STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHELLE McQUEER, individually and in her official capacity as Clerk of the Township of Bridgewater, *Plaintiff*, REPUBLICAN NATIONAL COMMITTEE, and MICHIGAN REPUBLICAN PARTY, *Plaintiff-Intervenors*, v. JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and JONATHAN BRATER, in his official capacity as Director of Elections, and the MICHIGAN DPEARTMENT OF STATE *Defendants*.	Case No. 26-000172-MZ Hon. Michael J. Riordan

RETRIEVED FROM DEMOCRACYDOCKET.COM

UNITED STATES OF AMERICA'S UNOPPOSED MOTION FOR LEAVE TO FILE STATEMENT OF INTEREST

Pursuant to MCR 2.119 and 28 USC 517, the United States hereby moves this Court for leave to file the attached Statement of Interest in the above-captioned case. Pursuant to this Court's Local Rules, counsel for the United States sought concurrence from all parties in this case, and all parties to this case represented that they do not oppose this motion.

In addition to the Proposed Statement of Interest, the United States, should this Court desire, will make itself available to "attend to the interests of the United States" related to any of the issues raised in the brief. *See* 28 USC 517.

RECEIVED by MCOC 10/16/2026 1:19:32 PM

The Attorney General of the United States is authorized under federal law "to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State." 28 USC 517. This case presents important questions regarding the duty of county and local clerks, along with the Secretary of State, to preserve election records pursuant to Title III of the Civil Rights Act of 1960, codified at 52 USC 20701, *et seq.* ("Title III") in which the United States has a substantial interest. See, e.g., *Alabama ex rel Gallion v Rogers*, 187 F Supp 848, 855 (MD Ala, 1960), aff'd sub nom *Dinkens v Attorney General*, 285 F2d 430 (CA 5, 1961). Furthermore, the United States has long maintained a substantial interest in the enforcement and proper interpretation of federal election law, including the National Voter Registration Act and the Help America Vote Act. See 52 USC 20510(a), 20511, 21111, *Crawford v Marion Cnty Election Bd*, 553 US 181, 192, 128 S Ct 1610, 170 L Ed 2d 574 (2007).

Congress has provided the Solicitor General and Attorney General the right to "attend to the interests of the United States." 28 USC 517. As the U.S. Court of Appeals for the Sixth Circuit noted, "[t]he legislative branch has created the scheme that gives the executive branch the ability to 'attend to the interests of the United States,' 28 U.S.C. § 517, as it — not we — may choose." *United States ex rel Prather v Brookdale Senior Living Communities, Inc*, 892 F3d 822, 833 n6 (CA 6, 2018). Similarly, the U.S. District Court for the Eastern District of Michigan, when rejecting a magistrate judge's recommendation to deny leave, found that the statute "contains no time limitation and does not require the Court's leave." *Karnoski v Trump*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued September 20, 2018 (Case No. 18-51013), 2018 WL 4501484, p 1-2. The law is usually interpreted "broadly and [courts] typically deny motions to strike such statements of interest." *Id.* All that was necessary, according to the court, is that the government "adequately claimed to have an interest" in the plaintiffs'

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

motion. *Id*. Other district court cases reach similar conclusions. *See United States ex rel Lynch v University of Cincinnati Medical Center, LLC*, unpublished opinion of the United States District Court for the Southern District of Ohio, issued March 20, 2020 (Case No. 1:18-cv-587), 2020 WL 1322790, p 3-4 (holding that 28 USC 517 includes neither a time limitation for filing nor requires the United States to obtain the court's leave" but that the court "will consider the Statement… insofar as the filings are relevant and aid the Court in the resolution of the pending motions."); *Gil v Winn Dixie Stores, Inc*, 242 F Supp 3d 1315, 1317 (SD Fla, 2017) ("28 USC 517, which allows an officer of the Department of Justice . . . to file a statement of interest, contains no time limitation and does not require the Court's leave.").

As noted above, the United States' interest is substantial. The United States' Statement of Interest filing also would be timely as the parties' recently filed motions for summary disposition are pending. Accordingly, the Court should grant the United States motion for leave to file the attached Statement of Interest.

Date: October 15, 2026

Respectfully submitted,

TIMOTHY VERHEY
United States Attorney

/s/ Jacob L. Carlton
JACOB L. CARLTON(P84859)
Assistant United States Attorney
U.S. Attorney's Office
Western District of Michigan
330 Ionia Avenue NW, Suite 501
Grand Rapids, MI 49503
Tel: (616) 456-2404
Jacob.Carlton@usdoj.gov

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

ERIC SELL
Deputy Assistant Attorney General

WILLIAM MORHMAN
Senior Counsel

ANDREW BRANIFF
Acting Chief, Appellate Section

ERIC V. NEFF,
Acting Chief, Voting Section

JAMES H. CUMMING
Acting Deputy Chief, Voting Section

JONATHON P. HAUENSCHILD
ANELISE K. POWERS
Trial Attorneys
Civil Rights Division
United States Department of Justice
4 Constitution Square
150 M St. NE, 7th Fl.
Washington, D.C. 20002
Jonathon.Hauenschild@usdoj.gov
Anelise.Powers@usdoj.gov
202-215-2110

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHELLE McQUEER, individually and in her official capacity as Clerk of the Township of Bridgewater, *Plaintiff*,	Case No. 26-000172-MZ Hon. Michael J. Riordan
REPUBLICAN NATIONAL COMMITTEE, and MICHIGAN REPUBLICAN PARTY, *Plaintiff-Intervenors*, v. JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and JONATHAN BRATER, in his official capacity as Director of Elections, and the MICHIGAN DPEARTMENT OF STATE *Defendants*.	**STATEMENT OF INTEREST OF UNITED STATES OF AMERICA**

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

INTRODUCTION

The United States respectfully submits this Statement of Interest pursuant to 28 USC 517, which authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." The Attorney General enforces both Title III of the Civil Rights Act of 1960 ("CRA"), 52 USC 20701 *et seq*., and Section 303 of the Help America Vote Act ("HAVA"), 52 USC 21083. Both statutes are implicated in the above-captioned action. The Plaintiff seeks relief in the form of an opinion from this court as to whether the CRA preempts Mich Admin Code, R 168.48 ("Rule 168.48"). In response, the Defendant asserts factual defenses that implicate Michigan's noncompliance with HAVA.

This court described Defendants' "quite remarkable and reckless" dismissal of criminal liability for Plaintiff as "speculative." *McQueer v Benson*, ("*McQueer*") No. 26-000172-MZ, slip op at 9 n 3 (Mich Ct Cl Sept. 22, 2026). This court declined to grant relief until Defendants issued their position on the legality of the rule. Defendants did so on September 30, 2026, asserting that "so long as the clerk follows the requirements […] for retention, deletion [of election data …] does not violate […] federal law." *Declaratory Ruling by the Michigan Department of State,* Sept. 30, 2026 at 2.

The United States submits this Statement to offer its position on two questions:

1. How would the DOJ respond to the deletion of election data pursuant to Rule 168.48 after the 2026 midterm election?

2. Does Michigan's asserted practice of slicing and distributing the Statewide Voter Registration List (SVRL) for Election Day violate HAVA?

RETRIEVED FROM DEMOCRACYDOCKET.COM

SUMMARY OF POSITION

The Attorney General would not find deletions pursuant to Rule 168.48 as described in Defendant's Declaratory Ruling to be an enforcement priority in 2026. Assuming the *factual assertions* in Defendant's Declaratory Ruling to be true, and assuming the Attorney General did not find certain clarifications and verifications lacking, such deletions would not constitute conduct the Attorney General would evaluate for criminal prosecution after this midterm election.

Those same *factual assertions* raise novel questions about HAVA's requirement that Michigan maintain "a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level." 52 USC 21083(a)(1)(A). Defendant places great weight on the assertion that Michigan distributes jurisdiction-specific portions of the SVRL to each jurisdiction across the state, which is later

RECEIVED by MCOC 10/16/2026 1:19:32 PM

returned with new data uploaded. Therefore, at the time most critical to election administration—Election Day—Michigan's chief State election official has unleashed disjointed and disconnected SVRLs across the state. This nonuniformity was the precise problem HAVA was passed to prevent after the 2000 Presidential Election.

BACKGROUND

Procedural

On August 12, 2026, Plaintiff, Michelle McQueer, the Clerk of the Township of Bridgewater, filed a lawsuit against Defendants Secretary of State Jocelyn Benson, Director of the Bureau of Elections Jonathan Brater, and the Michigan Department of State over a recently promulgated rule requiring local clerks to delete electronic pollbook (EPB) software and associated files within seven days after an election is certified. *See McQueer*, slip op at 1. The relevant rule, Rule 168.48, was approved and became immediately effective on October 23, 2025. *Id.* at 4.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Rule 168.48 states:

> (1) Subject to subrule (2) of this rule, the [EPB] software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the Secretary of State. If a precinct is selected for an audit, the [EPB] software and associated files must be deleted from all devices by the seventh day following completion of the audit.
>
> (2) The [EPB] software and associated files must not be deleted from devices until the [BOE] or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

Prior to promulgation of the rule, Defendants provided "administrative guidance" instructing election officials to delete EPBs following an election. *McQueer,* slip op at 3. The rule was created in response to changes in election procedures prompted by a constitutional amendment

RECEIVED by MCOC 10/16/2026 1:19:32 PM

allowing early in-person voting in Michigan. *Id.* After requests for rulemaking, and after a regulatory impact statement and several drafts were approved by the Michigan Office of Administrative Hearings and Rules, a notice of public hearing was published in several newspapers, but the notice did not include any mention of the requirements that clerks delete EPB files and software within seven days of an election's certification. *Id.* at 3−5.

Michigan election law requires each city or township to use EPB software to process voters and create precinct reports. *Id.* at 3. Election officials in each precinct download data from the SVRL to the EPB, which is used on a laptop in each precinct. *Id.*; MCL 168.668b(1). There is a backup paper pollbook. *McQueer,* slip op at 3. After the election, the voter history file is uploaded from the EPB and used to update the Qualified Voter File (QVF), which is Michigan's name for its SVRL. *Id*. Once the voter history information is deleted from the EPB, it cannot be recovered, though Defendants argue that the data is accessible on the SVRL and deletion from flash drives and laptops aids security of voter data. *Id*.

Plaintiff, in both her individual capacity and with other clerks, filed requests for declaratory relief under Section 63 of the Administrative Procedures Act and MCL 24.263. *Id.* 5−7. Because her requests were unanswered due to unresolved HAVA complaints on the same issue, Plaintiff filed suit on August 12, 2026, when the primary election results were certified. *Declaratory Ruling* at 2. Plaintiff's suit includes three counts: (i) a request for declaratory judgment that Rule 168.48 is preempted by federal statutes 52 USC 20701 and 20702 under the Supremacy Clause of the United States Constitution, US Const, art VI, cl 2; (ii) a request for a declaratory judgment that Rule 168.48 exceeds the Secretary of State's authority and conflicts with MCL 168.811; and (iii) in the alternative, a request for a declaratory judgment that Rule 168.48 is invalid for failure to substantially comply with the APA in the promulgation process. *Id.* at 7.

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

On September 22, 2026, the Court denied Defendants' motion for summary disposition, which argued failure to exhaust remedies, laches, and that Plaintiff was not entitled to a private right of action. The Court also denied Plaintiff's counter motion for summary disposition. *Id.* at 16−23.

Statutory

The CRA

The CRA requires election officials to "retain and preserve" for 22 months following an election for federal office, "all records and papers which come into [the election official's] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election." 52 USC 20701. If an election official willfully fails to preserve such records, he or she "shall be fined not more than $1,000 or imprisoned not more than one year, or both." *Id.* The law also provides the same penalties if election officials willfully steal, destroy, conceal, mutilate, or alter the election records identified in the previous paragraph. 52 USC 20702. Title III defines an "officer of election" broadly as "any person who […] is authorized to perform any function, duty, or task in connection with any […] act requisite to voting […]." 52 USC 20706.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Michigan recognizes its obligations under Title III in its statutory scheme, even in some cases expanding preservation requirements beyond the 22-month federal statutory floor. *See* MCL 168.811.

HAVA

The HAVA, Pub. L. No. 107-252, 116 Stat. 1666, was enacted in the aftermath of the 2000 Presidential election, in which the outcome of the election turned on a by-hand recount in Florida, with local officials applying different standards when evaluating ambiguously marked

RECEIVED by MCOC 10/16/2026 1:19:32 PM

punch-card ballots. *See Bush v Gore*, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000). The closely followed recount increased awareness of the problems local jurisdictions faced in their efforts to hold fair elections. In August 2001, the National Commission on Federal Election Reform, a private public-policy organization, issued a report formally entitled *To Assure Pride and Confidence in the Electoral Process*. The report, informally known as the *Ford-Carter Report*,[1] included in its recommendations for reform that "[e]very state should adopt a system of statewide voter registration," *Ford-Carter Report* 6, and that "[t]he federal government should develop a comprehensive set of voting equipment system standards for the benefit of state and local election administration," *Id.* at 9.

The purpose of HAVA "can be stated very simply—it is to improve our country's election system." H.R. Rep. No. 107-329, at 31 (2001). "Historically, elections in this country have been administered at the state and local level," but Congress found that "[w]hile local control must be preserved, it is time to recognize that the federal government can play a valuable [role] by assisting state and local government[s] in modernizing their election systems." *Id.* at 31−32. Accordingly, HAVA "impose[s] minimum requirements" for the conduct of federal elections. *Id.* at 35. Section 303 requires every state to "define[], maintain[], and administer[]" "a single, uniform, official, centralized, interactive computerized statewide voter registration list," 52 USC 21083(a)(1)(A); *see Crawford v Marion Co Election Bd*, 553 US 181, 192; 128 S Ct 1610; 170 L Ed 2d 574 (2008), and it establishes minimum requirements for the content of such lists, 52 USC 21083(a)(1), (4).

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

[1] Presidents Gerald R. Ford and Jimmy Carter served as honorary co-chairs of the Commission. The *Ford-Carter Report* can be found at https://tcf.org/content/report/to-assure-pride-and-confidence-in-the-electoral-process/ (last visited Aug. 7, 2026).

POSITION STATEMENT

I. Deletion of election data pursuant to Rule 168.48 after the 2026 midterm election, assuming all facts and clarifications in Defendants' favor, would not be a prosecuting priority of the DOJ.

Local clerks were put in a difficult position by Defendants. Defendants issued a rule that, at least in part, implicated their obligations under federal law. As discussed below, EPB and related data qualify as election records under Title III. Furthermore, clerks (as well as the Secretary) are "election officials" under Title III, as anyone who "performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast" is an election official. 52 USC 20706. After the rule was issued, local clerks were then made to wait months before receiving guidance as to the State's interpretation of this rule and how it is squared with federal law. With that guidance issued, those clerks are given little time to determine if this is guidance that can be reasonably relied upon to comply with both the rule and federal law.

Title III requires officials to preserve "all papers and records" if they "relate to the acts requisite to voting." *Alabama ex rel Gallion v Rogers*, 187 F Supp 848, 855 (MD Ala, 1960), aff'd sub nom. *Dinkens v Attorney Gen*, 285 F2d 430 (CA 5, 1961). In a criminal case predating the CRA, the Fourth Circuit noted that ballots, registration books, and returns all fall within the category of "election records." *United States v Ponder*, 238 F2d 825 (CA 4, 1956). A few years later, in a Title III case, the Fifth Circuit defined election records broadly, deferring to the Attorney General as to the scope of records sought. *Kennedy v Lewis*, 325 F2d 210, 211−12 (CA 5, 1963) (holding the trial court erred when limiting the Attorney General only "to documents relating to any 'act requisite to voting relative to the eligibility of any listed voter eligible to vote in the

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

primary election'" and linking election records to those the Attorney General deemed necessary for his investigation).

Defendants responded to Plaintiff's claim that Rule 168.48 is conflict preempted by Title III of the CRA arguing that all the data Rule 168.48 requires election officials to delete is first uploaded to the qualified list of voters file (the QVF) and, as such, all the data is retained before the EPB data on each precinct's flash drive and laptop is deleted. Further, Defendants argue that deleting redundant EPB data protects voters' private information and preserves resources, as each precinct would require additional space and resources to store the data long-term.

EPB data contain the list of registered voters in each precinct and records ballot numbers and styles issued to each voter. The United States recognizes that there may be some dispute as to what data is recorded on the EPBs on election day. *Compare McQueer,* slip op at 3−4 *with* Decl. Ruling at 6−9 (the slip opinion acknowledging that Plaintiff alleges EPB data includes "the ballot number and ballot style issued to each voter," while the Secretary's ruling broadly paints EPB data as electronic activity logs, without identifying the relevant fields).

Other critical facts remain in dispute or require further verification. Plaintiff argues that not all data that an election official is required to delete is transferred to the SVRL. Defendants also fail to establish how they can ensure that all data is indeed transferred from each precinct to the SVRL before it is deleted. However, taking Michigan's assertions in its Declaratory Ruling as true, and assuming the Declaratory Ruling description of "activity logs" to mean *all* fields recorded by clerks plus related metadata, the Attorney General would not consider deletions pursuant to Rule 168.48 after this midterm election an enforcement priority under 52 USC 20702.

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

II. Michigan's Rule 168.48 may violate the Help America Vote Act's uniformity requirements, 52 USC 21083.

It is HAVA that requires states to create the SVRLs. HAVA requires states to "implement in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State." 52 USC 21083(a)(1)(A). This list (the SVRL) must, among other things, "serve as the single system for storing and managing the official list of registered voters throughout the State," "contain[] the name and registration information of every legally registered voter in the State," and "serve as the official voter registration list for the conduct of all elections for Federal office in the State." *Id*. at (i), (ii), and (viii). Furthermore, local election officials, who have access to the list, must be able both to "*obtain immediate electronic access* to the information contained in the computerized list" and "electronically enter[] [voter registration information] into the computerized list on *an expedited basis at the time the information is provided* to the local official." *Id*. at (v), (vi) (emphasis added).

The Declaratory Ruling raises concerns that the Secretary is failing to comply with her obligations under HAVA. The Declaratory Ruling describes a process that is decentralized and for which local election officials—including wardens and other precinct level election officials and clerks—may not have immediate electronic access either to obtain the SVRL information or to update the information on an expedited basis at the time it is provided by the voter. *Declaratory Ruling* at 5. Although the United States would not prioritize legal action against county or local clerks under Title III of the CRA at this time, the United States remains concerned that Rule 168.48, as interpreted by the Secretary, may conflict with HAVA.

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

A. HAVA requires immediate transfer of registration and other voter-related information both to and from the SVRL.

HAVA's Section 303 requires states' SVRL be "centralized," "interactive," immediately available to all election officials for both access and input, and utilized for conducting all federal elections. 52 USC 21083(a)(1)(A). Rule 168.48 appears to violate HAVA's uniformity requirement because the Declaratory Ruling describes Michigan's SVRL as de-centralized, not immediately accessible to all election officials, and not used for immediate input of new information, and because the centralized list does not appear to serve as the official list for conducting federal elections on Election Day.

According to Michigan Department of State's Declaratory Ruling, clerks download an EPB package to a laptop that includes the list of registered voters for each precinct, which the Department of State describes as a "'snap shot' of the QVF for each precinct to use on Election Day." *Declaratory Ruling* at 5. Confusingly, and contradictorily, the Declaratory Ruling assumes all EPB laptops will be simultaneously operated offline and on Election Day, while Rule 168.45 suggests that EPB laptops should be online if capable. *Id.* The Declaratory Ruling explains that "[t]he EPB laptop is operated offline on Election Day . . .," whereas Rule 168.45 states that if a polling place has internet access and the bureau of elections has established live connectivity functionality, the EPB software "used on election day must have a secure live connection to the [QVF] software and allow real-time updates." So, it is unclear whether and to what extent the EPB laptops are either offline or online. To the extent that clerks' EPB laptops are operated offline with only a "snap shot" of the centralized SVRL, this would violate HAVA's requirement that the state only operate from the single centralized SVRL.

As of December 2018, Michigan permits prospective voters to register and vote on election day. *See* 2018 PA 603; MCL 168.499e; 168.500d. Individuals wishing to register on election day

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

must do so at the local clerk's office. MCL 168.499e. Such individuals must then go to the appropriate local precinct to vote. *E.g.* MCL 168.662, 168.500d. With a decentralized, offline system as described in the Declaratory Ruling, precinct-level election officials cannot receive real-time updates to the list of qualified voters and, aside from the "validated voter registration application receipt," those officials have no way of immediately confirming whether the individual is properly registered or qualified to vote in that precinct as HAVA requires.

The described system also appears to have no mechanism to update the computerized list "on an expedited basis at the time the information is provided to the local official." 52 USC 21083(a)(1)(A)(vi). According to Defendants and also Michigan's election rules, election clerks have seven days after election certification to upload voter history, including the list of voters, provisional ballot information, and an activity log, from the EPB to the SVRL. *Declaratory Ruling* at 6 (*citing* Rule 168.47). In this way, the computerized list does not "serve as the official voter registration list for the conduct of the election" in Michigan; rather, the partial lists do, for there appears to be an air gap between the EPB and the SVRL during the critical time when the election is conducted. Therefore, Michigan's election procedures fail to meet HAVA's requirements that clerks have immediate access to the centralized voter registration list, that clerks update the list at the time information is provided to them, and that the election is conducted off the centralized list. A list that is de-centralized just before the election and then re-centralized seven days later is not a HAVA-compliant SVRL.

B. Rule 168.48 as construed in Michigan Department of State's Declaratory Ruling frustrates the purposes of HAVA.

Michigan's Rule 168.48 and election process as described in Defendants' Declaratory Ruling and discussed above also conflicts with the purpose of HAVA, introducing opportunities for confusion that could be avoided by complying with HAVA's uniformity requirement.

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

Congress enacted HAVA as a response to the problems that arose during the 2000 presidential election in Florida. E.g. *Huber v Auglaize Co Bd Of Elections*, unpublished opinion of the United States District Court for the Northern District of Ohio, issued September 17, 2007 (Case No. 3:06 CV 1968) 2007 WL 2713904, p 5; *Bay Co Democratic Party v Land*, 347 F Supp 2d 404, 412 (ED Mich, 2004). When discussing some of the problems that occurred, the Federal Commission on Federal Election Reform, co-chaired by former presidents Jimmy Carter and Gerald Ford, noted that the decentralized system for voter list maintenance devolved "from state governments down to the local and county governments that managed this process and maintained the rolls." *Ford-Carter Report* 28.

For a while, the decentralized maintenance of registration rolls worked, but combined with permanent registration and an increasingly mobile society, the local rolls became bloated with voters who moved out of the jurisdiction. *Ford-Carter Report* 29. The problems of decentralization manifested in 2000, with voters in Florida finding themselves removed from the lists of eligible voters due to misspellings or other clerical errors. "Any state adopting a statewide voter registration system will confront the problem of uniquely identifying voters, figuring which Joseph Smith is the same as that Joe Smith." *Id*. at 32−33.

To avoid repetition of the 2000 elections and modernize voter registration lists, the Commission recommended that "[e]very state... adopt a system of statewide voter registration," which should be computerized and "networked with and accessible to every election jurisdiction in the state so that any level can initiate registrations and updates with prompt notification to the other[] [states]." *Id*. at 29.

The Report emphasized that "[a]ccuracy can mean [voter] access," partially solving the problem of mobile voters and registration. "People are mobile, but more than three-quarters of all moves are within the same state. An effective statewide database can therefore be quite useful,

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

including its capacity to address such common issues as registration of in-state college students and people with second homes within a state." *Id*. at 30.

Shortly after Congress passed HAVA, thereby requiring all states to adopt centralized, computerized lists, the United States had to sue and eventually enter consent decrees in Maine and Alabama to ensure compliance with HAVA. In the complaint against Maine, the United States alleged, in part, that Maine violated HAVA by "not having fully developed and implemented a computerized statewide voter registration list" and by "failing to ensure that local registrars eliminated duplication in voter registration records across municipal jurisdictions in federal elections." *United States v Maine*, unpublished opinion of the United States District Court for the District of Maine, issued April 4, 2007 (Case No. 06-86-B-W), 2007 WL 1059565, p 1.

In the complaint against Alabama, the United States alleged that Alabama was not in compliance with HAVA's computer list requirements because Alabama's system was "diffuse, decentralized, and county-oriented." *United States v Alabama*, unpublished opinion of the United States District Court for the Middle District of Alabama, issued June 7, 2006 (Case No. 2:06-CV-392WKW), 2006 WL 1598839, p 1. The *Alabama* court determined, based on evidence the United States presented, that Alabama failed to have a centralized list that served "as the official voter registration list for the conduct of all elections for federal office." *Id*. at p 3. The *Alabama* court ordered strict compliance with 52 USC 21083(a)(1).

Once HAVA's *raison d'etre* is understood, it is easy to see how Rule 168.48 and the Declaratory Ruling raise concerns. The problems in this case relating to retention of election records pursuant to Title III result directly from the State not properly implementing HAVA's centralized, computerized list requirements. Congress designed HAVA (i) to avoid the decentralized problems the 2000 election revealed and (ii) to address the lack of communication

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM

between state and local officials and even between local officials from neighboring jurisdictions themselves. If, as HAVA requires, local officials – including precinct officials – had access to the SVRL and the ability to read and update it in real time, those officials could (i) see who is, or is not, registered to vote; (ii) see who had, or had not, already voted (even elsewhere in the state); (iii) update registration lists to accommodate same-day registrations; and (iv) all EPB data would be captured and preserved in real-time within the statewide SVRL.

CONCLUSION

If the factual assertions in the Secretary's Declaratory Ruling are accurate, and all EPB data is uploaded and preserved, the Attorney General would not prioritize prosecution under Title III of the CRA. The Attorney General has concerns, however, about the State's compliance with HAVA based on the Declaratory Ruling. The Secretary remains ultimately responsible for the preservation of records under Title III and the State's maintenance of a HAVA-compliant system.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Date: October 15, 2026

Respectfully submitted,

TIMOTHY VERHEY
United States Attorney

/s/ Jacob L. Carlton
JACOB L. CARLTON(P84859)
Assistant United States Attorney
U.S. Attorney's Office
Western District of Michigan
330 Ionia Avenue NW, Suite 501
Grand Rapids, MI 49503
Tel: (616) 456-2404
Jacob.Carlton@usdoj.gov

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

ERIC SELL
Deputy Assistant Attorney General

RECEIVED by MCOC 10/16/2026 1:19:32 PM

WILLIAM MORHMAN
Senior Counsel

ANDREW BRANIFF
Acting Chief, Appellate Section

ERIC V. NEFF,
Acting Chief, Voting Section

JAMES H. CUMMING
Acting Deputy Chief, Voting Section

JONATHON P. HAUENSCHILD
ANELISE K. POWERS
Trial Attorneys
Civil Rights Division
United States Department of Justice
4 Constitution Square
150 M St. NE, 7th Fl.
Washington, D.C. 20002
Jonathon.Hauenschild@usdoj.gov
Anelise.Powers@usdoj.gov
202-215-2110

RETRIEVED FROM DEMOCRACYDOCKET.COM

RECEIVED by MCOC 10/16/2026 1:19:32 PM