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12 *Secretary of State Adrian Fontes*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 United States of America,

16
17 Plaintiff,

18 v.

19 Adrian Fontes, in his official capacity as
20 Secretary of State for the State of Arizona,

21 Defendant.

No. CV-26-00066-PHX-SMB

**ARIZONA SECRETARY OF
STATE'S MOTION TO DISMISS**

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1 Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Arizona Secretary of State Adrian
2 Fontes (the “Secretary”) moves to dismiss the United States’ Complaint. This Motion is
3 supported by the following Memorandum of Points and Authorities.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 INTRODUCTION

6 This case is one of more than two dozen that the Plaintiff United States has filed
7 to obtain access to states’ entire unredacted voter registration databases with all voters’
8 sensitive, personally identifiable information (“PII”). So far, the three federal district
9 courts that have ruled on the merits in those cases—two of which are within the Ninth
10 Circuit—have concluded that Plaintiff is not entitled to the records it seeks as a matter of
11 law and dismissed the complaints with prejudice. See *United States v. Benson*, No. CV-
12 25-1148, 2026 WL 362789, at *11 (W.D. Mich. Feb. 10, 2026); *United States v.*
13 *Oregon*, No. CV-25-01666-MTK, 2026 WL 318402, at *13 (D. Or. Feb. 5, 2026);
14 *United States v. Weber*, No. CV-25-09149-DOC-ADS, 2026 WL 118807, at *20 (C.D.
15 Cal. Jan. 15, 2026). The legal issues in this case are indistinguishable from the issues
16 considered in those cases, and this Court should reach the same result and dismiss the
17 Complaint with prejudice.

18 Plaintiff’s single count Complaint seeks an order directing the Secretary to turn
19 over a complete, unredacted, electronic copy of Arizona’s computerized statewide voter
20 registration database (the “VRDB”). (Doc. 1, at 7, ¶ B). It demands that the Secretary
21 provide the VRDB in electronic format “with all fields” of information associated with
22 each individual voter’s registration record. (*Id.*). In short, Plaintiff seeks sensitive
23 personal information and voting history about each of Arizona’s nearly five million
24 registered voters. Moreover, Plaintiff’s demand encompasses voters whose registration
25 records are confidential because those voters hold sensitive government positions or
26 have been victims of domestic or sexual violence or stalking. A.R.S. §§ 16-165, 41-163.

27 Arizona law provides for public access to portions of the VRDB, but expressly
28 bars release of certain identifying information, including a voter’s social security

1 number or portion thereof, driver’s license number, Indian census number, father’s name
2 or mother’s maiden name, the state or country of birth, e-mail address, and signature.
3 A.R.S. § 16-168(F). Moreover, the right of public access does not extend to the voter
4 registration information of persons who participate in the state’s address confidentiality
5 program due to domestic violence or those “eligible persons”—such as those employed
6 in the criminal justice system and the courts—who have obtained a court order shielding
7 their records from public view. A.R.S. §§ 16-153(A), 41-166(D). But Plaintiff’s
8 demand seeks even that information made confidential by Arizona law.

9 The Complaint’s sole count relies on Title III of the Civil Rights Act of 1960 (the
10 “CRA”), 52 U.S.C. § 20701, *et seq.*—a Civil Rights-era law that allows the Attorney
11 General to inspect elections records at the office of the election official in possession of
12 those records to enforce laws designed to prevent race discrimination in voting. But that
13 law does not support Plaintiff’s sweeping demand for Arizona voters’ private
14 information for four independently sufficient reasons. *First*, Plaintiff has not provided a
15 statement of the basis and purpose for its demand for records that complies with the
16 CRA. *See* 52 U.S.C. § 20703. *Second*, the CRA provision on which Plaintiff relies is
17 not part of the enforcement scheme of the National Voter Registration Act of 1993 (the
18 “NVRA”), 52 U.S.C. § 20501 *et seq.* and the Help America Vote Act of 2002
19 (“HAVA”), 52 U.S.C. § 20901 *et seq.*, which were enacted more than thirty and fifty
20 years after the CRA, respectively. *Third*, Plaintiff has not complied with federal laws,
21 including the Privacy Act of 1974, the E-Government Act, and the Driver’s Privacy
22 Protection Act (the “DPPA”) regarding records like Arizona’s VRDB. *Finally*, the CRA
23 does not preempt the Arizona laws that protect voter information. Consequently, the
24 Complaint fails as a matter of law, and the Court should dismiss the Complaint without
25 leave to amend.

26 **FACTUAL AND PROCEDURAL BACKGROUND**

27 On July 28, 2025, Plaintiff, acting through the Civil Rights Division of the
28 Department of Justice (the “DOJ”), sent the Secretary a letter purporting to seek

1 information concerning Arizona’s procedures for compliance with the voter registration
2 list maintenance provisions of the NVRA. (Doc. 8-1 at 1).¹ The July 28 letter (1) asked
3 several questions about Arizona’s responses to the Election Assistance Commission’s
4 biennial Election Administration and Voting Survey, (2) sought the contact information
5 for Arizona election officials responsible for voter registration list maintenance, and
6 (3) demanded a copy of the VRDB “includ[ing] all fields contained with the list.” (*Id.* at
7 1-3). The DOJ asserted that it was seeking the VRDB pursuant to 52 U.S.C. §
8 20507(i)(1), the NVRA’s records provision. (*Id.* at 1). On August 8, 2025, the
9 Secretary provided a partial response to the July 28 letter and indicated that his office
10 was continuing to work on the items requested. (Doc. 8-2, at 1). In an August 14, 2025
11 letter, the DOJ reiterated its demand for the complete VRDB and asserted for the first
12 time that the CRA supported its demand. (Doc. 8-3, at 4).

13 The Secretary responded to both DOJ letters on August 29, 2025. (Doc. 8-4).
14 The Secretary answered the questions in the July 21 letter, including extensive
15 information about the state’s list maintenance practices. (*Id.* at 1-3). With respect to the
16 renewed demand for the VRDB, the Secretary explained that “Arizona privacy law
17 prohibits this or any other state office from releasing certain sensitive personal data.”
18 (*Id.* at 3). The Secretary also stated that the DOJ did not “explain how [its] authority
19 under the CRA applies to” its demand for an unredacted copy of the VRDB to ascertain
20 compliance with the NVRA and that the VRDB “alone does not provide evidence
21 regarding Arizona compliance with its NVRA obligation.” (*Id.* at 3-4). Finally, the
22 Secretary explained that the Privacy Act of 1974 “imposes specific limitations upon
23 Federal agencies . . . when they collect . . . information concerning individual citizens,”
24 and requested that the DOJ provide information concerning its compliance with the
25 Privacy Act. (*Id.* at 3-4). The DOJ never responded to the Secretary’s August 29 letter,
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27 ¹ The correspondence between the DOJ and the Secretary is referenced in the Complaint,
28 and was attached to Plaintiff’s Motion to Compel. (*See* Doc. 8). This Court may
properly consider it in connection with this Motion to Dismiss. *See Steinle v. City and*
Cnty. of San Francisco, 919 F.3d 1154 1132-63 (9th Cir. 2019).

1 and instead filed this lawsuit on January 6, 2026.

2 At present, Plaintiff has filed lawsuits against at least twenty-nine states and the
3 District of Columbia seeking those states' complete voter registration lists.² To date, the
4 only three courts to rule on the merits in those cases have granted motions to dismiss
5 without leave to amend. *See Weber*, 2026 WL 118807, at *20; *Oregon*, 2026 WL
6 318402, at *13; *Benson*, 2026 WL 362789, at *11.

7 ARGUMENT

8 I. Legal Standard.

9 "A complaint may be dismissed for failure to state a claim only when it fails to
10 state a cognizable legal theory or fails to allege factual support for its legal theories."
11 *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016);
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13 ² *United States v. Bellows*, No. CV-25-00468 (D. Me.) (filed Sep. 16, 2025); *United*
14 *States v. State of Oregon*, No. CV-25-01666 (D. Or.) (filed Sep. 16, 2025); *United States*
15 *v. Benson*, No. CV-25-01148 (W.D. Mich.) (filed Sep. 25, 2025); *United States v. Board*
16 *of Elections of the State of New York*, No. CV-25-01338 (N.D.N.Y.) (filed Sep. 25,
17 2025); *United States v. Commonwealth of Pennsylvania*, No. CV-25-01481 (W.D. Pa.)
18 (filed Sep. 25, 2025); *United States v. NH Secretary of State*, No. CV-25-00371 (D.N.H.)
19 (filed Sep. 25, 2025); *United States v. Simon*, No. CV-25-03761 (D. Minn.) (filed Sep.
20 25, 2025); *United States v. Weber*, No. CV-25-09149 (C.D. Cal.) (filed Sep. 25, 2025);
21 *United States v. DeMarinis*, No. CV-25-03934 (D. Md.) (filed Dec. 1, 2025); *United*
22 *States v. Hanzas*, No. CV-25-00903 (D. Vt.) (filed Dec. 1, 2025); *United States v.*
23 *Albence*, No. CV-25-01453 (D. Del.) (filed Dec. 2, 2025); *United States v. Amore*, No.
24 CV-25-00639 (D.R.I.) (filed Dec. 2, 2025); *United States v. Hobbs*, No. CV-25-06078
25 (W.D. Wash.) (filed Dec. 2, 2025); *United States v. Oliver*, No. CV-25-01193 (D.N.M.)
26 (filed Dec. 2, 2025); *United States v. Galvin*, No. CV-25-13816 (D. Mass.) (filed Dec.
27 11, 2025); *United States v. Griswold*, No. CV-25-03967 (D. Colo.) (filed Dec. 11, 2025);
28 *United States v. Nago*, No. CV-25-00522 (D. Haw.) (filed Dec. 11, 2025); *United States*
v. Evans, No. CV-25-04403 (D.D.C.) (filed Dec. 18, 2025); *United States v. Matthews*,
No. CV-25-03398 (C.D. Ill.) (filed Dec. 18, 2025); *United States v. Wisconsin Elections*
Commission, No. CV-25-01036 (W.D. Wis.) (filed Dec. 18, 2025); *United States v.*
Thomas, No. CV-26-00021 (D. Conn.) (filed Jan. 6, 2026); *United States v. Beals*, No.
CV-26-00042 (E.D. Va.) (filed Jan. 16, 2026); *United States v. Raffensperger*, No. CV-
26-00485 (N.D. Ga.) (filed Jan. 23, 2026); *United States v. Adams*, No. CV-26-00019-
GFVT (E.D. Ky.) (filed Feb. 26, 2026); *United States v. Caldwell*, No. CV-26-02025
(D.N.J.) (filed Feb. 26, 2026); *United States v. Ziriaux*, No. CV-26-00361 (W.D. Okla.)
(filed Feb. 26, 2026); *United States v. Henderson*, No. CV-26-166 (D. Utah) (filed Feb.
26, 2026); *United States v. Warner*, No. CV-26-00156 (D.W.V.) (filed Feb. 26, 2026).

1 Fed. R. Civ. P.12(b)(6). This Court may consider affirmative defenses at the motion to
2 dismiss phase. *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013). Specifically,
3 if the Court sees “some obvious bar to securing relief on the face of the complaint,” it
4 can dismiss based on an affirmative defense. *U.S. Commodity Futures Trading Comm’n*
5 *v. Monex Credit Co.*, 931 F.3d 966, 973 (9th Cir. 2019) (cleaned up). As demonstrated
6 below, the Complaint on its face includes three “obvious bar[s]” to relief: Plaintiff’s
7 failure to comply with the Privacy Act, the E-Government Act, and the DPPA.

8 **II. The CRA Does Not Authorize Plaintiff’s Demand for the VRDB.**

9 **A. Plaintiff Has Not Met the CRA Requirement to Provide a Basis and** 10 **Purpose for Its Demand.**

11 The CRA was “designed to secure a more effective protection of the right to
12 vote.” *Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 853 (M.D. Ala. 1960). To
13 advance this purpose, the CRA imposes document retention requirements on elections
14 officials: “[e]very officer of election,” or designated custodian, “shall retain or preserve,
15 for a period of twenty-two months from the date of any general, special, or primary
16 election” for federal office, “all records and papers which come into his possession
17 relating to any application, registration, payment of poll tax, or other act requisite to
18 voting in such election” 52 U.S.C. § 20701; *see also* 52 U.S.C. § 20706. The CRA
19 further provides that the Attorney General may inspect these records if she presents “a
20 statement of the basis and the purpose therefor” with the request. 52 U.S.C. § 20703.

21 This case should be dismissed because Plaintiff failed to provide “a statement of
22 the basis *and* the purpose,” of its demand for the VRDB. *Id.* (emphasis added).
23 Plaintiff asserted in its Complaint that it provided the basis and purpose in its August 14,
24 2025 letter to the Secretary. (Doc. 1 at ¶¶ 31-32). But the August 14 letter stated only
25 that “[t]he *purpose* of the request is to ascertain Arizona’s compliance with the list
26 maintenance requirements of the NVRA and HAVA.” (Doc. 8-3, at 2) (emphasis
27 added). The DOJ’s statement amounts, at best, only to a statement of its purpose. In
28 addition, the DOJ’s letters fail to provide any statement of the basis for its demand—*i.e.*,

1 its grounds for suspecting that Arizona has violated the NVRA or HAVA, or to explain
2 how the requested records are relevant to such an investigation. Both the DOJ and
3 courts have long treated “purpose” and “basis” separately. *See Kennedy v. Lynd*, 306
4 F.2d 222, 231 n.6 (5th Cir. 1962). Allowing Plaintiff to obtain records without showing
5 both a basis and a purpose would nullify Congress’s deliberate decision to impose this
6 requirement. *See In re Saldana*, 122 F.4th 333, 342-43 (9th Cir. 2024); *see also*
7 *Confederated Tribes & Bands of Yakama Nation v. Yakima Cnty.*, 963 F.3d 982, 990
8 (9th Cir. 2020) (“[W]hen ‘and’ is used to join two concepts, it is usually interpreted to
9 require ‘not one or the other, but both.’”).

10 **1. The CRA Does Not Cover Plaintiff’s Stated Purpose.**

11 Plaintiff’s demand for records further fails to satisfy the CRA’s requirements
12 because the stated purpose falls outside the scope of the CRA. The CRA’s text and
13 history limit it to investigations of civil rights violations, namely, efforts to prevent
14 eligible voters from registering to vote for illegal reasons like race discrimination. For a
15 “statement of the basis and the purpose” in a CRA demand to be valid, it must relate to a
16 civil rights investigation, not investigation of compliance with laws that were enacted
17 decades after the CRA and are unrelated to discriminatory practices.

18 Justification or purposes unrelated to the CRA are insufficient to invoke the law’s
19 records production requirements. Plaintiff’s reason for invoking the CRA’s production
20 provision must be consistent with the text and purpose of the statute. *Cf. United*
21 *Steelworkers of Am., AFL-CIO-CLC v. Weber*, 443 U.S. 193, 201-02 (1979) (concluding
22 that “[t]he prohibition against racial discrimination in . . . Title VII must therefore be
23 read against the background of [its] legislative history . . . and the historical context from
24 which the Act arose”) (internal citation omitted); *Doe v. Kamehameha Sch./Bernice*
25 *Pauahi Bishop Est.*, 470 F.3d 827, 846 (9th Cir. 2006) (quoting *United Steelworkers* in
26 race discrimination case under 42 U.S.C. § 1981). This Court therefore must read the
27 statute’s text alongside its context and history. *Avila v. Spokane Sch. Dist. 81*, 852 F.3d
28 936, 941 (9th Cir. 2017). The overwhelming evidence shows that the CRA was enacted

1 to facilitate investigation into discrimination in voting, not a nationwide fishing
2 expedition for sensitive PII. A valid “statement of the basis and purpose,” then, must
3 relate to such an investigation.

4 Both congressional reports and President Eisenhower’s signing statement indicate
5 that the CRA itself focused on the “key constitutional right of every American, the right
6 to vote *without discrimination on account of race or color.*” Dwight D. Eisenhower,
7 Statement by the President Upon Signing the Civil Rights Act of 1960 (May 6, 1960),
8 [https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-](https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-the-civil-rights-act-1960)
9 [thecivil-rights-act-1960](https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-the-civil-rights-act-1960) (“CRA Statement”) (emphasis added). The CRA was enacted to
10 further that overarching goal. The year before the enactment, the President’s
11 recommendations to Congress emphasized the “serious obstacle” that insufficient access
12 to voter registration records posed to safeguarding the right to vote under the Civil
13 Rights Act of 1957. Dwight D. Eisenhower, Special Message to the Congress on Civil
14 Rights (Feb. 5, 1959), [https://www.presidency.ucsb.edu/documents/special-message-the-](https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights-0)
15 [congress-civil-rights-0](https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights-0). Once enacted, the President’s signing statement recognized that
16 the CRA “requires the retention of voting records, [which] will be of invaluable aid in
17 the successful enforcement of existing voting rights statutes.” CRA Statement.

18 In fact, all contemporaneous records related to the enactment strongly indicate
19 that the CRA was enacted to build upon the Civil Rights Act of 1957. As a House
20 committee report explained, “Title III is a necessary supplement to part IV of the Civil
21 Rights Act of 1957,” and “would implement Federal enforcement” of this provision.
22 H.R. Rep. No. 86-956, at 26 (1959). And the congressional record repeatedly shows that
23 the CRA was meant to facilitate the enforcement of the voting rights protections codified
24 in the Civil Rights Act of 1957. *See Rogers*, 187 F. Supp. at 853 (finding that the
25 legislative history of the Civil Rights Act of 1960 “leaves no doubt but that [Title III] is
26 designed to secure a more effective protection of the right to vote”).

27 Courts construing the CRA shortly after it was enacted confirm that its aim was to
28 facilitate protection of the right to vote through the Civil Rights Acts of 1957 and 1960.

1 *Lynd*, 306 F.2d at 228 (explaining that the Attorney General “is entitled to inspect and
2 copy all of the voter papers and records as defined” “in fulfillment of the duties imposed
3 upon him by the Civil Rights Act of 1957 and 1960”). Valid statements of basis and
4 purpose from the time of enactment were “based upon information in the possession of
5 the Attorney General tending to show that discriminations on the basis of race and color
6 have been made with respect to registration and voting within your jurisdiction.” *Id.* at
7 231 n.6; *In re Coleman*, 208 F. Supp. 199, 199-200 (S.D. Miss. 1962). Repeatedly
8 addressing the issue, the Fifth Circuit “laid down the rule that the government is entitled
9 to have an order of the trial court authorizing it to inspect the voting records” based on
10 Plaintiff’s “reasonable grounds for belief that certain voters are being discriminatorily
11 denied their voting rights in a given county.” *United States v. Lynd*, 301 F.2d 818, 822
12 (5th Cir. 1962).

13 The Complaint in this case does not allege a purpose related to investigation of
14 race discrimination in voting. Instead, Plaintiff’s alleged purpose concerns assessing
15 compliance with the voter registration list maintenance provisions of the NVRA and
16 HAVA. (Doc. 8-3, at 2). The NVRA requires each state to “conduct a general program
17 that makes a reasonable effort to remove the names of” voters who are ineligible due to
18 death or a change in residence, 52 U.S.C. § 20507(a)(4), while HAVA creates minimum
19 standards for maintaining voter registration records and prohibits processing of voter
20 registration applications absent specific information, 52 U.S.C. § 21083(a)(4), (5)(A).
21 But list maintenance practices do not fall within the CRA’s scope without some basis to
22 assert that list maintenance is being conducted in a discriminatory manner. *See Kennedy*
23 *v. Bruce*, 298 F.2d 860, 863 & n.2 (5th Cir. 1962) (noting that statistical evidence in a
24 Title III proceeding indicating a failure to remove voters who moved away or died was
25 “a matter which does not bear any particular importance” to demonstrating illegal
26 discrimination). Plaintiff must articulate a purpose and basis that relates to an
27 investigation into civil rights violations, specifically, discrimination in voting, but it has
28 failed to do so here.

1 Considering essentially the same demand for a statewide voter registration list,
2 another district court recently concluded that Plaintiff’s statement of basis and purpose
3 was “both lacking in depth” and “contrived.” *Weber*, 2026 WL 118807 at *13. As is
4 the case here, “[i]f the DOJ wants to instead use [the cited] statutes for more than their
5 stated purpose, circumventing the authority granted to them by Congress, it cannot do so
6 under the guise of a pretextual investigative purpose.” *Id.*, at *19. In *Oregon*, the court
7 concluded that “the ‘purpose’ required in a demand for records under Title III must
8 relate to a purpose of investigating violations of individuals’ voting rights,” rather than
9 Plaintiff’s alleged purpose of investigating list maintenance procedures. 2026 WL
10 318402 at *9-10. As in *Weber* and *Oregon*, Plaintiff has failed to allege any basis for its
11 demand, let alone a reason to believe that race discrimination related to voting is
12 occurring in Arizona. And Plaintiff’s alleged purpose is not valid because it has not
13 articulated how its assessment of Arizona’s compliance with NVRA’s list maintenance
14 requirements relates to an investigation into discrimination in voting. Nothing in
15 Plaintiff’s Complaint or letters to the Secretary even suggests that it has a proper basis or
16 purpose to demand Arizona’s VRDB.

17 **2. Plaintiff has no basis to demand Arizona’s VRDB to find**
18 **noncitizens on Arizona’s voter rolls.**

19 As the *Weber* and *Oregon* courts explained, Plaintiff’s actions and public
20 statements conflict with its stated purpose for demanding Arizona’s VRDB. In *Weber*,
21 the court determined that Plaintiff was not forthcoming about its true basis or purpose
22 for demanding state voter registration lists and that it was apparent that “the federal
23 government [is] laying the groundwork to amass the personal information of millions of
24 Americans in a centralized database.” *Weber*, 2026 WL 118807 at *18-19. And in
25 *Oregon*, the court observed that “Plaintiff has continued to engage in conduct raising
26 suspicion about the purposes for which it seeks statewide unredacted voter registration
27 lists.” *Oregon*, 2026 WL 318402 at *11. It also noted that in Minnesota, Plaintiff had
28 tied its demand for state voter lists to its immigration enforcement efforts. *See id.*

1 (citing Attorney General’s letter to the Minnesota Governor regarding immigration
2 enforcement and asking the state to “allow the Civil Rights Division of the Department
3 of Justice to access voter rolls to confirm that Minnesota’s voter registration practices
4 comply with federal law as authorized by the Civil Rights Act of 1960.”). As the court
5 concluded, “[t]he context of this demand within a letter about immigration enforcement
6 casts serious doubt as to the true purposes for which Plaintiff is seeking voter
7 registration lists in this and other cases, and what it intends to do with that data.” *Id.*

8 Finally, if Plaintiff’s true purpose is to gather information to aid enforcement of
9 immigration law in Arizona, and that could somehow come within the CRA (it cannot),
10 the VRDB is not a useful tool to achieve that goal. As this Court is surely aware, for
11 more than twenty years, Arizona has required that a voter registration application for one
12 registering to vote for the first time or re-registering when moving from one Arizona
13 county to another be accompanied by “satisfactory evidence of United States
14 citizenship.” A.R.S. § 16-166(F) (listing the documents that provide such evidence
15 (“DPOC”). Under more recent Arizona law, if a registrant does not provide DPOC, the
16 county recorder must check federal databases, including the Social Security
17 Administration and the Systematic Alien Verification for Entitlements (“SAVE”) system
18 for evidence of citizenship. A.R.S. § 16-121.01(D)(2)-(3). Simply put, any person who
19 makes it onto Arizona’s voter rolls has already demonstrated United States citizenship.
20 Accordingly, if the purpose for Plaintiff’s demand is to find noncitizens on Arizona’s
21 voter rolls, the state has already done that work and access to Arizona’s VRDB will not
22 further Plaintiff’s purpose. Furthermore, such a demand is improper under the CRA.

23 **B. The CRA Does Not Prevent Adjudication of this Matter,**

24 As explained in greater detail in the Secretary’s Response in Opposition to the
25 Motion to Compel, the CRA does not bar this court from determining whether Plaintiff
26 has met its burden under that law. Plaintiff attempts to characterize these proceedings as
27 akin to an order to show cause or a “summary” proceeding, in which this Court does
28 “not adjudicate ‘the factual foundation for, or the sufficiency of, the Attorney General’s

1 ‘statement of the basis and the purpose’ contained in the written demand’ or ‘the scope
2 of the order to produce.’” (Doc, 1, ¶ 4 (quoting *Kennedy v. Lynd*, 306 F.2d 222, 226 (5th
3 Cir. 1962)). But this is an ordinary civil action, subject to the Federal Rules of Civil
4 Procedure (the “Federal Rules”), and this Court has authority to determine that Plaintiff
5 has failed as a matter of law to provide the requisite statement of basis and purpose.

6 Plaintiff’s reliance on *Lynd* is misplaced for two reasons. First, the Supreme
7 Court’s decision in *United States v. Powell*, 379 U.S. 48 (1964) calls *Lynd* into question.
8 Second, Plaintiff chose to initiate this action by filing a Complaint, and Plaintiff is
9 therefore bound to follow the Federal Rules, which govern such proceedings.

10 The statutory language at issue states that when “a demand is made pursuant to
11 [53 U.S.C. §] 20703” a district court “shall have jurisdiction by appropriate process to
12 compel the production of such record or paper.” 52 U.S.C. § 20705. The *Lynd* court
13 interpreted “appropriate process” to give courts a limited role, but that does not end the
14 inquiry. Two years after *Lynd*, the Supreme Court interpreted a statute with similar
15 language and determined that the language did not require a departure from the Federal
16 Rules. *Powell*, 379 U.S. at 58 n.18. There, the Court concluded that because the statute
17 at issue contained “no provision specifying the procedure to be followed in invoking the
18 court’s jurisdiction, the Federal Rules of Civil Procedure apply,” allowing this Court to
19 “inquire into the underlying reasons for the examination” of records. *Id.* “The Supreme
20 Court’s holding in *Powell* squarely rejects [Plaintiff’s] contention and reliance on *Lynd*.”
21 *Oregon*, 2026 WL 318402, at *8.

22 Furthermore, “[e]ven if *Lynd* applied here, the Court doubts its applicability . . .
23 where [Plaintiff] made an affirmative choice to file a complaint and proceed through
24 ordinary litigation.” *Id.* at *8 n.1. As in *Oregon*, here Plaintiff filed a complaint
25 pursuant to Fed. R. Civ. P. 8 seeking production of the VRDB and affirmatively treated
26 this matter as ordinary civil litigation from the start. While *Lynd* addressed an
27 application directly to the court for records, here Plaintiff has invoked “an ordinary,
28 traditional civil action with all of its trappings.” *Oregon*, 2026 WL 318402, at *8 n.1.

1 Because Plaintiff chose to proceed under the Federal Rules, it cannot artificially limit
2 this Court’s role.

3 **C. In the Alternative, the VRDB Is Not a Document Subject to the CRA’s**
4 **Records Provision.**

5 The language of 52 U.S.C. § 20701 provides an additional basis to dismiss this
6 action. “[A] voter registration list is not a ‘record’ that ‘c[a]me into [the state’s]
7 possession relating to any application, registration, payment of poll tax, or other act
8 requisite to voting in such election.” *Benson*, 2026 WL 362789, at *9 (quoting 52
9 U.S.C. § 20701). The statutory language “refers only to documents that people submit
10 to the State as part of the voter registration process, not a document like the voter
11 registration list that is created by state officials.” *Id.* The *Benson* court found the VRDB
12 is not subject to the CRA for several reasons: (1) records that “come into [the state’s]
13 possession” must “naturally refer[] to a process by which someone *acquires* an item
14 from an external source,” (2) giving the phrase effect necessitates this interpretation, and
15 (3) the next part of the statutory language—“relating to any application, registration,
16 payment of poll tax, or other act requisite to voting in such election”—shows that the
17 statute is meant to cover “something that the voter submits or does as part of the
18 registration process.” *Id.* (emphasis in original). The VRDB is created and maintained
19 by state officials using information derived from voters’ registration and voting-related
20 activities, but is separate from the records that voters themselves submit. Accordingly,
21 the VRDB does not come within the terms of 52 U.S.C. § 20701

22 **III. Plaintiff Has Not Complied with Federal Privacy Laws.**

23 **A. Plaintiff’s Demand for the VRDB Violates the Privacy Act.**

24 Even if Plaintiff had demonstrated its entitlement to obtain the VRDB, the
25 Privacy Act bars its demand. “The Privacy Act exists to protect individuals from
26 disclosure of government collected information.” *Ritter v. United States*, 177 Fed. Cl.
27 84, 87 (2025). The law implements “certain safeguards for an individual against an
28 invasion of personal privacy.” Pub. L. No. 93–579, § 2(b), 88 Stat. 1896 (1974).

1 Compliance with the Privacy Act is particularly important with respect to Plaintiff’s
2 unprecedented demand for the PII and voting history of every Arizona voter in light of
3 recent evidence that the federal government has not followed privacy laws with respect
4 to information about voters. *See Am. Fed’n of State, Cnty., and Mun. Emps., AFL-CIO*
5 *v. Soc. Sec. Admin.*, No. CV-25-00596-ELH, Doc. 197, Not. of Corr. to the Record, at 5
6 (D. Md. Jan. 16, 2026) (stating that SSA determined that a member of its DOGE Team
7 had signed a “Voter Data Agreement” with an advocacy group to analyze voter rolls “to
8 find evidence of voter fraud and to overturn election results in certain States”).

9 First, the Privacy Act bars Plaintiff’s demand for the VRDB because the VRDB is
10 a “record” and Plaintiff has not followed the Privacy Act’s procedures. Under the
11 Privacy Act, a covered “record” includes “any item, collections, or grouping of
12 information about an individual that is maintained by an agency.” 5 U.S.C.
13 § 552a(a)(4). The VRDB is within this definition, because it includes core personal
14 information like full names, dates of birth, residence addresses, political party
15 preference, and voting history. *See* A.R.S. § 16-168(C), (F). The VRDB also includes
16 sensitive PII protected as confidential under Arizona law such as month and day of birth
17 date, any portion of a social security number, driver’s license number, Indian census
18 number, father’s name or mother’s maiden name, state or country of birth, e-mail
19 address, and voter signatures. A.R.S. § 16-168(F). Moreover, the VRDB contains
20 records related to voters’ First Amendment activities—*i.e.*, their political party
21 affiliation and voting history. *See* 5 U.S.C. § 552a(e)(7). In short, Arizona’s VRDB in
22 Plaintiff’s hands will constitute a “system of records” under the Privacy Act. 5 U.S.C. §
23 552a(a)(5). Because Plaintiff has not followed the procedures the Privacy Act requires
24 before it “maintain[s], collect[s], use[s], or disseminate[s]” any system of records
25 searchable by individual, the Privacy Act bars Plaintiff’s demand for the VRDB,
26 including its presumptively public portions. 5 U.S.C. §§ 552a(a)(3), (a)(5), (e)(4), (f).

27 Second, the Privacy Act bars federal agencies from collecting or maintaining
28 records “describing how any individual exercises rights guaranteed by the First

1 Amendment unless expressly authorized by statute or by the individual about whom the
2 record is maintained or unless pertinent to and within the scope of an authorized law
3 enforcement activity.” 5 U.S.C. § 552a(e)(7). Plaintiff’s demand directly implicates
4 that statutory bar. Voter registration, party affiliation, and the choice to participate or
5 not in an election are forms of political expression protected by the First Amendment.
6 *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 195 (1999) (choice of whether to
7 register to vote “implicates political thought and expression”); *Rutan v. Republican*
8 *Party of Ill.*, 497 U.S. 62, 69, 75-76 (1990) (expression of political beliefs and
9 association through political affiliation is protected by the First Amendment).

10 None of the exceptions in 5 U.S.C. § 552a(e)(7) applies here. Plaintiff has not
11 received the express authorization of the five million voters whose records it seeks. 5
12 U.S.C. § 552a(e)(7). Nor will the records of Arizona voters’ First Amendment activity
13 further a legitimate law enforcement investigation. *Garris v. Fed. Bureau of*
14 *Investigation*, 937 F.3d 1284, 1299 (9th Cir. 2019) (stating that if a record “has at best
15 only speculative relevance to an unstated law enforcement purpose,” the law
16 enforcement exception in 5 U.S.C. § 552a(e)(7) does not apply). Because no exception
17 applies to the VRDB, the statutory bar on maintaining records on First Amendment
18 activities prohibits Plaintiff from collecting the requested records.

19 Third, heightened protections apply when an agency establishes or alters a
20 “system of records,” or “group of records under the control of any agency from which
21 information is retrieved by the name of the individual” or other individual identifier. 5
22 U.S.C. § 552a(a)(5), (e). The Privacy Act’s structure hinges on public notice and
23 comment regarding the nature, scope, and routine uses of a system of records before the
24 government bulk-collects Americans’ data. 5 U.S.C. § 552a(e)(4)(D); *see Am. Fed’n of*
25 *State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, 778 F. Supp. 3d 685, 763 (D.
26 Md. 2025). As relevant here, the Privacy Act requires Plaintiff to publish a System of
27 Records Notice (“SORN”) in the Federal Register before “establish[ing] or revis[ing]” a
28 “system of records.” 5 U.S.C. § 552a(e)(4); *Brusseau v. Dep’t of Homeland Sec.*, No.

1 CV-20-1364, 2021 WL 3174248, at *5 (E.D. Va. July 27, 2021). Plaintiff’s demand to
2 obtain Arizona’s unredacted VRDB unquestionably seeks a “system of records.” 52
3 U.S.C. § 552a(a)(5). Yet the Complaint identifies no SORN allowing Plaintiff to collect
4 this sensitive data, nor is the Secretary aware of any applicable SORN. This dooms
5 Plaintiff’s data collection efforts under the Privacy Act.

6 **B. Plaintiff’s Demand for the VRDB Violates the E-Government Act.**

7 For similar reasons, the Court should dismiss the Complaint for failure to comply
8 with the E-Government Act, Pub. L. No. 107-347, § 208, 116 Stat. 2899 (2002). The E-
9 Government Act requires federal agencies to conduct a “privacy impact assessment”
10 (“PIA”) prior to “initiating a new collection of information” that “includes any
11 information in an identifiable form permitting the physical or online contacting of a
12 specific individual” if the information relates to “10 or more persons.” *Id.* § 208(b).
13 Crucially, the PIA and its procedural requirements must be completed “before the
14 agency initiates a new collection of information.” *Elec. Priv. Info. Ctr. v. Presidential*
15 *Advisory Comm’n on Election Integrity*, 266 F. Supp. 3d 297, 311 (D.D.C. 2017).

16 The face of the Complaint reveals that Plaintiff demanded information protected
17 by the E-Government Act. (Doc. 1 at 7, ¶ B). The sensitive voter information contained
18 in the VRDB clearly constitute personal information protected by the Act, triggering the
19 PIA requirement. *See* Pub. L. No. 107-347, § 208(b)(1)(A)(ii)(II); OMB Guidance, M-
20 03-22 (Sep. 26, 2003), <https://perma.cc/E6PWYQTP>, Att. A § II(a)(b), *id.* ¶ II(B)(a)(6).
21 However, the Complaint does not allege that Plaintiff completed a PIA for the VRDB,
22 requiring dismissal.

23 **C. Plaintiff’s Demand Violates the Driver’s Privacy Protection Act.**

24 Finally, Plaintiff’s demand for the VRDB also violates the DPPA because
25 Arizona’s VRDB pulls sensitive voter information directly from the Arizona Department
26 of Transportation, Motor Vehicle Division (“MVD”). *See* 52 U.S.C. § 20504(c)(2)(E);
27 A.R.S. § 16-112(B)(2) (requiring rules that shall “[a]llow the transfer of driver license
28 applications, including renewal and change of address, and voter registration

1 information from the department of transportation to the voter registration rolls”).

2 The DPPA expressly prohibits disclosing “personal information” that is obtained
3 by the MVD in connection with a motor vehicle record.” 18 U.S.C. §§ 2721(a)(1),
4 2725(1), (3), & (4); *Reno v. Condon*, 528 U.S. 141, 143 (2000). This prohibition
5 extends to authorized recipients, like the Secretary, who receives information from
6 MVD to carry out voter registration. 18 U.S.C. §§ 2721(b)(1), (c). In Arizona, the
7 MVD electronically provides to the Secretary certain information associated with each
8 person who applies for a driver’s license, including completed voter registration
9 applications. *See* A.R.S. § 16-112(A), (B); *see also* 52 U.S.C. § 20504.

10 Plaintiff alleges that its demand is exempt from the DPPA because the demand
11 “is for use by a government agency in carrying out the government agency’s function to
12 accomplish its enforcement authority.” (Doc. 1 ¶ 28) (citing 18 U.S.C. § 2721(b)(1)).
13 This conclusory statement is insufficient to plausibly allege that the DPPA’s government
14 use exception applies. The DPPA’s inclusion of the phrase “[f]or use” dictates the
15 critical inquiry—*i.e.*, whether “the actual information disclosed . . . is used for the
16 identified purpose.” *Senne v. Vill. Of Palatine, Ill.*, 695 F.3d 597, 606 (7th Cir. 2012).
17 “When a particular piece of disclosed information is not used to effectuate that purpose
18 in any way, the exception provides no protection for the disclosing party.” *Id.*

19 Here, even if the Court accepts that assessing Arizona’s compliance with the
20 NVRA is a proper purpose under the CRA (which, as explained above, it is not),
21 obtaining the driver’s license numbers of five million Arizonans will not establish
22 whether Arizona makes a reasonable effort to remove persons due to death or change in
23 residence. *See* 52 U.S.C. § 20507(a)(4). Moreover, Plaintiff has not alleged how it
24 intends to use the driver’s license numbers. Consequently, Plaintiff’s unbounded request
25 exceeds the scope of the DPPA’s government-function exception.

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1 **IV. The CRA, the NVRA, and HAVA Do Not Preempt Arizona Law Limiting**
2 **Access to Information in the VRDB.**

3 Plaintiff is not entitled to inspect an unredacted version of Arizona's VRDB to
4 assess the state's compliance with the NVRA, HAVA, or the CRA. Arizona law bars
5 election officials from disclosing certain information from the VRDB. In particular,
6 they may not disclose "the month and day of birth date, the social security number or
7 any portion thereof, the driver license number or nonoperating identification license
8 number, the Indian census number, the father's name or mother's maiden name, the state
9 or country of birth and the records containing a voter's signature and a voter's e-mail
10 address." A.R.S. § 16-168(F). Disclosure in violation of this prohibition is a felony. *Id.*

11 Plaintiff attempts to make an end run around these state law privacy provisions by
12 arguing that the CRA preempts them. (Doc. 8, at 12-13). But Plaintiff's purported
13 purpose for invoking the CRA here is to assess compliance with the NVRA. The
14 NVRA's disclosure provisions do not prohibit the redaction of sensitive voter
15 information. *See Pub. Int. Legal. Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024)
16 (finding that "the appropriate redaction of uniquely or highly sensitive personal
17 information in the voter file" was permissible where the NVRA did not prohibit such
18 redactions). In *Weber, Oregon*, and *Benson*, the courts applied the reasoning in *Bellows*
19 to Plaintiff's similar demands for California, Oregon, and Michigan's voter registration
20 databases. *Benson*, 2026 WL 362789 at *3 (collecting cases); *Oregon*, 2026 WL
21 318402, at *6 (same); *Weber*, 2026 WL 118807 at *12-13 (noting the Plaintiff has
22 previously taken the position that "the NVRA does not prohibit States from redacting
23 'uniquely sensitive information' like voters' Social Security Numbers before disclosing
24 records"). Accordingly, even if Plaintiff could cure all the defects in its demand
25 discussed above, no law requires Arizona to produce unredacted versions of its VRDB.

26 **CONCLUSION**

27 For the foregoing reasons, the United States' Complaint fails to state a claim for
28 relief and should be dismissed without leave to amend.

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RESPECTFULLY SUBMITTED this 27th day of February, 2026.

Kristin K. Mayes
Attorney General

/s/ Karen J. Hartman-Tellez

Karen J. Hartman-Tellez
Kara Karlson
Kyle Cummings
Attorneys for Defendant Arizona
Secretary of State Adrian Fontes

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CERTIFICATE OF GOOD FAITH CONFERRAL

Pursuant to Local Rule 12.1(c), I certify that on February 27, 2026, I attempted to contact Brittany Bennett, counsel for the United States in this matter, by telephone at the number listed on the Complaint to discuss whether any permissible amendment to the Complaint could cure the defects outlined in this Motion to Dismiss. I was unable reach Ms. Bennett by telephone and left a voicemail. In addition, I sent an email to Ms. Bennett summarizing the bases for dismissal stated above and invited her to contact me if she believed that an amendment to the Complaint would be appropriate. As of the time of filing the foregoing Motion, I have not received a response from the United States' counsel.

Kristin K. Mayes
Attorney General

/s/ Karen J. Hartman-Tellez

Karen J. Hartman-Tellez
Kara Karlson
Kyle Cummings
Attorneys for Defendant Arizona
Secretary of State Adrian Fontes

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2026, I filed the forgoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Monica Quinonez

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