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17 UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

19 United States of America
20
21 Plaintiff,

CASE NO: 2:26-cv-00066-SMB

22 v.

23 ADRIAN FONTES, in his Official
24 Capacity as Secretary of State for the State
25 of Arizona,

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

26 Defendant.
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MEMORANDUM OF LAW

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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 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 July 28, 2025, the Attorney General, through her representatives, made a written request to Secretary Fontes to produce certain information regarding Arizona’s procedures for complying with the statewide voter registration list (“SVRL”) maintenance provisions of the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20501 *et seq.* Ex. 1, Dep’t Ltr. to Fontes dated July 28, 2025 (“July 28 Letter”). On August 14, 2025, the Attorney General sent another letter making a demand for records specifically under the CRA. Ex. 3, Dep’t Ltr. to Fontes dated August 14, 2025 (“August 14 Letter”). Secretary Fontes explicitly refused to comply with either demand for records.

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.

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

14 II. BACKGROUND

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

16 Under Section 301 of the CRA, every “officer of election” must “retain and preserve
17 ... all records and papers which come into his possession relating to any ... act requisite to
18 voting in [a Federal] election” for a period of twenty-two months from that election. 52
19 U.S.C. § 20701. Section 303 of the CRA provides, “Any record or paper required by section
20 301 to be retained and preserved shall, upon demand in writing by the Attorney General or
21 [her] representative directed to the person having custody, possession, or control of such
22 record or paper, be made available for inspection, reproduction, and copying at the
23 principal office of such custodian by the Attorney General or [her] representative....” 52
24 U.S.C. § 20703. The written demand “shall contain a statement of the basis and the purpose
25 therefor.” *Id.*

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

7 The special proceeding is “summary” in “nature” and neither “plenary [n]or
8 adversary.” *In re Gordon*, 218 F. Supp. 826, 826-27 (S.D. Miss. 1963); *see Kennedy v.*
9 *Bruce*, 298 F.2d 860, 863 (5th Cir. 1962) (noting that this procedure “does not amount to
10 the filing of a suit of any kind”). “All that is required is a simple statement by the Attorney
11 General that after a ... written demand” for Federal election records covered by Section
12 301 of the CRA (52 U.S.C. § 20701), “the person against whom an order for production is
13 sought ... has failed or refused to make such papers ‘available for inspection, reproduction,
14 and copying’” *Lynd*, 306 F.2d at 226 (quoting 52 U.S.C. § 20703). The court does not
15 entertain “any other procedural device or maneuver—either before or during any hearing
16 of the application—to ascertain the factual support for, or the sufficiency of, the Attorney
17 General’s ‘statement of the basis and the purpose therefor’ as set forth in the written
18 demand.” *Id.* (quoting 52 U.S.C. § 20703). Rather, “[t]he Court, with expedition, should
19 grant the relief sought or, if the respondent-custodian opposes the grant of such relief, the
20 matter should be set down without delay for suitable hearing on the matters open for
21 determination.” *Id.*

22 Those matters, though, are “severely limited.” *Id.* The court may adjudicate only:
23 (1) “whether the written demand has been made”; and (2) “whether the custodians against
24 whom orders are sought have been given reasonable notice of the pendency of the
25 proceeding.” *Id.* Neither “the factual foundation for, or the sufficiency of, the Attorney
26 General’s ‘statement of the basis and the purpose’ contained in the written demand” nor
27 “the scope of the order to produce” is open for review. *Id.*; *see ..* As the Fifth Circuit has
28 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

1 dispute subsequently arises as to whether or not any specified particular paper or record
2 comes within [52 U.S.C. § 20701's] broad statutory classification," that issue may be
3 decided by the court. *Lynd*, 306 F.2d at 226.

4 **B. The Attorney General is demanding Federal election records under the CRA**
5 **to assess Arizona's NVRA and HAVA compliance.**

6 On July 28, 2025, the Attorney General, acting through her representatives at the
7 Department of Justice ("Department"), sent a letter to Secretary Fontes, Chief Election
8 officer of Arizona, regarding Arizona's compliance with Federal list maintenance
9 requirements. Ex. 1. The NVRA and HAVA have list maintenance requirements "to protect
10 the integrity of the electoral process." 52 U.S.C. § 20501(b)(3). The statutes impose certain
11 recordkeeping duties and require reasonable efforts to maintain lists of eligible voters for
12 federal elections. *See* 52 U.S.C. §§ 20507(a)(4), 20507(i)(1), 21083(a)(1)(A). The U.S.
13 Election Assistance Commission's ("EAC") biennial Election Administration and Voting
14 Survey ("EAVS") report was released in June 2025 ("2024 EAVS Report"). The survey
15 includes each State's report of election administration activities including information
16 regarding their list maintenance procedures.

17 The July 28 Letter requested a copy of Arizona's SVRL within fourteen days of the
18 date of the letter. Ex. 1. It further requested Secretary Fontes to produce the requested
19 information and records by encrypted email or via the Department's secure file-sharing
20 system, Justice Enterprise File Sharing (JEFS). *Id.*

21 On August 8, 2025, Secretary Fontes responded to the July 28 Letter stating his
22 office was unable to comply within 14 days due to the nature of the request. Ex. 2, Fontes
23 Ltr. to Dep't dated August 8, 2025 ("August 8 Letter"). The August 14 letter responded by
24 requesting responses to the July 28 Letter regarding Arizona's answers to the most recent
25 EAVS survey by no later than August 21, 2025. Ex. 3. The August 14 Letter also requested
26 an electronic copy of the SVRL be produced by August 21, 2025. *Id.*

27 The August 14 Letter explained "Section 303 of the CRA provides, in pertinent part,
28 'Any record or paper required by section 20701 to be retained and preserved shall, upon
demand in writing by the Attorney General or his representative directed to the person

1 having custody, possession, or control of such record or paper, be made available for
2 inspection, reproduction, and copying at the principal office of such custodian by the
3 Attorney General or his representative...’ See 52 U.S.C. § 20703.” Ex. 3 at 2.

4 The August 14 Letter specifically demanded the electronic copy of Arizona’s SVRL
5 with *all fields*, which means the registrant’s full name, date of birth, residential address, his
6 or her state driver’s license number or the last four digits of the registrant’s social security
7 number as required under HAVA to register individuals for federal elections. See 52 U.S.C.
8 § 21083(a)(5)(A)(i). Ex. 3 at 1.

9 On August 29, 2025, Secretary Fontes responded to the August 14 Letter with
10 responses to the EAVS data requests. However, Secretary Fontes refused to comply with
11 the Attorney General’s CRA demand to produce Arizona’s SVRL. Secretary Fontes based
12 his noncompliance on Arizona privacy law which he asserts prohibits Arizona from
13 producing the information sought by the Attorney General. Ex. 4, Fontes Ltr. to Dep’t dated
14 August 29, 2025 (“August 29 Letter”).

15 The August 14 Letter explained to Secretary Fontes that “HAVA specifies that the
16 ‘last 4 digits of a social security number . . . shall not be considered a social security number
17 for purposes of section 7 of the Privacy Act of 1974.’ See 5 U.S.C. § 552a note; 52 U.S.C.
18 § 21083(c). In addition, any prohibition of disclosure of a motor vehicle record contained
19 in the Driver’s [Privacy] Protection Act, codified at 18 U.S.C. § 2721(b)(1), is exempted
20 when the disclosure is for use by a government agency in carrying out the government
21 agency’s function to accomplish its enforcement authority as the Department is now
22 doing.” Ex. 3 at 2.

23 To alleviate the privacy concerns raised by Secretary Fontes, the Department
24 already made clear in the August 14 Letter that the Attorney General and her
25 representatives would comply with Federal privacy laws applicable to the demanded
26 Federal election records. For example, the Department pointed out that in addition to the
27 Privacy Act, the CRA provides:

28 Unless otherwise ordered by a court of the United States, neither the
Attorney General nor any employee of the Department of Justice, nor any

1 other representative of the Attorney General, shall disclose any record or
2 paper produced pursuant to this chapter, or any reproduction or copy,
3 except to Congress and any committee thereof, governmental agencies,
4 and in the presentation of any case or proceeding before any court or grand
jury.

5 *Id.* (quoting 52 U.S.C. § 20704).

6 III. ARGUMENT

7 A. The United States is entitled to an Order to Compel Production under 8 the CRA.

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

15 The August 14 Letter satisfies these requirements by: (1) making a written demand
16 for inspection, reproduction, and copying of federal election records, including the SVRL
17 and records of voter registration application within twenty-two months of a Federal
18 election; (2) directing that demand to Secretary Fontes, an officer of election as defined by
19 Section 306 of the CPA;² and (3) stating that the purpose of the demand is to “ascertain
20

21 ² Section 306 provides:

22 As used in this chapter, the term “officer of election” means any person
23 who, under color of any Federal, State, Commonwealth, or local law, statute,
24 ordinance, regulation, authority, custom, or usage, performs or is authorized
25 to perform any function, duty, or task in connection with any application,
26 registration, payment of poll tax, or other act requisite to voting in any
27 general, special, or primary election at which votes are cast for candidates
28 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.

1 Arizona’s compliance with the list maintenance requirements of the NVRA and HAVA.”
2 Ex. 3 at 2.

3 Secretary Fontes relies on Arizona law A.R.S. §16-168(F), which restricts public
4 access to information in the state’s voter registration database. *See* August 29 Letter citing
5 A.R.S. §16-168(F). Secretary Fontes’ reliance on state law to deny the Attorney General’s
6 demand for a copy of Arizona’s SVRL is without merit and insufficient. Officers of election
7 have no discretion to refuse or otherwise limit the federal election records or papers or the
8 content of those records made available to the Attorney General. *See* 52 U.S.C. § 20703;
9 *see also* 52 U.S.C. § 20701 (referring to “all records and papers”).

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

19 Similarly, HAVA requires list maintenance to “be conducted in a manner that
20 ensures” the elimination of duplicate names from the statewide list. 52 U.S.C. §
21 21083(a)(2)(B)(iii). Unredacted voter files, including the three identification numbers
22 described above, are needed to determine if the state has a reasonable program of
23 identifying and removing duplicate voter registrations. That is why twenty-five states
24 (including Arizona) share the identical information sought by the Attorney General here
25 with a private organization known as the Electronic Registration Information Center
26 (“ERIC”)³. Secretary Fontes routinely shares this data with ERIC.

27
28 ³ <https://ericstates.org/who-we-are/>

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

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

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

11 Defendant has refused to produce the federal election records demanded by the
12 Attorney General under the CRA because she contends that Arizona's privacy law and the
13 Federal Privacy Act prohibit cooperation without an appropriate purpose stated by the
14 Attorney General. First, the August 14 letter provided Secretary Fontes with the Attorney
15 General's purpose for the demand. Second, the Supremacy Clause of the Constitution says
16 otherwise. It is a basic tenet of our federal system that when Federal and State law conflict,
17 the federal law governs. *See* U.S. Const. art. VI. As this Circuit has explained, if a federal
18 election law like the NVRA and state law "do not operate harmoniously in a single
19 procedural scheme for federal voter registration, then Congress has exercised its power to
20 'alter' the state's regulation, and that regulation is superseded." *Gonzalez v. Arizona*, 677
21 F.3d 383, 394 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of*
22 *Ariz., Inc.*, 570 U.S. 1 (2013).

23 A South Carolina court recently confronted the same argument from an individual
24 voter seeking to enjoin state officials from cooperating with the Department. Addressing
25 federal preemption over state statutes governing privacy, the court explained, "Federal law
26 likely requires the Election Commission to provide the requested information to DOJ, and
27 while DOJ has also pointed to the National Voter Registration Act and the Help America
28 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 1, 2025), attached to the Declaration of Eric Neff as Ex. 5, at 10. The court noted, “Title III
 2 requires that, for 22 months after a federal election, a state election official ‘retain and
 3 preserve’ ‘all records and papers which come into his possession relating to any application,
 4 registration, payment of poll tax, or other act requisite to voting in such election.’ 52 U.S.C.
 5 § 20701.” *Id.* at 10-11. The court reasoned:

6 Title III has long been understood to “encompass[], among other things,
 7 voting registration records,” *McIntyre v. Morgan*, 624 F. Supp. 658, 664 (S.D.
 8 Ind. 1985), which is not surprising given the scope of the statutory text. And
 9 since HAVA’s enactment two decades ago, registration records must include
 10 either “the applicant’s driver’s license number” or “the last four digits of the
 11 applicant’s social security number.” 52 U.S.C. § 21083(a)(5)(A). The
 12 Attorney General (or his representative) may demand in writing “[a]ny
 13 record or paper” that a state election official must keep under § 20701. *Id.* §
 14 20703. That demand must simply “contain a statement of the basis and the
 15 purpose therefor.” *Id.*

16 *Id.* at 11. As a result, the court found, “DOJ’s request for South Carolina’s voter registration
 17 list fits comfortably within this legal framework” and denied the voter’s request to enjoin
 18 the state’s production of its list to the Department. *Id.* at 11-12. For those reasons, *id.*, any
 19 state-law privacy right to the contrary is preempted by the CRA’s broad grant of access to
 20 the Attorney General. *See* 52 U.S.C. § 20703; *Sullivan v. Summers*, 769 F. Supp. 3d 455,
 21 461 (D. Md. 2025). Consequently, the Attorney General is entitled to the federal election
 22 records she has demanded from Secretary Fontes under the CRA, notwithstanding any
 23 conflicting state privacy laws.

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

26 The CRA displaces the Federal Rules of Civil Procedure and creates a “special
 27 statutory proceeding” under which Secretary Fontes, as an officer of election for Arizona,
 28 must produce the voter-registration lists and other federal election records demanded by
 the Attorney General.⁴ *Lynd*, 306 F.2d at 225. The court in *Lynd* reasoned that a special

⁴ 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

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

3
4 There is no place for a motion for a bill of particulars or for a more definite
5 statement under F.R.Civ.P. 12(e), 28 U.S.C.A. There is no place for any other
6 procedural device or maneuver— either before or during any hearing of the
7 application— to ascertain the factual support for, or the sufficiency of, the
8 Attorney General's 'statement of the basis and the purpose therefor' as set
9 forth in the written demand. [52 U.S.C. § 20703]. Thus with respect to the
10 reasons why the Attorney General considers the records essential, there is no
11 place, either as a part of pleadings, discovery, or trial, for interrogatories
12 under F.R.Civ.P. 33, oral depositions of a party under F.R.Civ.P. 26(a), 30,
13 production of documents under F.R.Civ.P. 34, or request for admissions as to
14 facts or genuineness of documents or other things under F.R.Civ.P. 36, 37.

15 *Id.* at 226.

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

28 election 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).

1 **IV. CONCLUSION**

2 For the foregoing reasons, the United States requests that this Court enter an Order
3 directing Defendant to comply with the Attorney General’s demand pursuant to the CRA
4 and provide an electronic copy of Arizona’s SVRL with *all fields* including the name, date
5 of birth, driver’s license number, last four digits of the social security number or the HAVA
6 unique identifier. Those records should be provided electronically to the United States
7 within five days.

8
9 DATED: January 7, 2026

Respectfully submitted,

10
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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2026, 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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