially derived and naturalized citizens, are already being forced to provide DPOC or risk being purged from voter rolls. *See* Decls. in Supp. of Pls.' Mot. for Summ. J., ECF No. 66, Attachs. 2-11. As USCIS continues to press for the use of SAVE in many states, additional states will doubtless adopt similar programs. These errors make it inevitable that eligible voters will have to take action to

protect their right to vote—action that costs them time, effort, and money to address an issue that does not exist.

In states that are using SAVE to check voter eligibility, inaccurate results are already leading to eligible voters receiving notices informing them that they are suspected of being ineligible to vote. One such notice from a county in Texas is provided as Exhibit 1 to the Declaration of Alex Doe in support of Plaintiffs' Motion for Summary Judgment. *See* ECF No. 66-4 at 8. It reads in part:

> We have received information from the Texas Secretary of State reflecting that you might not be a United States citizen. . . . Please provide proof of U.S. citizenship within thirty (30) days from the date of this letter. If we do not receive a response from you within thirty (30 days), your voter registration will be canceled.

Providing DPOC requires many Americans to produce documents that they do not have on hand and that are difficult and costly to obtain. A recent study showed that more than 9% of Americans do not have ready access to DPOC; that number jumps to 11% for self-identified voters of color. Kevin Morris and Cora Henry, *Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available*, BRENNAN CTR. FOR JUST. (June 11, 2024), https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily. For naturalized and derived citizens, the burden is especially high. If a naturalized citizen does not have access to their original naturalization/citizenship document—whether it is stolen, lost to a fire or natural disaster, misplaced in a move, or otherwise unlocatable—it costs $555 to file a paper request for a replacement and $505 to do so online. There is a seven-page form to complete the request. *See N-565, Application for Replacement Naturalization/Citizenship Document*, USCIS (last updated Dec. 29, 2025), https://www.uscis.gov/n-565. Average wait times to obtain replacement copies were 4.9 months in Fiscal Year 2025 and 5.6 months in Fiscal Year 2024. *Historical National*

Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year, USCIS (last updated Feb. 28, 2026), https://egov.uscis.gov/processing-times/historic-pt.

Derived citizens are even more unlikely to have DPOC readily accessible. While derived citizens can apply to DHS for a Certificate of Citizenship, the form's instructions make clear that obtaining the certificate is optional. The online filing fee is currently $1,335; the paper filing fee is $1,385. *See G-1055, Fee Schedule for N-600, Application for Certificate of Citizenship*, USCIS (last updated Mar. 23, 2026), https://www.uscis.gov/g-1055?form=n-600. According to SSA's national average wage index, the average monthly wage in 2024 was $5,820; the cost of the online filing fee represents just under 23% of average monthly earnings. *National Average Wage Index*, SSA, https://www.ssa.gov/oact/cola/AWI.html (last visited Apr. 1, 2026). Thus, as DHS has recognized, derived citizens "frequently do not apply for and thus do not receive a determination and certificate of United States citizenship . . . ." DHS, *Privacy Threshold Analysis for SAVE Program Optimization* (July 17, 2025), https://www.citizensforethics.org/wp-content/uploads/2026/01/Copy-of-SAVE-Privacy-Threshold-Analysis-7_17_25-10_17_25.pdf. Many people would have no need to obtain this form *except* to respond to a request for DPOC so they can vote. Given the steep cost of obtaining a Certificate of Citizenship, eligible voters will face a choice between preserving their right to vote and covering survival needs for themselves and their family.

Beyond the financial burden of obtaining a Certificate of Citizenship is a timing problem. Even if voters are willing and able to pay the steep fee for a Certificate of Citizenship, it is unlikely they will be able to get one in time to vote. Per USCIS, median processing times for a Certificate of Citizenship were 2.9 months in Fiscal Year 2025 and 4.3 months in Fiscal Year 2024. *Historical National Median Processing Time (in Months) for All USCIS Offices for Select*

Forms By Fiscal Year, USCIS (last updated Feb. 28, 2026), https://egov.uscis.gov/processing-times/historic-pt. That is well beyond the 30-day deadline in the above Texas notice after which a lawful voter's registration would be canceled. While the notice does allow voters to present DPOC at their polling place even if they miss the arbitrary 30-day deadline, there is no guarantee that SAVE searches will only be run far enough in advance of elections to ensure that voters have time to obtain their certificate and preserve their right to vote. And there is no remedy for the voter whose notice goes to the wrong address, who misunderstands the notice, who mistakes it for junk mail, and shows up at the polls without DPOC and with no way to get documents in time. In other words, the practical effect of all these requirements is that voters may be unable to get the necessary information to cast their votes.

Data errors could also lead to U.S.-born citizens, not just derived and naturalized citizens, having to present DPOC. There are numerous potential sources of error. For one, SSA only began tracking citizenship information regarding applicants for Social Security Numbers ("SSNs") in 1981, so when SAVE queries SSA data for voters born before that date, it may return missing or inaccurate citizenship information. Letter from SSA Off. of Gen. Counsel to Fair Elections Ctr. (July 13, 2023), https://fairelectionscenter.org/wp-content/uploads/2025/07/SSA-Touhy-Decision-letter.July-13-2023-signed.pdf, at 2. In addition, overhauled SAVE now allows states to search records using truncated SSNs (that is, just the last four digits), in part because many states do not collect full SSNs as part of their voter lists. These searches might return information about a different individual whose SSN contains the same last four digits or otherwise create confusion. For voters who do not have a copy of their birth certificate or a current passport, obtaining one will require an investment of time and money. About 47% of Americans do not have a current passport. Center for American Progress, *The*

SAVE Act Would Disenfranchise Millions of Citizens, tables (Jan. 31, 2025), https://www.americanprogress.org/wp-content/uploads/sites/2/2025/01/SAVEact-tables.pdf. Passports cost $165 to obtain and $130 to renew, and routine processing time is four to six weeks. *See Passport Fees*, Dep't of State (last updated Feb. 10, 2026), https://travel.state.gov/content/travel/en/passports/how-apply/fees.html. In Texas, birth certificates ordered online take 20-25 days to process and those ordered by mail take 25-30 days. Practically speaking, none of these are likely to arrive before the voter's registration would be cancelled. There are even more challenges for people whose documents do not have a consistent name, such as those who change their last name when they get married.

Beyond these concrete harms, notices of ineligibility are intimidating. They warn voters that they are suspected of voting when ineligible—which is a federal crime punishable by up to one year in prison. *See* 18 U.S.C. § 611. Federal authorities threaten harsh punishments, including denaturalization, for individuals who cast votes when they are not citizens. *See* Carol Leonnig et al., *White House directing DHS to hunt for voter fraud by naturalized citizens: Sources*, MS NOW (Feb. 18, 2026), https://www.ms.now/news/memo-shows-white-house-directing-dhs-to-hunt-for-voter-fraud-by-naturalized-citizens (describing DHS internal memo with headline, "Potential Voter Fraud – Denaturalization" that directs an initiative to search for past voting fraud by naturalized citizens); Glenn Thrush et al., *Administration Targets Noncitizen Voting, Despite Finding It Rare*, N.Y. TIMES (Feb. 18, 2026), https://www.nytimes.com/2026/02/18/us/politics/voting-trump-immigrants-midterms.html. The Texas Secretary of State promised referrals for investigation by the Office of the Attorney General for voters deemed to be noncitizens based on SAVE searches. Press Release, Tex. Sec'y of State, "Texas Completes Citizenship Verifications in the SAVE Database" (Oct. 20, 2025),

https://www.sos.state.tx.us/about/newsreleases/2025/102025.shtml. The head of the USCIS division that oversees SAVE has stated publicly that voters whom SAVE identifies as noncitizens will be referred to DHS for potential criminal investigation. Jen Fifield and Zach Despart, *A federal tool to check voter citizenship keeps making mistakes. It led to confusion in Texas.*, TEX. TRIBUNE (Feb. 13, 2026), https://www.texastribune.org/2026/02/13/save-voter-citizenship-tool-mistakes-confusion/. For a new citizen in a country where ICE has wrongfully detained and even deported United States citizens, choosing to present oneself to any government authority while under suspicion of fraud could be a terrifying prospect. Many people who have done nothing wrong might prefer to sit out elections rather than try to correct their records. Declarant Bailey Doe, for example, who became a U.S. citizen in 2021, was "initially scared to even call or go visit [their] county elections office because [they] know that federal immigration officers, including ICE, have been showing up at courthouses and other government buildings to question and arrest people." ECF No. 66-18 at ¶¶ 2, 18.

II. Baseless claims of noncitizen voting do not justify the SAVE overhaul.

Defendants' attempts to justify the overhauled SAVE as a protection against noncitizen voting have no factual foundation. In DHS's press release touting the SAVE overhaul, a spokesperson claimed, "Illegal aliens have exploited outdated systems to defraud Americans and taint our elections. . . . Under Secretary Noem's leadership, this revamped SAVE system will ensure government officials can swiftly verify legal status, halting entitlements and voter fraud." Press Release, DHS, "DHS, USCIS, DOGE Overhaul Systemic Alien Verification for Entitlements Database" (Apr. 22, 2025), https://www.dhs.gov/news/2025/04/22/dhs-uscis-doge-overhaul-systematic-alien-verification-entitlements-database. As courts around the country have

confirmed, the claims that "[i]llegal aliens" have "taint[ed] our elections" or engaged in widespread "voter fraud" are not based on empirical evidence.

Repeated studies have shown that noncitizen voting is incredibly rare, and where it has occurred, it has been adequately addressed by the existing legal process. There is no evidence to support DHS's aggressive interventions, particularly when these interventions exceed its legal authority. *See Update: Review of Claims of Noncitizen Registrants and Voters*, CTR. FOR ELECTION INNOVATION & RSCH. (Feb. 2026), https://electioninnovation.org/research/noncitizen-analysis-update/ ("sweeping allegations about noncitizen registrations or voting appear to arise from misunderstandings, mischaracterizations, or outright fabrications about complex voter data"); *Voting by Noncitizens is a Non-Issue*, FAIR ELECTIONS CTR. (last updated Mar. 3, 2026), https://fairelectionscenter.org/voting-by-noncitizens-is-a-non-issue/ (collecting data from studies and state-level reviews by election officials showing no evidence of widespread noncitizen voting); Stephen Richer, *Trump's Claims about Noncitizens Voting Are False. We Can Prove It.*, CATO INST. (Feb. 5, 2026), https://www.cato.org/commentary/trumps-claims-about-noncitizens-voting-are-false-we-can-prove-it (describing "new state-level proof that noncitizen voting is virtually nonexistent"); Wren Orey et al., *Four Things to Know about Noncitizen Voting*, BIPARTISAN POLICY CTR. (Feb. 20, 2026), https://bipartisanpolicy.org/article/four-things-to-know-about-noncitizen-voting/ (manual review of The Heritage Foundation's oft-cited Election Fraud Cases database found only 77 instances of noncitizen voting between 1999 and 2023, each of which was investigated by the authorities).

Data from states that have used the overhauled SAVE to review their voter registration lists bear out this fact. Of Texas's complete voter registration list of 18 million voters, SAVE

identified 2,724 *potential* noncitizens who had registered to vote. *See* Press Release, Tex. Sec'y of State, "Texas Completes Citizenship Verifications in the SAVE Database" (Oct. 20, 2025), https://www.sos.state.tx.us/about/newsreleases/2025/102025.shtml. Moreover, since Texas's implementation of the SAVE results, individual voters and election officials have proven that the error rate among this subset of flagged voters is substantial. Many naturalized and derived citizens were flagged as ineligible. Jen Fifield and Zach Despart, *A federal tool to check voter citizenship keeps making mistakes. It led to confusion in Texas.*, TEX. TRIBUNE (Feb. 13, 2026), https://www.texastribune.org/2026/02/13/save-voter-citizenship-tool-mistakes-confusion/. Since many contacted voters may not respond, the error rate is likely even higher than this evidence suggests. Moreover, not all of these flagged voters have ever cast ballots and many were registered due to administrative error, after the applicants identified themselves as noncitizens. *Id*. Ultimately, the state only referred 33 people to their Office of the Attorney General for investigation. *Id.* Texas has not published data on the outcomes of those investigations, but even if all 33 people investigated were noncitizens and registered voters, that would constitute only 0.0001% of registered voters in the state. Reports from Indiana and Louisiana show similarly negligible instances of noncitizen voting. *See* Gabriella Sanchez and Kevin Morris, *Louisiana's Chief Election Official Confirms Lack of Widespread Noncitizen Voting*, BRENNAN CTR. FOR JUST. (Sept. 12, 2025), https://www.brennancenter.org/our-work/analysis-opinion/louisianas-chief-election-official-confirms-lack-widespread-noncitizen; Tom Davies, *Indiana officials say review found 21 noncitizens voting in state*, IND. CAP. CHRONICLE (Dec. 4, 2025), https://indianacapitalchronicle.com/2025/12/04/indiana-officials-say-review-found-21-noncitizens-voting-in-state/. Using the supposed prevalence of noncitizen voting as a justification for this overhaul is a lie that camouflages voter suppression as voter protection.

Courts have recognized the practical non-existence of noncitizen voting. In considering a preliminary injunction against the Election Assistance Commission's decision to allow several states to require DPOC to accompany national mail voter registration forms, the D.C. Circuit acknowledged "precious little record evidence" that enjoining this requirement would actually allow fraudulent registration by noncitizens and pointed to the miniscule numbers of noncitizens found to have even attempted to vote in prior cases in Arizona and Kansas. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016). Similarly, in *Fish v. Schwab*, a case regarding a challenge to a Kansas state law requiring DPOC, the Tenth Circuit affirmed the district court's finding that the evidence at trial did not support Kansas's contention that the DPOC requirement was necessary to protect against noncitizen voting, noting there was "essentially no evidence that the integrity of Kansas's electoral process had been threatened, that the registration of ineligible voters had caused voter rolls to be inaccurate, or that voter fraud had occurred." 957 F.3d 1105, 1134 (10th Cir. 2020). Even an expert witness for the state in that case calculated that the number of rejected voting applications from noncitizens under Kansas's DPOC requirement was "statistically indistinguishable from zero." *Id*. at 1115. And as discussed in further detail below, Congress has not seen a need to require DPOC to protect the integrity of the election process. In passing the National Voter Registration Act, one of the purposes of which was to "protect the integrity of the electoral process," Congress considered and rejected a proposed amendment allowing states to require DPOC. 52 U.S.C. § 20501(b)(3); *see League of United Latin Am. Citizens v. Exec. Off. of President*, 808 F. Supp. 3d 29, 84 (D.D.C. 2025) (citing H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.)). There is no evidence that noncitizen voting is a significant problem at all, let alone one that justifies throwing major obstacles in the way of voting and disenfranchising qualified voters.

III. The overhaul of SAVE violates the separation of powers doctrine.

Along with its many other problems, DHS and SSA's overhaul of SAVE violates the separation of powers principle, a crucial underpinning of the American political system. The Constitution presumes coequal branches, and the "doctrine of separation of powers" lies "at the heart of our Constitution." *Buckley v. Valeo*, 424 U.S. 1, 119 (1976).

By twisting SAVE into a national voter eligibility system, DHS and SSA have attempted to grant the executive branch powers over elections that the Constitution grants exclusively to Congress and the states. The Constitution vests "the power to determine who is qualified to vote" in the states, and "the power to regulate federal election procedures" rests exclusively with the states and Congress. *League of United Latin Am. Citizens*, 808 F. Supp. 3d at 42-43 (citing U.S. Const. art. I, § 2, cl. 1 ("Voter Qualifications Clause") and U.S. Const. art. I, § 4, cl. 1 ("Elections Clause")). The executive branch, whether the President himself or the agencies that are following his direction, has no constitutional authority for meddling in matters of voter eligibility.

Congress has passed no statute giving DHS and SSA authority to overhaul SAVE and twist its purposes. "Federal agencies are creatures of statute. They possess only those powers that Congress confers upon them." *Judge Rotenberg Educ. Ctr., Inc. v. FDA*, 3 F.4th 390, 399 (D.C. Cir. 2021); *see also* Mem. in Supp. of Pls.' Mot. for Summ. J., ECF No. 66-1 at 27-28 (discussing nondelegation doctrine). Not only has there been no affirmative Congressional grant of authority for the overhaul, as explained on pages 25-32 of the Memorandum in Support of Plaintiffs' Motion for Summary Judgment, but Defendants' actions violate express prohibitions in the Privacy Act against creating a national database of individuals' private, sensitive information.

The Congressional authorization for the original use of SAVE is a specific, limited purpose: verifying the status of noncitizens for the purposes of granting *benefits*. *See* Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, title I, § 121(a)(1)(C), 100 Stat. 3359, 3384-86 (1986) (codified at 42 U.S.C. § 1320b-7(d)) (section titled "Verification of Immigration Status of Aliens Applying for Benefits under Certain Programs"). The statute lists the particular benefits that require states to verify applicants' immigration status via SAVE, including food stamps, unemployment compensation, and medical assistance—it makes no mention of voting or elections. 42 U.S.C. § 1320b-7(b). The statute gives no indication that Congress was establishing a verification process for voter eligibility. "'[B]oth separation of powers principles and a practical understanding of legislative intent' suggest Congress would not have delegated 'highly consequential power' through ambiguous language." *Learning Res., Inc. v. Trump*, 607 U.S. __, 146 S. Ct. 628 (2026) (citation omitted). Indeed, as the Supreme Court further explained in its most recent explication of the major questions doctrine, which reviewed its growing jurisprudence applying the doctrine, "'a reasonable interpreter would [not] expect' Congress to 'pawn[]' such a 'big-time policy call[] . . . off to another branch.'" *Id.* (citation omitted). Defendants cannot look to Congressional authorization for the original, limited version of SAVE for a delegation of Article I elections authority.

Defendants instead claim a different statutory authorization for the SAVE overhaul: 8 U.S.C. § 1373, a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). *Compare* Privacy Act Notice of Modified System of Records, 85 Fed. Reg. 31798, 31800 (May 27, 2020) ("2020 SAVE SORN") (identifying authority for maintenance of the system), *with* Privacy Act Notice of Modified System of Records, 90 Fed. Reg. 48948, 48952 (Oct. 31, 2025) ("2025 SAVE SORN") (identifying same authority with sole addition of 8 U.S.C.

§ 1373(c)). But Section 1373 tells government entities what they may *not* do, not what *to do*: "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C.A. § 1373(a). There is no mention of setting up an overhauled data matching system and no reference to SAVE at all. There is no hint that Congress intended this language as a delegation to DHS to set up a complex verification program like the overhauled SAVE.

Where Congress intends to set up a data matching system, it says so directly. IIRIRA is such a statute, but it established and authorized a different program—E-Verify—not the overhauled SAVE system. IIRIRA directed Immigration and Naturalization Service (the predecessor to USCIS) to create pilot programs for verifying applicants' and employees' work authorization via data matching between INS and SSA records starting in 1998. (That pilot program started two years after the statute was passed; DHS "found" authorization to overhaul SAVE in the same statute 30 years after it passed.) The language of the statute is a directive to create a program:

> The Attorney General shall establish a pilot program confirmation system through which the Attorney General . . . responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) . . . concerning an individual's identity and whether the individual is authorized to be employed . . . .

Pub. L. No. 104-208, § 404, 110 Stat. 3009-546, 3009-664 (1996) (codified at 8 U.S.C. § 1324a note). IIRIRA included specific directives on how matching should be performed, such as mandating that "[t]he Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and

shall provide a process for the prompt correction of erroneous information . . . ." *Id.* § 404(g). The statute also put strict limits on the usage of data associated with E-Verify, forbidding it to be repurposed for any other use. *Id.* § 404(h). Section 1373 is also part of IIRIRA, but because it does not actually authorize any data matching system, there is no corresponding direction on how it should be kept accurate and up-to-date or how errors should be corrected.

Congress includes clear limitations when it creates large-scale data sharing programs, in part because the Privacy Act, Social Security Act, and other statutes require them. *See* Mem. in Supp. of Pls.' Mot. for Summ. J., ECF No. 66-1 at 32, 35-38. Since its inception and through multiple amendments to the Privacy Act, Congress has consistently expressed wariness regarding the centralization of personal data, notably through the Computer Matching and Privacy Protection Act of 1988, which imposed stringent requirements on interagency data matching programs to restrict data centralization, and the E-Government Act of 2002, which mandated Privacy Impact Assessments for new information aggregations to balance modernization with privacy risks. *See* Pub. L. No. 100-503, 102 Stat. 2507 (1988) (codified at 5 U.S.C. § 552a note); Pub. L. No. 107-347, 116 Stat. 2899 (2002) (codified at 44 U.S.C. § 101 note). Given that context, it is implausible that Congress would create a massive data-matching program like the overhauled SAVE in an unrelated, prohibitory provision like 1373. Perversely, because DHS and SSA can point to no valid authorizing statute, they are also acting in the absence of any statutory safeguards to protect voters' rights. That is, because they have no basis for a Congressional delegation of power, they are exercising even broader, more unconstrained power with no authorizing statute to impose guardrails. *See* Mem. in Supp. of Pls.' Mot. for Summ. J., ECF No. 66-1 at 26-32. The modified Statement of Record Notice that DHS issued on October 31, 2025 regarding the SAVE overhaul creates no standardized process for individuals to contest the

stripping away of their voting rights, leaving that to the discretion of state election officials. Instead, it purports to authorize DHS to represent to states that it provides verification of citizenship status of voter registrants or voter registration applicants—and induces states' reliance on DHS's data for list maintenance—but then fails to put in place any protections for voters that could curb the detrimental effects of its admittedly flawed data. *See* 2025 SAVE SORN at 48950 ("If SAVE is unable to provide an initial automated response verifying the benefit applicant's immigration status or U.S. citizenship, SAVE will provide instructions on actions the user agency *may* take, including requesting additional verification.") (emphasis added).

The SAVE overhaul is part of a larger effort to centralize Americans' private information. The executive branch is engaging in a multipronged effort to centralize collection of Americans' private information, including by creating a centralized federal voter database. This is an unprecedented usurpation of election powers that the Constitution wisely vests in the states and Congress. The Department of Justice has pressed states to sign Memoranda of Understanding ("MOUs") that entail agreeing to transfer voter data to DOJ for voter list maintenance—and so that the federal government can ultimately check these records against the overhauled SAVE (and any other data it sees fit). Devlin Barrett and Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. TIMES (Sept. 9, 2025), https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html; Alexander Castro, *Providence federal judge grills DOJ lawyer over reasons for demanding RI's voter data*, R.I. CURRENT (Mar. 26, 2026), https://rhodeislandcurrent.com/2026/03/26/providence-federal-judge-grills-doj-lawyer-over-reasons-for-demanding-ris-voter-data/. These MOUs provide that DOJ can analyze states' voter rolls, direct states to remove specific voters, and retain sensitive

voter records even after removal or investigation. Colorado has publicly released the text of the proposed Memorandum of Understanding, which includes the provision, "[y]ou agree therefore that within forty-five (45) days of receiving that notice from the Justice Department of any issues, insufficiencies, inadequacies, deficiencies, anomalies, or concerns, your state will clean its VRL [Voter Registration List]/Data by removing ineligible voters and resubmit the updated VRL/Data to the Civil Rights Division of the Justice Department to verify proper list maintenance has occurred by your state . . . ." DOJ, *Confidential Memorandum of Understanding* (Dec. 1, 2025), https://www.brennancenter.org/media/14806/download/2025-12-01-doj-mou-to-colorado.pdf?inline=1, at 5. The majority of states refused to turn over their full voter registration lists, citing concerns about DOJ's authority to request the data and how it would be handled, and DOJ has sued 29 of them, plus the District of Columbia. Eileen O'Connor, *Trump Administration Has Sued More than 20 States for Refusing to Turn Over Voter Files*, BRENNAN CTR. FOR JUST. (Jan. 16, 2026), https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-has-sued-more-20-states-refusing-turn-over-voter; Press Release, DOJ, "Justice Department Sues Five Additional States for Failure to Produce Voter Rolls" (Feb. 26, 2026), https://www.justice.gov/opa/pr/justice-department-sues-five-additional-states-failure-produce-voter-rolls. The three courts to address DOJ's claims have dismissed the cases. *See United States v. Benson*, No. 1:25-cv-01148-HYJ-PJG, 2026 WL 362789 (W.D. Mich. Feb. 10, 2026); *United States v. Oregon*, No. 6:25-cv-01666-MTK, 2026 WL 318402 (D. Or. Feb. 5, 2026); *United States v. Weber*, No. 2:25-cv-09149-DOC-ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026). As the *Weber* decision put it, "[t]he centralization of this information by the federal government would have a chilling effect on voter registration which would inevitably lead to decreasing voter turnout as voters fear that their information is being used for some inappropriate or unlawful

purpose. This risk threatens the right to vote which is the cornerstone of American democracy." *Weber*, No. 2026 WL 118807, at *20. The same risk is present here, as Defendants continue to use voters' data to deny their rights to participate in our democracy.

CONCLUSION

For all the foregoing reasons, Amici respectfully urge Plaintiffs' Motion for Summary Judgment should be granted.

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Respectfully submitted,

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