

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UNITED STATES OF AMERICA

Plaintiff,

v.

JENA GRISWOLD, in her Official Capacity
as Secretary of State for the State of
Colorado,

Defendant.

CASE NO: 1:25-cv-03967

MEMORANDUM IN SUPPORT OF THE
REQUEST FOR ORDER TO COMPEL
PRODUCTION OF RECORDS PURSUANT
TO 52 U.S.C. § 20701, *et seq.*

MEMORANDUM OF LAW

I. INTRODUCTION

Section 301 of Title III of the Civil Rights Act of 1960 (“CRA”) imposes a “sweeping” obligation on election officials. *Kennedy v. Lynd*, 306 F.2d 222, 226 (5th Cir. 1962).¹ It provides, “Every officer of election shall retain and preserve, for a period of twenty-two months from the date of [a 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 (transferred from 42 U.S.C. § 1974) (emphasis added).

Section 303 provides the Attorney General of the United States a correspondingly sweeping power to obtain Federal election records: “Any record or paper required by [52 U.S.C. § 20701] to be retained and preserved shall, upon demand in writing by the Attorney General or [her] representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying ... by the Attorney General

¹ Caselaw addressing the CRA in any depth is confined to courts within the Fifth Circuit in the early years following the CRA’s enactment. Since then, courts have not had occasion to revisit the issue. The United States is unaware of any courts disagreeing with the Fifth Circuit’s approach to the CRA.

or [her] representative....” 52 U.S.C. § 20703. The written demand need only “contain a statement of the basis and the purpose therefor.” *Id.*; *Coleman v. Kennedy*, 313 F.2d 867, 868 (5th Cir. 1963) (per curiam).

On May 12, 2025, the Attorney General, through her representatives, made a written demand to Secretary of State Jena Griswold to produce certain federal election records covered by the CRA. That written demand explained that the purpose of the demand was to assess Colorado’s compliance with the list maintenance requirements of the National Voter Registration Act (“NVRA”) and the Help America Vote Act (“HAVA”). Secretary Griswold refused to produce the requested Federal election records. This litigation followed.

Pursuant to Section 305 of the CRA, the United States moves for an order to compel production that requires Secretary Griswold to produce the federal election records identified in the written demand. *See Alabama ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 855-56 (M.D. Ala. 1960), *aff’d and adopted in full sub nom. Dinkens v. Attorney General*, 285 F.2d 430 (5th Cir. 1961) (per curiam). The CRA displaces the Federal Rules of Civil Procedure by creating a “special statutory proceeding.” *Lynd*, 306 F.2d at 225. “All that is required is a simple statement by the Attorney General” after making a written demand for Federal election records and papers covered by the statute, explaining that the person against whom an order is sought has failed or refused to make the requested records ““available for inspection, reproduction, and copying...”” *Id.* at 226 (quoting 52 U.S.C. § 20703). The United States has satisfied those requirements. Accordingly, the United States respectfully requests that the Court issue an order to compel Defendant to produce the federal election records described in its written demand.

II. BACKGROUND

A. Title III of the Civil Rights Act of 1960.

Under Section 301 of the CRA, every “officer of election” must “retain and preserve ... all records and papers which come into his possession relating to any ... act requisite to voting in [a Federal] election” for a period of twenty-two months from that election. 52 U.S.C. § 20701. Section 303 of the CRA provides, “Any record or paper required by section 301 to be retained

and preserved shall, upon demand in writing by the Attorney General or [her] representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or [her] representative....” 52 U.S.C. § 20703. The written demand “shall contain a statement of the basis and the purpose therefor.” *Id.*

If an officer of election refuses to comply with the CRA’s command, the Act requires “a special statutory proceeding in which the courts play a limited, albeit vital, role” in assisting the Attorney General’s investigative powers. *Lynd*, 306 F.2d at 225. The Attorney General or her representative may request a federal court to issue an order directing the officer of election to produce the demanded records, akin to “a traditional order to show cause, or to produce in aid of an order of an administrative agency.” *Id.*

The special proceeding is “summary” in “nature” and neither “plenary [n]or adversary.” *In re Gordon*, 218 F. Supp. 826, 826-27 (S.D. Miss. 1963); see *Kennedy v. Bruce*, 298 F.2d 860, 863 (5th Cir. 1962) (noting that this procedure “does not amount to the filing of a suit of any kind”). “All that is required is a simple statement by the Attorney General that after a ... written demand” for Federal election records covered by Section 301 of the CRA (52 U.S.C. § 20701), “the person against whom an order for production is sought ... has failed or refused to make such papers ‘available for inspection, reproduction, and copying’” *Lynd*, 306 F.2d at 226 (quoting 52 U.S.C. § 20703). The court does not entertain “any other procedural device or maneuver—either before or during any hearing of the application—to ascertain the factual support for, or the sufficiency of, the Attorney General’s ‘statement of the basis and the purpose therefor’ as set forth in the written demand.” *Id.* (quoting 52 U.S.C. § 20703). Rather, “[t]he Court, with expedition, should grant the relief sought or, if the respondent-custodian opposes the grant of such relief, the matter should be set down without delay for suitable hearing on the matters open for determination.” *Id.*

Those matters, though, are “severely limited.” *Id.* The court may adjudicate only: (1) “whether the written demand has been made”; and (2) “whether the custodians against whom

orders are sought have been given reasonable notice of the pendency of the proceeding.” *Id.* Neither “the factual foundation for, or the sufficiency of, the Attorney General’s ‘statement of the basis and the purpose’ contained in the written demand” nor “the scope of the order to produce” is open for review. *Id.*; see *Coleman*, 313 F.2d at 868. As the Fifth Circuit has explained, “No showing even of a prima facie case of a violation of Federal law need be made.” *Id.* (citation omitted). Instead, “[i]f, after issuance of an order to produce, a genuine dispute subsequently arises as to whether or not any specified particular paper or record comes within [52 U.S.C. § 20701’s] broad statutory classification,” that issue may be decided by the court. *Lynd*, 306 F.2d at 226.

B. The Attorney General is demanding Federal election records under the CRA to assess Colorado’s NVRA and HAVA compliance.

On May 12, 2025, the Attorney General, acting through her representatives at the Department of Justice (“Department”), sent a letter to Jena Griswold, Secretary of State of Colorado, regarding Colorado’s compliance with federal list maintenance requirements. Ex. 1, Dep’t Ltr. to Griswold dated May 12, 2025 (“May 12 Letter”). The NVRA and HAVA have list maintenance requirements “to protect the integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). The statutes impose certain recordkeeping duties and require reasonable efforts to maintain lists of eligible voters for federal elections. See 52 U.S.C. §§ 20507(a)(4), 20507(i)(1), 21083(a)(1)(A).

The Letter requested a copy of all records, as outlined in 52 U.S.C. § 20701, and a certification that no record required for preservation has been deleted, destroyed or altered from its original format. The May 12 Letter also requested that Colorado provide all statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures Colorado has put in place relating to implement the requirements of 52 U.S.C. § 20701.

The May 12 Letter requested that this information be provided within 14 days of the date of the letter.

On December 1, 2025, attorney Eric Neff followed up by email to Secretary Griswold requesting Colorado’s Statewide Voter Registration list (“SVRL”) (the December 1 Email). The December 1 Email also stated that:

The United States is prepared at this early stage to enter into an MOU with the State of Colorado regarding the sharing of the nonpublic, unredacted voter registration list. I have attached that MOU, which we believe cures all potential concerns a state might rightfully raise regarding its citizens’ private data and identifying information. Ex. 2, December 1 Email.

On December 3, 2025, Secretary Griswold responded by email stating “We received your request. We will not be producing unredacted voter files or signing the MOU.” December 3 Email. Ex. 3.

III. ARGUMENT

A. **The United States is entitled to an Order to Compel Production under the CRA.**

An order to compel production of documents under the CRA is appropriate when the United States files a “simple statement” describing its written demand for inspection, reproduction, and copying, and explaining that the officer of election to whom it was directed has “failed or refused to make such papers ‘available for inspection, reproduction, and copying.’” *Lynd*, 306 F.2d at 226 (citation omitted). The written demand must include “a statement of the basis and the purpose therefor.” 52 U.S.C. § 20703.

The Department’s May 12 Letter satisfies these requirements by: (1) making a written demand for inspection, reproduction, and copying of federal election records, including the SVRL and records of voter registration application within twenty-two months of a federal election; (2) directing that demand to Secretary Griswold, an officer of election as defined by

Section 306 of the CRA;² and (3) stating that the purpose of the demand is “[t]o assist our efforts in evaluating the complaint...” Ex. 1, May 12 Letter.

The Attorney General cannot assess compliance with HAVA and the NVRA without the full, unredacted SVRL and other requested federal election records pertaining to Colorado’s list maintenance efforts. HAVA prohibits a state from processing a voter registration application without the applicant’s driver’s license number, where an applicant has a current and valid driver’s license, or, for other applicants, the last four digits of the applicant’s social security number; for those lacking both identification numbers, the state must assign a unique HAVA identifier. *See* 52 U.S.C. § 21083(a)(5)(A)(i)-(ii). Without the data including those identification numbers, the United States cannot evaluate the state’s compliance with HAVA.

Similarly, HAVA requires list maintenance to “be conducted in a manner that ensures” the elimination of duplicate names from the statewide list. 52 U.S.C. § 21083(a)(2)(B)(iii). Unredacted voter files, including the three identification numbers described above, are needed to determine if the state has a reasonable program of identifying and removing duplicate voter registrations. That is why twenty-five states (including Colorado) share the identical information sought by the Attorney General here with a private organization known as the Electronic Registration Information Center (“ERIC”). Secretary Griswold routinely shares this data with ERIC.

² Section 306 provides:

As used in this chapter, the term “officer of election” means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

52 U.S.C. § 20706.

The same unredacted Federal election records, including the SVRL, are needed to assess Colorado's compliance with the NVRA. The use of unredacted voter data ensures that matches to identify deceased and duplicate voters are more accurate and complete.

Secretary Griswold has rejected the United States's written demand pursuant to the CRA to produce Colorado's statewide VRL, a federal election record. Consequently, the United States respectfully requests that this Court issue an Order compelling Secretary Griswold to immediately produce those records through a secure method. *See Lynd*, 306 F.2d at 226; *Coleman*, 313 F.2d at 868.

B. The CRA does not permit Defendant to withhold federal elections because of privacy concerns.

Defendant has refused to produce the federal election records demanded by the Attorney General under the CRA because he contends that Colorado's election law and the Federal Privacy Act prohibit cooperation without an appropriate purpose stated by the Attorney General. First, the May 12 letter provided Secretary Griswold with the Attorney General's purpose for the demand. Second, the Supremacy Clause of the Constitution says otherwise. It is a basic tenet of our federal system that when Federal and State law conflict, the federal law governs. *See* U.S. Const. art. VI. As this Circuit has explained, If the federal voting laws and state law "do not operate harmoniously in a single procedural scheme for federal voter registration, then Congress has exercised its power to 'alter' the state's regulation, and that regulation is superseded." *Gonzalez v. Arizona*, 677 F.3d 383, 394 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.* ("ITCA"), 570 U.S. 1 (2013).

A South Carolina court recently confronted the same argument from an individual voter seeking to enjoin state officials from cooperating with the Department. Addressing Federal preemption over state statutes governing privacy, the court explained, "Federal law likely requires the Election Commission to provide the requested information to DOJ, and while DOJ has also pointed to the National Voter Registration Act and the Help America Vote Act, Title III [of the Civil Rights Act] alone is sufficient to reach that conclusion." *Crook v. S.C. Election*

Comm'n, No. 2025-CP-40-06539 (Richland Cty. Comm. Pleas Oct. 1, 2025), attached to the Declaration of Eric Neff as Ex. 4, at 10. The court noted, “Title III requires that, for 22 months after a federal election, a state election official ‘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.” *Id.* at 10-11. The court reasoned:

Title III has long been understood to “encompass[], among other things, voting registration records,” *McIntyre v. Morgan*, 624 F. Supp. 658, 664 (S.D. Ind. 1985), which is not surprising given the scope of the statutory text. And since HAVA’s enactment two decades ago, registration records must include either “the applicant’s driver’s license number” or “the last four digits of the applicant’s social security number.” 52 U.S.C. § 21083(a)(5)(A). The Attorney General (or his representative) may demand in writing “[a]ny record or paper” that a state election official must keep under § 20701. *Id.* § 20703. That demand must simply “contain a statement of the basis and the purpose therefor.” *Id.*

Id. at 11. As a result, the court found, “DOJ’s request for South Carolina’s voter registration list fits comfortably within this legal framework” and denied the voter’s request to enjoin the state’s production of its list to the Department. *Id.* at 11-12. For those reasons, *id.*, any state-law privacy right to the contrary is preempted by the CRA’s broad grant of access to the Attorney General. *See* 52 U.S.C. § 20703; *Summers*, 759 F. Supp. 3d at 461. Consequently, the Attorney General is entitled to the federal election records she has demanded from Secretary Griswold under the CRA, notwithstanding any conflicting state privacy laws.

C. The Attorney General is entitled to relief under the CRA’s summary proceeding for obtaining federal election records.

The CRA displaces the Federal Rules of Civil Procedure and creates a “special statutory proceeding” under which Secretary Griswold, as an officer of election for Colorado, must produce the voter-registration lists and other federal election records demanded by the Attorney General.³ *Lynd*, 306 F.2d at 225. The court in *Lynd* reasoned that a special proceeding was

³ Although this Motion for an Order to Compel Production is made under the CRA, the United States notes that the NVRA includes a similar requirement for production of Federal election

necessary to obtain federal election records because no other procedural device or maneuver was available:

There is no place for a motion for a bill of particulars or for a more definite statement under F.R.Civ.P. 12(e), 28 U.S.C.A. There is no place for any other procedural device or maneuver— either before or during any hearing of the application— to ascertain the factual support for, or the sufficiency of, the Attorney General's 'statement of the basis and the purpose therefor' as set forth in the written demand. [52 U.S.C. § 20703]. Thus with respect to the reasons why the Attorney General considers the records essential, there is no place, either as a part of pleadings, discovery, or trial, for interrogatories under F.R.Civ.P. 33, oral depositions of a party under F.R.Civ.P. 26(a), 30, production of documents under F.R.Civ.P. 34, or request for admissions as to facts or genuineness of documents or other things under F.R.Civ.P. 36, 37.

Id. at 226.

The “special statutory proceeding” of these statutes is “a summary proceeding.” *Id.* at 225-26. To institute this proceeding, the United States need only file a “simple statement” describing its written demand for the federal election records and explaining that Secretary Griswold, acting as an officer of election for Colorado, “failed or refused to make such papers ‘available for inspection, reproduction, and copying.’” *Id.* at 226 (citation omitted). Accordingly, the Court “should grant the relief sought or, if the respondent-custodian opposes the grant of such relief, the matter should be set down without delay for suitable hearing on the matters open for determination.” *Id.* The Attorney General’s right to reproduction and copying of Federal election records is not dependent upon any other showing. *Id.* Therefore, the United States respectfully requests that this Court issue an Order directing Secretary Griswold to produce the federal election records described in the Attorney General’s written demand.

records. *See* 52 U.S.C. § 20507, 20510(a). “[W]hen Congress uses the same language in two statutes having similar purposes ... it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.” *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion).

IV. CONCLUSION

For the foregoing reasons, the United States requests that this Court enter an Order directing Defendant to comply with the Attorney General's Demand pursuant to the CRA an electronic copy of Colorado's SVRL including the name, date of birth, driver's license number, last four digits of the social security number or the HAVA unique identifier. Those records should be provided electronically to the United States within five days.

Dated: December 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2025, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Brittany E. Bennett

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