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** Admitted Pro Hac Vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT NAGO, in his official capacity as Chief Elections Officer for the State of Hawaii, *et al.*,

Defendants.

Case No. 1:25-cv-00522-LEK-RT

NAACP CALIFORNIA-HAWAII STATE CONFERENCE'S RULE 12 MOTION; MEMORANDUM IN SUPPORT OF MOTION; CERTIFICATE OF COMPLIANCE WITH PAGE LIMITATIONS; CERTIFICATE OF SERVICE

Date/Time of Hearing: Unknown
District Judge: Hon. Leslie E. Kobayashi
Magistrate Judge: Hon. Rom Trader
Trial Date: None

NAACP CALIFORNIA-HAWAII STATE CONFERENCE'S RULE 12 MOTION

The NAACP California-Hawaii State Conference ("NAACP-CA/HI") respectfully requests that the Court dismiss Plaintiff's complaint under Federal Rule of Civil Procedure 12(b)(6). Alternatively, if the Court determines that NAACP-CA/HI may not file a Rule 12(b) motion because NAACP-CA/HI filed an answer at the Court's instruction, *see* ECF Nos. 20, 21, then NAACP-CA/HI respectfully requests that the Court construe this motion under Rule 12(c) and enter judgment for Defendants on the pleadings. This motion is made following the conference of counsel pursuant to LR 7.8, which took place on February 11, 2026. On February 17, counsel for Plaintiff represented that they shared NAACP-CA/HI's preference that the Court construe this filing as a Rule 12(b)(6) motion to dismiss.

In support of its Motion, NAACP-CA/HI submits and incorporates the below Memorandum of Points and Authorities. NAACP-CA/HI respectfully requests that the Court set a hearing for this Motion as soon as practicable.

Dated: Honolulu, Hawaii, February 18, 2026.

Respectfully submitted,

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NAACP CALIFORNIA-HAWAII STATE CONFERENCE'S MEMORANDUM IN SUPPORT OF RULE 12 MOTION

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INTRODUCTION

The United States Department of Justice ("DOJ") seeks to build a nationwide voter registration list, a scheme not authorized by Congress and contrary to federal laws assigning States the responsibility for maintaining voter registration lists. To do so, DOJ has demanded that Hawaii—along with nearly every other State—turn over its full, unredacted voter list, despite the fact that Hawaii law protects sensitive information provided on voter registration affidavits. Haw. Rev. Stat. § 11-97(a).

DOJ's Complaint relies on a single cause of action under Title III of the Civil Rights Act of 1960 ("CRA"), but that law does not entitle DOJ to the data it seeks. DOJ must provide the "basis and the purpose" for any Title III request, but here it fails to provide *any* basis, and its purported purpose—to determine if Hawaii is complying with the National Voter Registration Act ("NVRA") and the Help America Vote Act ("HAVA")—is not a proper use for Title III. Even if it were, Title III does not require states to turn over highly confidential information, nor does it preempt state privacy laws. DOJ also has not complied with the federal Privacy Act, another prerequisite before any of the requested information could be collected.

Sister courts in the Ninth Circuit have already dismissed parallel lawsuits DOJ brought in California and Oregon, holding that its CRA claim was legally defective for each of the reasons stated here. *See generally United States v. Weber*, No. 2:25-CV-09149-DOC-ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026); *United States v.*

Oregon, No. 6:25-CV-01666-MTK, 2026 WL 318402, at *1 (D. Or. Feb. 5, 2026). This Court should likewise dismiss the Complaint with prejudice and enter judgment for Defendants.[1]

BACKGROUND

I. Federal law has long made voter list maintenance a state responsibility, consistent with constitutional principles of federalism.

The Constitution gives States "responsibility for the mechanics" of elections, subject to any decision by Congress to "preempt state legislative choices." *Foster v. Love*, 522 U.S. 67, 69 (1997); *see also* U.S. Const. art. I, § 4, cl. 1. Thus, States determine voter eligibility and maintain voter lists, unless Congress clearly acts to preempt those responsibilities. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013).

While Congress has enacted certain laws addressing voter registration, these laws augment existing "state voter-registration systems," *id.* at 5, and confirm that states are the custodians of voter registration data. As relevant here, Congress enacted the NVRA in 1993 to serve "two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration

[1] NAACP-CA/HI and Plaintiff request that the Court construe this filing as a motion to dismiss under Federal Rule of Civil Procedure 12(b) so that it can be briefed and adjudicated concurrently with Chief Elections Officer Nago's Rule 12(b) motion. Alternatively, the Court may construe this filing as a motion for judgment on the pleadings under Rule 12(c).

rolls." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018); *see also* 52 U.S.C. § 20501(b). The law charges states—not the federal government—with the "administration of voter registration for elections for Federal office," 52 U.S.C. § 20507(a), including maintaining voter lists, *id.* § 20507(c)–(g). It similarly makes states the custodians of voter lists. *See Husted*, 584 U.S. at 761.

In the wake of the 2000 elections, Congress enacted HAVA "to help improve the equipment used to cast votes, the way registration lists are maintained, and how polling operations are conducted." *Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 180 (3d Cir. 2017) (internal citation omitted). Like the NVRA, HAVA regulates how states maintain their voter rolls, requiring them to create a "computerized statewide voter registration list." 52 U.S.C. § 21083(a)(1)(A). It also requires states to "perform list maintenance" consistent with the NVRA. *Id.* § 21083(a)(2)(A). HAVA is clear that this list is to be "defined, maintained, and administered at the State level." *Id.* § 21083(a)(1)(A). Further, HAVA commands that the "specific choices on the methods of complying with" HAVA "shall be left to the discretion of the State." *Id.* § 21085. Indeed, HAVA's legislative history stressed the importance of maintaining our decentralized electoral system to preserving liberty:

> 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) (emphases added).

Consistent with that principle, Congress has traditionally "left it up to the States to maintain accurate lists of those eligible to vote in federal elections," *Husted*, 584 U.S. at 761, subject only to the NVRA and HAVA, which purposefully operate through the states themselves.

II. DOJ has embarked on an unprecedented campaign to amass personal voter registration data held by the States.

Last spring, DOJ began demanding broad and unprecedented access to sensitive personal information about each registered voter in states' voter files. The vast majority of states that have received such demands—including those led by Republican officials—have declined to turn over information that is typically protected by state law.[2] DOJ's nationwide pressure campaign reached Hawaii on September 8, 2025, when DOJ sent a letter to Chief Election Officer Nago requesting "a copy of Hawaii's statewide voter registration list" within 14 days. Mem. in Supp. of Mot. to Compel Production ("DOJ Mem."), Ex. 1 at 1, ECF No. 5-2. DOJ insisted that Hawaii produce "*all fields*" in the voter registration list, which "must include

[2] Kaylie Martinez-Ochoa, Eileen O'Connor, & Patrick Berry, *Tracker of Justice Department Requests for Voter Information*, Brennan Ctr. for Just. (Feb. 13, 2026), https://perma.cc/5ST9-T2EW; Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. Times (Sep. 9, 2025), https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html.

the registrant's full name, date of birth, residential address, his or her state driver's license number or the last four digits of the registrant's social security number." *Id.* According to DOJ, the request's purpose was to "ascertain Hawaii's compliance with the list maintenance requirements of the NVRA and HAVA." *Id*. at 2. Hawaii's Deputy Solicitor General Thomas J. Hughes responded on September 22 by explaining that state law requires personal information provided on a voter registration affidavit to be kept confidential and that DOJ's request "raises additional privacy concerns and appears unrelated to the stated purpose of the request." DOJ Mem., Ex. 2 at 1–3, ECF No. 5-2.

III. DOJ sued Chief Election Officer Nago to obtain Hawaii's voter registration list.

DOJ filed this suit on December 11, 2025, seeking to compel Chief Election Officer Nago to provide Hawaii's full, unredacted statewide voter registration list. *See generally* Compl., ECF No. 1. DOJ frames its demand as part of an effort to ensure that Hawaii is complying with its list maintenance obligations under the NVRA and HAVA, *e.g.*, *id.* at 4–5, but it does not assert a claim under either statute.[3] Instead, DOJ asserts a solitary claim under Title III of the Civil Rights Act of 1960,

[3] Notably, DOJ previously asserted claims under the NVRA and HAVA in otherwise identical complaints that it brought against multiple other states in September of last year. *See, e.g.*, Compl., *United States v. Pennsylvania*, No. 2:25-cv-01481-CB (W.D. Pa. Sep. 25, 2025), ECF No. 1. But in its following 17 lawsuits against states seeking the same relief (including this one against Hawaii), DOJ has abandoned those claims.

a law that permits DOJ to review certain voting "records and papers," 52 U.S.C. §§ 20701–03, to facilitate investigations "concerning infringement or denial of . . . constitutional voting rights." *Kennedy v. Lynd*, 306 F.2d 222, 228 (5th Cir. 1962).

LEGAL STANDARD

A complaint must be dismissed where it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). At the motion-to-dismiss stage, the Court "must accept as true all of the allegations contained in a complaint" but need not accept the complaint's "legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Dismissal is required when a complaint fails to allege "sufficient facts" "to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

"[J]udgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Rose v. Chase Bank USA, N.A.*, 513 F.3d 1032, 1036 (9th Cir. 2008) (quoting *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005)); *see also* Fed. R. Civ. P. 12(c) ("After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings."). The Ninth Circuit treats Rule 12(c) motions for judgment on the pleadings as "functionally identical" to Rule 12(b)(6) motions and applies the "same standard of

review." *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc*., 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (collecting cases).

ARGUMENT

DOJ's reliance on Title III to justify its sweeping demand fails for three independent reasons. First, DOJ has not complied with the basic procedural requirements contained within Title III, namely that it provide Hawaii with a proper "basis" and "purpose" for its demand. Second, Title III does not preempt Hawaii's privacy protections for sensitive personal data. Third, DOJ's attempted collection and maintenance of this data violates the federal Privacy Act. This Court should follow the lead of its sister courts and enter judgment for Defendants.

I. DOJ did not state an adequate basis and purpose for its demand.

Governmental agencies are "not afforded unfettered authority to cast about for potential wrongdoing." *CFPB v. Accrediting Council for Indep. Colls. & Schs.* ("*ACICS*"), 854 F.3d 683, 689 (D.C. Cir. 2017) (citation modified). An agency's authority to demand documents and information "is a creature of statute," *CFPB v. Source for Pub. Data, L.P.*, 903 F.3d 456, 458 (5th Cir. 2018), and, as such, it "must comply with statutory requirements," *id.* at 460. If an agency fails to follow the relevant statutory prerequisites for issuing a demand for information, courts will decline to order enforcement. *See, e.g.*, *ACICS*, 854 F.3d at 690.

Title III contains a fundamental requirement that DOJ failed to follow in demanding the data it seeks here: it requires that any request for records made under it "shall contain a statement of the basis and the purpose therefor." 52 U.S.C. § 20703. The use of "and" means that DOJ must provide both. *See United States v. Voigt*, 89 F.3d 1050, 1087 (3d Cir. 1996) (noting it is a "well-settled canon of statutory construction that 'courts should disfavor interpretations of statutes that render language superfluous'" (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992))); *see also Oregon*, 2026 WL 318402, at *9 (finding plain text of statute requires DOJ to show both basis and purpose).

This requirement "is not merely perfunctory—it is a critical safeguard that ensures the request is legitimately related to the purpose of the statute." *Weber*, 2026 WL 118807, at *9. Indeed, courts regularly quash records demands when DOJ seeks to assert statutory authority for investigations "far removed from those claimed purposes granted by Congress." *In re Subpoena No. 25-1431-014*, No. 2:25-mc-00039-MAK, 2025 WL 3252648, at *12, *17 (E.D. Pa. Nov. 21, 2025) (striking DOJ subpoena that "invoke[d] sweeping" demands for information that had "no relevance to the investigation Congress permitted or to the investigation the [DOJ] tells the world it is pursuing").

The principal authority that DOJ cites in its Complaint confirms that DOJ has previously complied with this statutory requirement. *See id.* at 229 n.6. In *Lynd*, the

court recognized that the "basis" of DOJ's demand was "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," and the "purpose" was "to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred." *Id.* (citation modified). Other Title III cases from that period likewise contained an explicit statement of both a "basis" and "purpose" for DOJ's demand. *See Kennedy v. Bruce*, 298 F.2d 860, 861 (5th Cir. 1962); *In re Coleman*, 208 F. Supp. 199, 199–200 (S.D. Miss. 1962), *aff'd sub nom. Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963) (per curiam). Here, DOJ's demand was deficient on both fronts. *See Source for Pub. Data*, 903 F.3d at 460.

A. DOJ failed to provide any "basis" for its demand.

DOJ's request failed entirely to articulate any "basis" for its demand, let alone a basis to believe that Hawaii has denied the right to vote or otherwise infringed on anyone's voting rights. DOJ's September 8 letter demanding Hawaii's voter registration list did not articulate *any* specific concerns with Hawaii's list maintenance efforts, much less provide a factual basis to conclude that its efforts might not be "reasonable" as required by the NVRA and HAVA. 52 U.S.C. § 20507(a)(4); *id.* § 21083(a)(4); *id.* § 21085 (committing "specific choices on the

methods of complying with" HAVA "to the discretion of the State"); DOJ Mem., Ex. 1.[4]

The lack of a stated basis is fatal—Congress expressly required DOJ to provide "the basis *and* the purpose" of its request, 52 U.S.C. § 20703 (emphasis added), and the Court must give meaning to both requirements. *See Tulelake Irrigation Dist. v. U.S. Fish & Wildlife Serv.*, 40 F.4th 930, 936 (9th Cir. 2022) ("When construing a statute, courts should avoid any statutory interpretation that renders any section superfluous.") (quotation omitted). "Simply put, [DOJ's demand] does not identify what conduct, it believes, constitute[d] an alleged violation." *Source for Pub. Data*, 903 F.3d at 458–59 (quashing civil investigative demand that failed to provide basis for investigation); *see also Oregon*, 2026 WL 318402, at *9 (dismissing because Title III demand letter "contain[ed] no statement of a factual basis"); *Weber*, 2026 WL 118807, at *9 (finding that DOJ failed to "establish[] the basis for its request" because it failed to explain why it believed that California had violated the NVRA or its investigation required the unredacted voter registration list). The lack of any stated basis for DOJ's investigation of *Hawaii* is further highlighted by the fact that DOJ has made carbon copy demands to at least

[4] DOJ's own website acknowledges that States "have discretion under the NVRA and HAVA" to design voter registration list-maintenance programs, and that "States currently undertake a variety of approaches" to this process. *The National Voter Registration Act of 1993 (NVRA)*, U.S. Dep't of Justice, https://perma.cc/9V4X-764Z (updated Nov. 1, 2024) (last accessed Feb. 17, 2026).

40 States and has sued more than 20 based on nearly identical boilerplate claims and allegations. *See* Martinez-Ochoa, *et al.*, *supra* n.1. This nationwide effort to collect state voter registration lists undermines any notion that DOJ has a "basis" for investigating Hawaii specifically. DOJ's failure to include a "basis" in its demand to Hawaii therefore warrants dismissal.

B. DOJ has failed to provide a lawful purpose for its demand.

DOJ's claim must also be dismissed because it failed to articulate a proper purpose for its demand. Congress enacted the record retention provisions of Title III "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), *aff'd sub nom. Dinkens v. Att'y Gen. of U.S.*, 285 F.2d 430 (5th Cir. 1961); *see also* H.R. Rep. No. 86-956, at 7 (1959) (explaining Congress enacted Title III to aid DOJ "during any investigation it may conduct on complaints of a denial to vote"). But DOJ admits that it is *not* seeking Hawaii's statewide voter registration list for that reason. Rather, DOJ says that it seeks to ascertain "Hawaii's compliance with federal election law, particularly the NVRA and HAVA." Compl. ¶ 9; DOJ Mem. Ex. 1 at 2. That purpose, however, is beyond the voting rights scope of the CRA. "Title III was not passed as a tool for NVRA compliance." *Weber*, 2026 WL 118807, at *9. "[I]nvestigat[ing] list maintenance procedures" under the NVRA bears no relation to "the purposes for which Title III was enacted." *Oregon*, 2026 WL 318402, at *10. And "driver's

license numbers and partial social security numbers were not required for voter registration until the passage of HAVA in 2002 so Congress could not have conceived for this highly sensitive information to be at the DOJ's disposal through the passage of Title III four decades prior." *Weber*, 2026 WL 118807, at *9. Accordingly, two federal courts have dismissed DOJ's Title III claims as inconsistent with the statute's purpose of protecting voter rights. *Id.* at *8−10; *Oregon*, 2026 WL 318402, at *9−10; *see also Bruce*, 298 F.2d at 863 n.2 (noting NVRA and HAVA, which are concerned with issues such as "failures to purge voters who have moved away or have died," "do[] not bear any particular importance" to the Title III inquiry).[5]

Historical context confirms Title III's scope. In the Civil Rights Act of 1957, Congress tasked DOJ with protecting the "right of all qualified citizens to vote without discrimination on account of race." H.R. Rep. No. 86-956, at 7. Despite this charge, DOJ's efforts were stymied by "the refusal of some state and local authority to permit" inspection of certain voter records, *id.*, not to mention the intentional destruction of others, *Gallion*, 187 F. Supp. at 853 n.4 ("State action such as taken by the Alabama legislature authorizing registrars to destroy their records is an excellent example."). DOJ had "no existing power in civil proceedings to require the

[5] A third Court dismissed band on the alternative ground that DOJ's demand did not comport with the plain text of Title III. *See United States v. Benson*, No. 1:25-CV-1148, 2026 WL 362789, at *10 (W.D. Mich. Feb. 10, 2026).

production of [voter registration] records during any investigation" concerning "complaints of a denial to vote because of race." H.R. Rep. No. 86-956, at 7. Congress found that, without granting DOJ a "suitable provision for access to voting records during the course of an investigation," its ability to protect the right to vote was "rendered relatively ineffective." *Id.* Congress enacted Title III of the Civil Rights Act of 1960 to assist DOJ in those investigations. Title III was thus enacted to allow federal authorities to investigate and protect against states' infringement on the right to vote; it had nothing to do with investigating the administrative voter registration list requirements enacted in the NVRA and HAVA decades later. *See Oregon*, 2026 WL 318402, at *10.

Prior enforcement of Title III further confirms that it is meant to be used only for investigating the denial of voting rights. Shortly after the law's enactment, courts upheld DOJ demand letters that stated they were "based upon information in the possession of the Attorney General tending to show that discriminations on the basis of race and color have been made with respect to registration and voting within your jurisdiction." *In re Coleman*, 208 F. Supp. at 199–200; *see also Lynd*, 306 F.2d at 229 n.6 (similar). DOJ has yet to cite a single instance in which a court has upheld a demand for records made under Title III to assess state compliance with the NVRA

or HAVA.[6] Instead, federal courts in California and Oregon have rejected DOJ's demand for records made under Title III to assess compliance with the NVRA and HAVA. *See Weber*, 2026 WL 118807, at *8–10; *Oregon*, 2026 WL 318402, at *9–10.

Even if ascertaining Hawaii's compliance with the NVRA and HAVA were permissible grounds for invoking Title III, "DOJ states no reason why an *unredacted* version of [Hawaii's] voter list is necessary." *Weber*, 2026 WL 118807, at *9 (emphasis added); *see also Oregon*, 2026 WL 318402, at *10 n.4 (similar). Both the NVRA and HAVA grant states broad discretion in list maintenance: State efforts under the NVRA need only be "reasonable," 52 U.S.C. § 20507(a)(4), and HAVA explicitly commits "specific choices . . . to the discretion of the State," *id.* § 21085. In response to DOJ's HAVA and NVRA inquiries, Chief Election Officer Nago explained through counsel that no federal law authorized DOJ's request. DOJ Mem., Ex. 2. Chief Election Officer Nago also expressly warned DOJ that its request "does

[6] While some of the 1960s-era cases that interpreted Title III included language indicating broad deference to the Attorney General's statement of a "basis and . . . purpose" for requesting records, *see Lynd*, 306 F.2d at 226 (quoting 42 U.S.C. § 1974b, recodified at 52 U.S.C. § 20703), those cases involved circumstances where Title III was unquestionably being used for its intended purpose: investigations into the potential denial of voting rights on account of race. Those prior cases are thus fundamentally different from the circumstances here, where DOJ has not even tried to assert that it seeks to investigate any possible denial of the constitutional right to vote. Nor has it even offered any justifiable basis to support the need for records to evaluate compliance with the two *other* statutes it has invoked.

not explain why the production of personal information about every registered Hawai'i voter is necessary to achieve the stated purpose" of the investigation. *Id.* at 2. DOJ has never explained why it requires particularly sensitive information about Hawaii's voters: "neither Plaintiff's Title III demand nor any of its pleadings before this Court provide any reasonable explanation for why the Sensitive Voter Data in particular serves those purposes." *Oregon*, 2026 WL 318402, at *10 n.4.

Hawaii's full and unredacted statewide voter file is simply not helpful or necessary to determine whether Hawaii "conduct[ed] a general program that makes a reasonable effort to remove the names of ineligible voters" by virtue of "death" or "a change in the residence of the registrant," 52 U.S.C. § 20507(a)(4) (NVRA); *see also* 52 U.S.C. § 21083(a)(4) (HAVA). The unredacted voter file cannot tell DOJ anything about the list maintenance procedures that Hawaii undertook within its discretion under the NVRA and HAVA. If DOJ were to obtain the unredacted voter file, the data would be outdated almost immediately, and even if DOJ were able to use the data to identify voters who have moved or died since that single snapshot in time, it would not mean that Hawaii failed to make a "reasonable" list maintenance effort under the NVRA or HAVA. *Weber*, 2026 WL 118807, at *19 (explaining that "DOJ has not identified how the use of [] driver's license numbers would help it understand whether California conducts a general program that makes a reasonable effort to remove persons from its voter rolls").

II. Title III does not preempt Hawaii's privacy protections.

Hawaii law expressly protects all personal information provided on voter registration affidavits other than the voter's name, district/precinct designation, and voter status. Haw. Rev. Stat. § 11-97(a). Accordingly, to access this information DOJ must show that Title III preempts Hawaii's privacy protections. It does not.

Because Title III contains no express preemption provision, *see* 52 U.S.C. § 20703, DOJ's argument must rest on the idea that Hawaii's privacy protections *impliedly* conflict with Title III, *see generally Whistler Invs., Inc. v. Depository Tr. & Clearing Corp.*, 539 F.3d 1159, 1164 (9th Cir. 2008) (discussing express versus implied preemption). The Ninth Circuit and the Supreme Court have made clear that there is a strong presumption against preemption in areas of the law that States have traditionally occupied. *See Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1141 (9th Cir. 2015); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)); *see also* Antonin Scalia & Brian A. Garner, *Reading Law* 290 (2012) ("It is a reliable canon of interpretation . . . to presume that a federal statute does not preempt state law."). Although the presumption against preemption is inapplicable when Congress acts under the Elections Clause, which empowers Congress regulate the mechanics of the voting process, *Inter Tribal Council of Ariz., Inc.*, 570 U.S. at 14, Title III addresses only the retention, maintenance, and disclosure of records; it does not target any state election regulations or practices, nor does it implicate any voting

requirements. Accordingly, the presumption against preemption applies here, which requires DOJ to show that preemption "was the clear and manifest purpose of Congress." *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 664, n.14 (9th Cir. 2021) (quotation omitted).

DOJ cannot overcome that presumption because that is no evidence that Congress intended to preempt state privacy laws that protect highly sensitive information. To the contrary, in the principal case DOJ cites in its Complaint, the Fifth Circuit explained that Title III is intended to reach *only* "public records which ought ordinarily to be open to legitimate reasonable inspection," and *not* "confidential, private papers and effects." *Lynd*, 306 F.2d at 231. The information that DOJ seeks here is not of the type ordinarily open to legitimate reasonable inspection; instead, DOJ demands obviously sensitive information that enjoys strong privacy protection under both federal and state law. *See Weber*, 2026 WL 118807, at *9 (recognizing that this "sensitive and identifying information is private and not open to inspection by federal officials").

Moreover, DOJ's stated purpose for its demand for personal and highly sensitive voter information is purportedly to evaluate Hawaii's compliance with its list maintenance obligations under the NVRA and HAVA. See DOJ Mem. Ex. 1 at 2; Compl. ¶ 19. Indeed, in its first iteration of these lawsuits, DOJ asserted substantive claims under the NVRA and HAVA in addition to its CRA claim. But

the courts to have considered the question thus far have had no problem dismissing those claims, noting that the NVRA's disclosure provision does not provide a basis for seeking this information, and that HAVA has no disclosure provisions at all—"end[ing] the inquiry." *Weber*, 2026 WL 118807, at *15; *Oregon*, 2026 WL 318402, at *6–7 (dismissing NVRA and HAVA claims). Now DOJ has jettisoned those claims and proceeds under Title III alone, while still relying on its discredited interpretation of the NVRA and HAVA. *See* DOJ Mem. Ex. 1 at 2.

If Congress had thought it necessary or desirable for DOJ to access databases containing highly sensitive information about every voter in any state so that it could ensure that the state was complying with its list maintenance obligations under the NVRA and HAVA, it would have done so in *the NVRA and HAVA themselves*. Congress did not. Instead, it created a different mechanism meant to ascertain states' compliance with list maintenance obligations: the NVRA inspection provision, located at 52 U.S.C. § 20507(i). Congress "envisioned" this provision to allow for "critical scrutiny and public audits of voter data," but it did not prevent states from redacting sensitive voter data. *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1082, 1083 n.14 (10th Cir. 2025). Instead, it specified only that records subject to inspection must include the "names and addresses" of certain voters. 52 U.S.C. § 20507(i)(2).

Multiple courts have found that this NVRA disclosure provision does *not* preempt state laws protecting the same highly sensitive categories of information that DOJ seeks here. *See, e.g.*, *Weber*, 2026 WL 118807, at *13; *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024) ("[N]othing in the text of the NVRA prohibits the appropriate redaction of uniquely or highly sensitive personal information in the Voter File.").[7] This is further reason to find that Title III similarly does not allow DOJ to demand this type of information. Title III and the NVRA employ similar language to require disclosure of certain records relating to voter registration. *Compare* 52 U.S.C. § 20703 (providing in Title III that covered voting records held by a state election official "shall, upon demand in writing by the Attorney General . . . be made available for inspection"), *with id.* § 20507(i)

[7] *See also Voter Reference Found.*, 160 F.4th at 1083 n.14 ("To the extent the State wishes to redact appropriate personal information before providing the voter data, the NVRA does not prohibit that limitation."); *Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 268 (4th Cir. 2021) (recognizing NVRA permits redactions to "protect sensitive information"); *Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 561 n.3 (M.D. Pa. 2019) (noting NVRA "does not guarantee unfettered access to confidential sensitive information"); *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 942 (C.D. Ill. 2022) (holding NVRA permits "proper redaction of highly sensitive information"); *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1344 (N.D. Ga. 2016) (holding NVRA "does not require the disclosure of sensitive information that implicates special privacy concerns," including telephone numbers, partial social security numbers, partial email addresses, and birth dates); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 739 (S.D. Miss. 2014) (holding NVRA "does not require the disclosure of unredacted voter registration documents, including voter registrant birthdates"); *Project Vote/Voting For Am., Inc. v. Long*, 752 F. Supp. 2d 697, 711 (E.D. Va. 2010) (holding NVRA permits redacting social security numbers).

(providing in the NVRA that states "shall make [covered voting records] available for public inspection"). HAVA, in turn, contains no disclosure provision at all, and instead explicitly confirms that voter registration lists must be "maintained" and "administered at the State level"—not by the federal government. 52 U.S.C. § 21083(a)(1)(A).

In short, it makes no sense to suggest that Congress intended Title III to preempt state privacy laws protecting highly sensitive voter data so that the federal government can assess compliance with voter list maintenance under the NVRA and HAVA, when both statutes reflect a congressional judgment *not* to preempt state privacy laws.

III. DOJ has failed to comply with the Privacy Act.

DOJ's claim must be dismissed for the additional reason that its requested relief would violate the federal Privacy Act. That Act, codified at 5 U.S.C. § 552a *et seq.*, "offers substantial protection[] regarding governmental use and retention of identifiable personal information." *League of Women Voters v. U.S. Dep't of Homeland Sec.*, No. 25-cv-3501, 2025 WL 3198970, at *1 (D.D.C. Nov. 17, 2025). It does so in part by "adopt[ing] procedural safeguards when the records maintained by a federal agency, *i.e.*, a 'system of records,' are changed or used in a new way." *Id.* at *2 (quoting 5 U.S.C. § 552a(a)(5), (e)). Congress enacted the Privacy Act after the Watergate scandal in response to "a growing awareness that governmental

agencies were accumulating an ever-expanding stockpile of information about private individuals that was readily susceptible to both misuse and the perpetuation of inaccuracies." *Londrigan v. FBI*, 670 F.2d 1164, 1169 (D.C. Cir. 1981). These concerns persist today, including for Intervenors, who are staunchly opposed to Hawaii giving their sensitive data to DOJ in this political climate. *See* Mot. to Intervene at 2, ECF No. 7; Decl. of Rick Callender ¶¶ 10–12, ECF No. 7-1.

In its rush to sweep up the sensitive information of every registered voter in Hawaii, DOJ overlooked the Privacy Act's basic procedural requirements, a concern that Chief Elections Officer Nago raised expressly in response to the DOJ's demands. *See* DOJ Mem., Ex. 2 at 2. The Privacy Act imposes obligations on any agency that "maintains" a "system of records." 5 U.S.C. § 552a(e). A "system of records" is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." *Id.* § 552a(a)(5); *see also id.* § 552a(a)(4) (defining "record" to include "any item, collection, or grouping of information about an individual that is maintained by an agency . . . that contains his name, or the identifying number . . . or other identifying particular assigned to the individual"). Hawaii's statewide voter registration list, which contains the names of all registered voters as well as their voter registration identifiers and other identifying information, plainly qualifies as a "system of

records" under the Privacy Act. The term "maintain" is defined to include "maintain, collect, use, or disseminate." *Id.* § 552a(a)(3). Accordingly, if DOJ were to "collect," "use," or "maintain" Hawaii's statewide voter registration list, the obligations imposed by subsection (e) would be triggered. *See id.* § 552a(e)(4); *Weber*, 2026 WL 118807, at *17.

When an agency establishes a system of records, the Privacy Act requires it to "'publish in the Federal Register' a notice containing a list of 'each routine use of the records contained in the system, including the categories of users and the purpose of such use,'" also called a "SORN." *League of United Latin Am. Citizens v. Exec. Off. of the President*, No. CV 25-0946 (CKK), 2026 WL 252420, at *12 (D.D.C. Jan. 30, 2026) (quoting 5 U.S.C. § 552a(e)(4)) (entering declaratory judgment against federal government, noting that "the Court has serious concerns that DHS and SSA may each have been violating the Privacy Act in significant ways," *id.* at *55, before publishing SORN). A SORN must include the name and location of the system, the categories of records and individuals maintained in the system, and all "routine uses" to which the system can be put as well as the "categories of users and the purpose of such use." *Id.* at *12.

DOJ has alleged in parallel litigation in other states that a SORN they identified as "JUSTICE/CRT – 001," the "Central Civil Rights Division Index File and Associated Records," supplies the requisite authority. *E.g.*, Compl. ¶ 23, *United*

States v. Oliver, No. 1:25-cv-1193 (D.N.M. Dec. 2, 2025), ECF No. 1. But even if DOJ had included that allegation in Hawaii, it would have been insufficient. That SORN does not extend to statewide voter registration lists. It notifies the public that the categories of individuals covered by the system may include "[s]ubjects of investigations, victims, [and] potential witnesses," in addition to other categories not relevant here. *Privacy Act of 1974; System of Records*, 68 Fed. Reg. 47610, 47611 (Aug. 11, 2003). It "does nothing to put a member of the American public on notice that specifically, their voter registration data is going to be collected on an unprecedented level." *Weber*, 2026 WL 118807, at *18. Similarly, the SORN describes the categories of records in this system to "consist of 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. While this language would seemingly cover run-of-the-mill files maintained for specific investigations and litigation matters, it would be a startling construction of these terms to find that they extend to a statewide (or nationwide) voter registration list that has never before been compiled by the federal government, as DOJ presses here.

To hold that this SORN is sufficient to allow DOJ to collate sensitive information about every registered voter in Hawaii (or the country) would nullify the Privacy Act's "procedural safeguards" that Congress enacted to "permit an

individual to determine what records pertaining to him are collected, maintained, used, or disseminated by federal agencies" and to "ensure adequate safeguards are provided to prevent misuse of such information." *League of Women Voters*, 2025 WL 3198970, at *2 (citation modified). If DOJ wishes to maintain the information it demands from Hawaii, the Privacy Act requires (at a minimum) that DOJ give the public adequate notice by publishing a SORN that accurately discloses the system of records it intends to create and the uses to which it will put that information. *Pippinger v. Rubin*, 129 F.3d 519, 527 (10th Cir. 1997); *see also* 5 U.S.C. § 552a(e)(4); *id.* § 552a(e)(11) (requiring a 30-day notice period "of any new use or intended use of the information in the system," to "provide an opportunity for interested persons to submit written data, views, or arguments to the agency").[8]

CONCLUSION

For all of the foregoing reasons, NAACP-CA/HI respectfully requests that the Court grant its motion, dismiss the complaint, and enter judgment for Defendants.

[8] There is no impediment to the Court granting the motion for judgment on the pleadings and dismissing the complaint based on DOJ's failure to comply with the Privacy Act. Even if the Court construes failure to comply with the Privacy Act as an affirmative defense, "the assertion of an affirmative defense may be considered properly on a motion to dismiss where the 'allegations in the complaint suffice to establish' the defense." *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting *Jones v. Bock*, 549 U.S. 199, 215 (2007)). Here, the complaint explicitly mentions compliance with the Privacy Act, *see* Compl. ¶ 24, and for the reasons stated above, DOJ's collection and maintenance of Hawaii's voter registration list do not comply with the Privacy Act.

Dated: Honolulu, Hawaii, February 18, 2026.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, *Plaintiff*, v. SCOTT NAGO, in his official capacity as Chief Elections Officer for the State of Hawaii, *et al.*, *Defendants*.	Case No. 1:25-cv-00522-LEK-RT **CERTIFICATE OF COMPLIANCE WITH PAGE LIMITATIONS**

The foregoing memorandum does not exceed the twenty-five (25) page limit of LR 7.4(a).

Dated: Honolulu, Hawaii, February 18, 2026.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, *Plaintiff*, v. SCOTT NAGO, in his official capacity as Chief Elections Officer for the State of Hawaii, *et al.*, *Defendants*.	Case No. 1:25-cv-00522-LEK-RT **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2026, I electronically filed the within motion and it is available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

Dated: Honolulu, Hawaii, February 18, 2026.

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