IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. SUSAN BEALS, in her Official Capacity as Commissioner of the Virginia Department of Elections, Defendant.	No. 3:26-cv-00042 (Hon. Roderick C. Young)

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-DEFENDANTS COMMON CAUSE AND KATHERINE ELLENA's MOTION TO DISMISS

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Intervenor-Defendants Common Cause, and Katherine Ellena hereby move to dismiss the United States' Complaint for failure to state a claim pursuant to Rule 12 of the Federal Rules of Civil Procedure and set forth below the relevant facts and points of law in support of their motion. *See* L.R. 7(F)(1).

INTRODUCTION

In this action, the United States seeks to compel the disclosure of sensitive personal voter data to which it is not entitled, using the civil rights laws as a pretext. But the information requests propounded by the U.S. Department of Justice ("DOJ") on the State of Virginia, as set forth in the Complaint, do not satisfy the core statutory requirement that any federal demand for information under the Civil Rights Act of 1960 include a disclosure of "the basis and the purpose" for the federal data request. 52 U.S.C. § 20703. Because the United States failed to properly disclose the basis and purpose of its request for the data, and because its request is unlawful, it has failed to state a claim. Indeed, a district court in California reached those same conclusions just two weeks ago with respect to a materially identical complaint, dismissing the United States's claims without leave to replead. *See United States v. Weber*, No. 2:25-CV-09149-DOC-ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026); *see also* Minutes of Proceedings, *United States v. Oregon*, No. 6:25-cv-01666-MTK (D. Or. Jan. 26, 2026), Dkt. No. 68 (also granting dismissal of the United States's claims with written opinion to follow). This Court should do the same.

The right to vote "'is of the most fundamental significance under our constitutional structure.'" *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 404 (4th Cir. 2024) (quoting *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)). It is "preservative of all [other] rights" because it serves as a check against tyrannical rule while simultaneously ensuring the competition of ideas amongst our elected officials. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

Congress has repeatedly legislated to protect the franchise, including through Title III of the Civil Rights Act of 1960 ("CRA"), 52 U.S.C. § 20701 *et seq*., as well as the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 *et seq*., and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 *et seq*. These statutes were enacted for the purpose of ensuring that all eligible Americans—especially racial minorities and voters with disabilities—have the opportunity to participate in free, fair, and secure elections. As the United States Department of Justice itself explains, Title III of the CRA, the election records provision invoked in the Complaint here, was designed to "secure a more effective protection of the right to vote." U.S. Dep't of Just., C.R. Div., *Federal Law Constraints on Post-Election "Audits"* (Jul. 28, 2021), https://perma.cc/74CP-58EH (citing *State of Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 853 (M.D. Ala. 1960) and H.R. Rep. No. 86-956 (1959)).

The United States' demand for Virginia's unredacted voter file—which contains sensitive personal information such as full birth dates, driver's license numbers, and Social Security numbers from every voter in the state—undermines these statutes' core purposes and is contrary to law. Although the public disclosure of carefully redacted state voting records can help ensure transparency and the accuracy of the voter rolls, demanding the production of unredacted voter records, thereby revealing protected personal identifying information such as driver's license numbers and Social Security numbers, would only deter voter participation and undermine the right to vote. Especially so here, where the United States' *actual* reason for the data demand, which it never disclosed in its request but has been widely reported, is to create an unauthorized and unlawful national voter database, and to use this illicit tool to illegally target and challenge voters.

For good reason, there is no statutory right to demand the type of sensitive voter information at issue here without fully and accurately setting forth "the basis and the purpose" for

the data request. 52 U.S.C. § 20703. Because the Complaint fails to establish United States' entitlement to a complete, unredacted, non-public Virginia voter file—much less its entitlement to obtain this sensitive data at the very beginning of the case, without any discovery process or any of the other protections and procedures required by the Federal Rules—this Court should dismiss this action.

BACKGROUND

I. STATUTORY BACKGROUND: THE CIVIL RIGHTS ACT OF 1960

Amidst the turmoil of the Jim Crow era, Congress enacted the Civil Rights Act of 1960, including the public records provisions in Title III, to facilitate investigations of civil rights violations preventing eligible citizens from voting due to discrimination. H.R. Rep. No. 86-956 at 7 (1959) (indicating the purpose of Title III "is to provide a more effective protection of the right of all qualified citizens to vote without discrimination on account of race"). Title III requires states to retain and preserve "all records and papers which come into [an election official's] possession relating to any application, registration, payment of poll tax, or other act requisite to voting." 52 U.S.C. § 20701. These records "shall, upon demand in writing by the Attorney General or his representative . . . be made available for inspection, reproduction, and copying at the principal office of [the] custodian." *Id*. § 20703.

Title III, as part of the 1960 Civil Rights Act, provided a mechanism by which "preliminary investigations of registration practices [could] be made in order to determine whether or not such practices conform[ed] to constitutional principles." *State of Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 853 (M.D. Ala. 1960), *aff'd sub nom. Dinkens v. Att'y Gen. of U.S.*, 285 F.2d 430 (5th Cir. 1961). After Congress enacted Title III, the federal government used it to investigate jurisdictions that had effectively denied Black Americans the right to register to vote. *See, e.g.*, *Alabama v. United States*, 304 F.2d 583, 585–86 (5th Cir. 1962), *aff'd sub nom. Alabama v. United*

States, 371 U.S. 37 (1962) (finding an Alabama county's registration practices were racially discriminatory, leading to less than 10% of Black citizens being registered to vote while nearly 100% of white citizens were registered, despite the county's population being 83% Black); *see also United States v. Cartwright*, 230 F. Supp 873, 875 (M.D. Ala. 1964) (reviewing data from an investigation pursuant to Title III which revealed that voting registrars engaged in racially discriminatory practices resulting in 89% of white citizens being registered to vote but only 7.5% of Black citizens being registered).

But this robust use of Title III was short lived. Only a few years later, Congress passed the Civil Rights Act of 1964, which outlawed racial segregation altogether. Then, in 1965, Congress passed the Voting Rights Act, the "crown jewel of the civil rights movement,"[1] which established new voter protections, eliminated literacy tests, and led to the enfranchisement of millions of Black citizens. Because Congress enacted more effective voting rights laws—most notably the Voting Rights Act—federal court assessment of Title III has largely been silent since 1965.

Title III does not provide for any sort of truncated "'special statutory proceeding'" that displaces the ordinary operation of the Federal Rules of Civil Procedure. *See* Compl. ¶¶ 1-4 (citing, primarily, *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962)).

In the early 1960s, particularly in the Fifth Circuit states of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas, election officials notoriously refused to register Black voters, and civil rights enforcement efforts confronted strong resistance from local officials and local courts.[2] Title III proved crucial for uncovering evidence showing why Black voter registration

[1] Eric H. Holder, Jr., *MLK50 Symposium: Where Do We Go from Here? Keynote Address*, 49 U. Mem. L. Rev. 33, 38 (2018).

[2] *See generally, e.g.*, Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (1976).

was extraordinarily low and allowed the federal government to bring "'pattern or practice'" voter discrimination cases. *Lynd*, 306 F.2d at 228 (citing 42 U.S.C. § 1971 (since transferred to 52 U.S.C. § 10101)). Consistent with Title III's purpose, the 1960s Fifth Circuit required counties to produce documents that were sought for that purpose when a proper statement of basis and purpose were given. *Id.* (Title III's "purpose is to enable the Attorney General to determine whether [§ 10101] suits or similar actions should be instituted. And it is to enable him to obtain evidence for use in such cases if and when filed."). It rejected the argument, made by the Jim Crow states, that the Attorney General needed to prove discrimination before it was entitled to inspect a county's election records where massive racial disparities with respect to registration and voting were clear. *See id.* In that context, "the factual foundation for" the basis and purpose of the Attorney General's requests was held to be utterly self-evident—Jim Crow regimes were using every possible means to block Black Americans from registering to vote, including resistance to federal court orders—and thus plenary "judicial review or ascertainment" of further facts was not warranted. *Id.* at 226.[3]

Notably, the 1960s Fifth Circuit cases were decided before sensitive personal identifying information such as Social Security Numbers or driver's license numbers was widely collected as part of the voter registration record, and before any federal laws had been passed to protect and constrain access to personal information.[4] And even in that context, the 1960s Fifth Circuit cases carefully noted that "we are not discussing confidential, private papers and effects. We are, rather

[3] *See also In re Coleman*, 208 F. Supp. 199, 201 (S.D. Miss. 1962), *aff'd sub nom. Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963) (acknowledging in the context of Title III of the CRA that while "[t]he right of free examination of official records is the rule," there could be "exception[s]" where "the purpose is speculative, or from idle curiosity").

[4] *E.g.*, Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (1974); Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994), codified at 18 U.S.C. § 2721 *et seq.*; E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (2002); Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 128 Stat. 3073 (2014), codified at 44 U.S.C. §§ 3351 *et seq.* (2014).

dealing with public records which ought ordinarily to be open to legitimate reasonable inspection." *Lynd*, 306 F.2d at 231.

In any case, nothing in the text of Title III of the CRA, which provides for judicial enforcement of records requests under the statute "by appropriate process," 52 U.S.C. § 20705, purports to override the Federal Rules of Civil Procedure. *See* 52 U.S.C. § 20703. To the contrary, the Federal Rules "govern the procedure in *all* civil actions and proceedings in the United States district courts," Fed. R. Civ. P. 1 (emphasis added), with only a narrow set of express exceptions of which the CRA is not one, Fed. R. Civ. P. 81.

Indeed, in the more than sixty years since *Kennedy v. Lynd*, the Supreme Court has repeatedly reaffirmed that "the Federal Rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings." *Becker v. United States*, 451 U.S. 1306, 1307–08 (1981) (internal citation and quotation marks omitted); *see also, e.g.*, *United States v. Powell*, 379 U.S. 48, 57–58 (1964) (holding that IRS Commissioner bears the burden to establish statutory requirements before enforcement of a tax subpoena pursuant to statute directly analogous to Title III).[5]

[5] *Powell* involved an attempt to enforce a statute providing the United States with the power to request certain books and records relating to taxes and to compel their production "by appropriate process"—terms that are materially identical to the relevant provisions of Title III. 379 U.S. at 57–58 & n.18 (citing 26 U.S.C. § 7604(a)); *compare* 26 U.S.C. § 7604(a) ("[T]he United States district court for the district in which such person resides or is found *shall have jurisdiction by appropriate process* to compel such attendance, testimony, or production of books, papers, records, or other data[.]" (emphasis added)), *with* 52 U.S.C. § 20705 ("The United States district court for the district in which a demand is made . . .or in which a record or paper so demanded is located, *shall have jurisdiction by appropriate process* to compel the production of such record or paper." (emphasis added)). And the Supreme Court squarely held that the tax

II. FACTUAL BACKGROUND

A. The United States Seeks to Force the Disclosure of Voters' Sensitive Voter Data

Beginning in May 2025, Plaintiff the United States, through DOJ, began sending letters to election officials in at least forty states, making escalating demands for the production of statewide voter registration databases, with plans to gather data from all fifty states. *See* Kaylie Martinez-Ochoa, Eileen O'Connor, & Patrick Berry, *Tracker of Justice Department Requests for Voter Information*, Brennan Ctr. for Just. (updated Jan. 23, 2026), https://perma.cc/R824-QG68.

On July 15, 2025, DOJ allegedly sent a letter to Defendant Susan Beals, Virginia's Commissioner of the Department of Elections, demanding, among other things, an electronic copy of Virginia's computerized statewide voter registration list, including "all fields" contained within the list. Compl. ¶¶ 21-24. That data purportedly may include each Virginia registrant's name, residential address, birth date, and driver's license number and/or partial Social Security Number. Compl. p. 10; *see also id.* ¶¶ 14-15. The letter reflects that DOJ expressed an interest in certain categories of persons who purportedly might be included on the voter rolls, including: voters who might have "duplicate" records in the system for some reason (for example, because they changed addresses and registered to vote at their new address); voters who have been convicted of a felony; voters "who have moved out of the commonwealth" and registered in their new state; and non-citizens. Ex. A, Letter of Deputy Assistant Attorney General Michael Gates to the Hon. Susan Beals (July 15, 2025) ("July 15 Letter").

On August 14, 2025, DOJ allegedly sent another letter, again requesting the unredacted voter file, and this time purporting to invoke Title III of the Civil Rights Act of 1960. Compl.

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records statute being enforced in *Powell* did *not* authorize any special or summary proceeding that might supplant the Federal Rules. 379 U.S. at 57–58 & n.18.

¶¶ 25-27. The United States again demanded sensitive Virginia voter data, specifying that "all fields" in the voter file should be produced. Compl. ¶ 25. According to public reporting, the August 14 Letter was sent by Assistant Attorney General Harmeet Dhillon. Alex Littlehales & Tracy Cooper, *DOJ Seeks Virginia Voter Data Amid Federal Compliance Review*, 13 NEWS NOW (Sept. 9, 2025), https://www.13newsnow.com/article/news/local/virginia/virginia-doj-voter-data-demand-privacy-concerns/291-d4aa5f8a-9797-461b-a45f-2110d6a88efa. While the United States did not append the August 14 Letter to the Complaint, Dhillon sent at least six other materially identical letters to the top state elections officials of Arizona, Georgia, Illinois, Nevada, Massachusetts, and Pennsylvania purporting to demand the unredacted state voter file and to invoke the CRA. *See* Ex. B, Compilation of August 14 Letters of Assistant Attorney General Harmeet Dhillon to the State Election Officials Invoking CRA ("Compilation of August 14 Letters").

DOJ alleges in its Complaint that the August 14 Letter "explained that the basis of the [] request was that the CRA requires the SVRL to be made available to the Attorney General upon her demand." Compl. ¶ 26. That is not consistent with the text of the other August 14 Letters, all of which use the same exact language to invoke the CRA and none of which sets forth the "basis" of DOJ's request. *See* Compilation of August 14 Letters at 2, 5, 8, 11, 14, 17. Consistent with the other August 14 letters from Dhillon to state election officials, the August 14 Letter "stated that the purpose of the request was to 'ascertain Virginia's compliance with the list maintenance requirements of the NVRA and HAVA.'" Compl. ¶ 27; *accord* Compilation of August 14 Letters at 2, 5, 8, 11, 14, 17.

The United States alleges that, in the months that followed those letters, it held "extensive discussions" with Commissioner Beals's representatives, but that the Virginia voter data was never

produced to its satisfaction. Compl. ¶ 28. On January 16, 2026, the United States filed this lawsuit—one of at least twenty-five nearly identical lawsuits that DOJ has initiated against states and election officials across the country—seeking to compel the production of this sensitive Virginia voter data.[6]

B. The United States Seeks to Unlawfully Construct National Voter Database with the Data

According to extensive public reporting, DOJ's requests for private, sensitive voter data from Virginia and other states appear to be in connection with novel efforts by the United States to construct a national voter database, and to otherwise use untested forms of database matching to scrutinize state voter rolls.

According to this reporting, DOJ employees "have been clear that they are interested in a central, federal database of voter information." Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. TIMES, Sept. 9, 2025, https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html. DOJ is coordinating these novel efforts with the federal Department of Homeland Security ("DHS"),

[6] *See* Press Release, U.S. Dep't of Just., *Justice Department Sues Virginia for Failure to Produce Voter Rolls* (Jan. 16, 2026), https://perma.cc/3L8Q-SJM5; Press Release, U.S. Dep't of Just., *Justice Department Sues Arizona and Connecticut for Failure to Produce Voter Rolls* (Jan. 6, 2026), https://perma.cc/YCM2-QQKM; Press Release, U.S. Dep't of Just., *Justice Department Sues Four States for Failure to Produce Voter Rolls* (Dec. 18, 2025), https://perma.cc/RZL3-4E4B; Press Release, U.S. Dep't of Just., *Justice Department Sues Four Additional States and One Locality for Failure to Comply with Federal Elections Laws* (Dec. 12, 2025), https://perma.cc/8V9V-SRPJ; Press Release, U.S. Dep't of Just., *Justice Department Sues Six Additional States for Failure to Provide Voter Registration Rolls* (Dec. 2, 2025), https://perma.cc/F5MD-NWHD; Press Release, U.S. Dep't of Just., *Justice Department Sues Six States for Failure to Provide Voter Registration Rolls* (Sept. 25, 2025), https://perma.cc/7J99-WGBA; Press Release, U.S. Dep't of Just., *Justice Department Sues Oregon and Maine for Failure to Provide Voter Registration Rolls* (Sept. 16, 2025), https://perma.cc/M69P-YCVC.

according to reported statements from DOJ and DHS. *Id.*[7] One article extensively quoted a recently-departed lawyer from DOJ's Civil Rights Division, describing DOJ's aims in this case and others like it:

> We were tasked with obtaining states' voter rolls, by suing them if necessary. Leadership said they had a DOGE person who could go through all the data and compare it to the Department of Homeland Security data and Social Security data. . . . I had never before told an opposing party, Hey, I want this information and I'm saying I want it for this reason, but I actually know it's going to be used for these other reasons. That was dishonest. It felt like a perversion of the role of the Civil Rights Division.

Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department*, N.Y. TIMES MAG., Nov. 16, 2025, https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html.

According to additional public reporting, these efforts are being conducted with the involvement of self-proclaimed "election integrity" advocates within and outside the government who have previously sought to disenfranchise voters and overturn elections. Those advocates include Heather Honey, who sought to overturn the result of the 2020 presidential election in multiple states and now serves as DHS's "deputy assistant secretary for election integrity."[8] Also

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[7] *See also, e.g.*, Jonathan Shorman, *DOJ is Sharing State Voter Roll Lists with Homeland Security*, STATELINE, Sept. 12, 2025, https://stateline.org/2025/09/12/doj-is-sharing-state-voter-roll-lists-with-homeland-security; Sarah Lynch, *US Justice Dept Considers Handing Over Voter Roll Data for Criminal Probes, Documents Show*, REUTERS, Sept. 9, 2025, https://www.reuters.com/legal/government/us-justice-dept-considers-handing-over-voter-roll-data-criminal-probes-documents-2025-09-09.

[8] *See* Alexandra Berzon & Nick Corasaniti, *Trump Empowers Election Deniers, Still Fixated on 2020 Grievances*, N.Y. TIMES, Oct. 22, 2025, https://www.nytimes.com/2025/10/22/us/politics/trump-election-deniers-voting-security.html (documenting "ascent" of election denier Honey); Jen Fifield, *Pa.'s Heather Honey, Who Questioned the 2020 Election, Is Appointed to Federal Election Post*, PA. CAP.-STAR, Aug. 27, 2025, https://penncapital-star.com/election-2025/pa-s-heather-honey-who-questioned-the-2020-election-is-appointed-to-federal-election-post; Doug Bock Clark, *She Pushed to Overturn Trump's*

involved is Cleta Mitchell, a private attorney and leader of a national group called the "Election Integrity Network," who has, among other things, promoted the use of artificial intelligence to challenge registered voters.[9] These actors and their associates have previously sought to compel states to engage in aggressive purges of registered voters, and have abused voter data to make mass challenges to disenfranchise voters. *See, e.g.*, *PA Fair Elections v. Pa. Dep't of State*, 337 A.3d 598, 600 n.1 (Pa. Commw. Ct. 2025) (dismissing as meritless complaint brought by "PA Fair Elections," a group affiliated with current DHS official Honey, challenging Pennsylvania's voter roll maintenance practices pursuant to HAVA).[10]

For example, in the months before the 2024 election, Honey and an organization affiliated with her, PA Fair Elections, pushed an effort to remove thousands of lawful Pennsylvania voters from the rolls, based on faulty sources of voter data such as "Eagle AI," a voter database analysis tool supported by Mitchell and her Election Integrity Network.[11] Then, on the eve of the 2024

Loss in the 2020 Election. Now She'll Help Oversee U.S. Election Security, PROPUBLICA, Aug. 26, 2025, https://perma.cc/CE7A-6RY6.

[9] *See, e.g.*, Matt Cohen, *DHS Said to Brief Cleta Mitchell's Group on Citizenship Checks for Voting*, DEMOCRACY DOCKET, June 12, 2025, https://perma.cc/E87D-XDRX; *see also* Jude Joffe-Block & Miles Parks, *The Trump Administration Is Building a National Citizenship Data System*, NPR, June 29, 2025, https://perma.cc/J8VZ-X4N4 (reporting that Mitchell had received a "full briefing" from federal officials); *see also* Andy Kroll & Nick Surgey, *Inside Ziklag, the Secret Organization of Wealthy Christians Trying to Sway the Election and Change the Country*, PROPUBLICA, July 13, 2024, https://perma.cc/5W2N-SS2Q.

[10] *See, e.g.*, Carter Walker, *This Pa. Activist Is the Source of False and Flawed Election Claims Gaining Traction Across the Country*, VOTEBEAT (Feb. 12, 2024), https://perma.cc/HQ9C-TMT7 (discussing Honey's "false" claims regarding voting in Pennsylvania in 2020 and her extensive collaboration with Mitchell); *see also* Brett Sholtis, *Pa. Election Integrity Group Met with 2 Architects of 2020 Effort to Overturn Election*, LANCASTERONLINE (July 21, 2024), https://perma.cc/K92T-L288 (describing Mitchell meeting with PA Fair Elections).

[11] *See* Brett Sholtis, *'PA Fair Elections,' Tied to Powerful Conservative Groups, Pushes to Remove People from Voter Rolls*, WESA (Sept. 28, 2024), https://perma.cc/8FNC-5KH9; *see also* Kroll & Surgey, *supra*, https://perma.cc/4MEZ-82SF ("Mitchell is promoting a tool called EagleAI, which has claimed to use artificial intelligence to automate and speed up the process of challenging ineligible voters.").

election, over 4,000 Pennsylvania voters were subjected to mass-challenges lodged by individuals affiliated with PA Fair Elections.[12] Public reporting and contemporaneous hearing testimony confirmed that PA Fair Elections helped facilitate these challenges, which were based on self-evidently flawed attempts to analyze and match data from the Pennsylvania voter database with external sources.[13] The baseless voter challenges were eventually all rejected. *See, e.g.*, Carter Walker, *Efforts to Challenge Pennsylvania Voters' Mail Ballot Applications Fizzle*, SPOTLIGHT PA, Nov. 8, 2024, https://perma.cc/YL7J-NUV5.

According to public reporting, as another part of its efforts to use novel and unspecified forms of data analysis to scrutinize state voter data and target voters for potential disenfranchisement, DOJ last year asked staffers from the new "Department of Governmental Efficiency" ("DOGE") to identify noncitizens in state voter rolls by matching voter data with data from the Social Security Administration.[14] DOJ officials have since claimed that "we've checked 47.5 million voter records" and found "several thousand non-citizens who are enrolled to vote in

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[12] *See* Carter Walker, *Efforts to Challenge Pennsylvania Voters' Mail Ballot Applications Fizzle*, SPOTLIGHT PA, Nov. 8, 2024, https://perma.cc/YL7J-NUV5 (describing mass-challenges and noting connection to Honey and her organization "PA Fair Elections"); Jeremy Roebuck and Katie Bernard, *'I Can't Think of Anything Less American': Right-Wing Activists' Effort to Nullify Hundreds of Pa. Votes Met with Skepticism*, PHILA. INQUIRER, Nov. 1, 2024, https://perma.cc/AMZ5-TFHQ (noting sworn testimony regarding PA Fair Elections' involvement in the challenges); Hansi Lo Wang, *Thousands of Pennsylvania Voters Have Had Their Mail Ballot Applications Challenged*, NPR, Nov. 5, 2024, https://perma.cc/9993-RZ6E (same).

[13] *E.g.*, Bethany Rodgers, *Testimony: Pa. Election Denial Group Behind Voter Registration Cancellation Form Mailings*, GOERIE.COM (Nov. 2, 2024), https://www.goerie.com/story/news/politics/elections/state/2024/11/02/pa-voter-registration-cancellation-letters-chester-county/75996247007. A challenger in one county testified about PA Fair Elections' involvement. Chester County, *Nov. 1, 2024 Election Board Hearing* at 50:30-51:34; 58:00-58:47; 1:54:58-1:55:19, https://chestercopa.portal.civicclerk.com/event/852/media.

[14] *E.g.*, Miles Parks & Jude Joffe-Block, *Trump's DOJ focuses in on voter fraud, with a murky assist from DOGE*, NPR, May 22, 2025, https://www.npr.org/2025/05/17/nx-s1-5383277/trump-doj-doge-noncitizenvoting.

Federal elections," although public reporting indicates that these efforts are producing false positives—*i.e.*, that they are flagging U.S. citizens as being non-citizens who are ineligible to vote.[15]

A recent federal court filing by DOJ further corroborates how United States officials have been seeking to use voter data in conjunction with DOGE-inspired data-matching and aggregation techniques, and have been working with outside "election integrity" advocates seeking to deny election results in those efforts. As detailed in the filing, which was made on behalf of the U.S. Social Security Administration (SSA):

> [I]n March 2025, a political advocacy group contacted two members of SSA's DOGE Team with a request to analyze state voter rolls that the advocacy group had acquired. The advocacy group's stated aim was to find evidence of voter fraud and to overturn election results in certain States. In connection with these communications, one of the DOGE team members signed a "Voter Data Agreement," in his capacity as an SSA employee, with the advocacy group. He sent the executed agreement to the advocacy group on March 24, 2025.

Notice of Corrections to the Record at 5, *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, No. 1:25-cv-596-ELH, Dkt. No. 197 (D. Md. Jan. 16, 2026); *see also* Kyle Cheney, *Trump Administration Concedes DOGE Team May Have Misused Social Security Data*, POLITICO, Jan. 20, 2026, https://www.politico.com/news/2026/01/20/trump-musk-doge-social-security-00737245. The filings, which do not specify the terms of the "Voter Data Agreement" or the activities these DOGE actors or others undertook pursuant to it, also indicated that, around the same period, DOGE actors also shared unknown amounts of social security data on an unapproved

[15] December 5, 2025 Post by @AAGDhillon https://x.com/AAGDhillon/status/1997003629442519114; *see* Jude Joffe-Block, *Trump's SAVE Tool Is Looking for Noncitizen Voters. But It's Flagging U.S. Citizens Too*, NPR, Dec. 10, 2025, https://www.npr.org/2025/12/10/nx-s1-5588384/savevoting-data-us-citizens.

third-party server, in a "manner [that] is outside SSA's security protocols." Notice of Corrections to the Record, *supra*, at 6.

C. The United States Seeks to Unlawfully Use the Data to Disenfranchise Voters

Additional federal government documents indicate how that the United States ultimately plans to use voters' sensitive personal data: to assert control over voting eligibility in the states, to order the disenfranchisement of voters, and potentially to contest the results of state-run elections.

In connection with its requests for states' voter data, the United States has begun asking states to execute a memorandum of understanding ("MOU") describing how the data will be used. *See* Ex. C, U.S. Dep't of Just., Civ. Div., Confidential Mem. of Understanding ("MOU"); *see also* Ex. D, Dec. 4 Transcript Excerpts from *United States v. Weber*, No. 25-cv-09149, at 72–73, 90 (DOJ attorney discussing MOU). The terms of the MOU purport to vest the United States with substantial new authority to identify supposedly ineligible voters on state voter rolls and then to compel states to remove these voters from the rolls, depriving them of the franchise.

The NVRA and HAVA give states the responsibility of conducting a "reasonable effort" to maintain voter lists and remove actually ineligible voters from the rolls. 52 U.S.C. § 20507(a)(4); § 21083(a)(4)(A). The particular procedures developed for complying with HAVA's requirement to maintain a centralized voter file are thus "left to the discretion of the State." 52 U.S.C. § 21085. Moreover, the NVRA builds in significant protections for voters, requiring that, once identified, certain potentially ineligible voters *must* necessarily stay on the rolls for two election cycles so as to limit the likelihood of a state removing eligible voters by mistake. *Id.* § 20507(d)(1)(B). That is consistent with Congress's core goals in the NVRA of protecting and expanding the right to register to vote and participate in democracy. *E.g.*, 52 U.S.C. § 20501.

The terms of the MOU, however, purport to place authority to identify supposed ineligible voters in the hands of the federal government. MOU at 2, 5. The MOU makes DOJ a "Custodian"

of the state's voter file, and provides that DOJ will analyze the file and identify "any voter list maintenance issues, insufficiencies, inadequacies, deficiencies, anomalies, or concerns, the Justice Department found when testing, assessing, and analyzing your state's [voter list] for NVRA and HAVA compliance, i.e., that your state's [voter list] only includes eligible voters." MOU at 4–5. And under the MOU's terms, once federal officials identify supposed "ineligible voters," states would be required to "remov[e]" these voters "within forty-five (45) days" and then resubmit their voter lists for additional analysis, MOU at 5. These removals would be required under the terms of the MOU notwithstanding the procedural protections afforded to voters by the NVRA, including the statute's firm bar on systematic removals of voters within 90 days of an election, 52 U.S.C. § 20507.[16]

Extensive public reporting, including government documents created by the DOJ and DOJ officials' own statements and admissions, thus indicate that the United States's aim in seeking sensitive voter data on millions of Americans is to turn states' own voter rolls into a tool for unlawfully and improperly mass-challenging voters and interfering with the democratic process in the states. Recent events have further highlighted the extremely abnormal nature of the United States' request. On January 24, 2026, Attorney General Pamela Bondi wrote a letter to Minnesota Governor Tim Walz, purporting to discuss DHS's "Operation Metro Surge" activities in the Twin Cities amidst ongoing violence against the civilian population there.[17] The letter purports to set out

[16] *See also* Jonathan Shorman, *Trump's DOJ Offers States Confidential Deal to Remove Voters Flagged by Feds*, STATELINE, Dec. 18, 2025, https://stateline.org/2025/12/18/trumps-doj-offers-states-confidential-deal-to-wipe-voters-flagged-by-feds-as-ineligible/.

[17] *Read Bondi's Letter to Minnesota's Governor*, N.Y. TIMES, Jan. 24, 2026, https://perma.cc/H5GY-ZKBS ("Bondi Letter"); *see also* Order, *Tincher v. Noem*, No. 0:25-cv-04669-KMM-DTS (D. Minn. Jan. 16, 2026), Dkt. No. 85 (granting injunction against certain DHS practices towards the civilian population of Minneapolis-St. Paul in connection with purported immigration enforcement operations there).

three actions that Minnesota—which is one of the states DOJ has sued to try to obtain sensitive voter data—should take to "restore the rule of law, support ICE officers, and bring an end to the chaos in Minnesota," one of which is to "allow the Civil Rights Division of the Department of Justice to access voter rolls to confirm that Minnesota's voter registration practices comply with federal law as authorized by the Civil Rights Act of 1960."[18]

LEGAL STANDARD

A court must dismiss a complaint if, accepting all well-pleaded factual allegations as true, it does not "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When considering a motion to dismiss, a court need not accept the complaint's legal conclusions. *Iqbal*, 556 U.S. at 678. A complaint must state a "plausible claim for relief" and contain more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678–79.

Thus, in practice, while courts "accept[] all well-pled facts as true and construe[] these facts in the light most favorable to the plaintiff," they ignore "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009). Courts can also "consider documents incorporated into the complaint by reference, and matters of which a court may take judicial notice," as well as "documents attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Just Puppies, Inc. v. Brown*, 123 F.4th 652, 660 (4th Cir. 2024) (internal citations and quotation marks omitted).

[18] Bondi Letter at 2, 3.

ARGUMENT

I. THE UNITED STATES' DEMANDS EXCEED THE STATUTORY AUTHORITY OF THE CRA AND ARE CONTRARY TO LAW.

When the Attorney General invokes Title III of the CRA to demand voting-related documents from the states, she must provide "a statement of the basis and the purpose" for her request. 52 U.S.C. § 20703.

The United States fails to state a claim under the CRA for at least two distinct reasons. *First*, as set forth in the Complaint, and as reflected in the requests themselves, DOJ failed to set forth a statutorily sufficient statement of "the basis and the purpose" of its demand for Virginia's full and unredacted state voter registration list. *Second*, to the extent the United States might be entitled to any records under the CRA, those records would need to be redacted to protect the privacy and constitutional rights of Virginia voters. State and federal law would require such redaction, and nothing in the CRA prevents the appropriate redaction of the sensitive personal information of voters. The United States' CRA claim seeking the unredacted records is thus legally deficient for that reason as well.

A. The United States' Demand for Records Fails to Meet the Statutory Requirements of the CRA.

Title III of the CRA sets out requirements regarding federal election records, including a requirement in Section 301 for officers of elections to "retain and preserve, for a period of twenty-two months from the date of any" federal election, "all records and papers which come into [their] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election," with certain exceptions regarding delivery and designation of custodians. 52 U.S.C. § 20701. Section 303 requires that "[a]ny record or paper" retained and preserved under Section 301 "shall, upon demand in writing by the Attorney General or [her] representative directed to the person having custody, possession, or control of such record or paper, be made

available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or [her] representative." *Id.* § 20703. "This demand *shall* contain a statement of *the basis and the purpose* therefor." *Id.* (emphasis added). The United States failed to provide "a statement of the basis and the purpose" for the requests sufficient to support disclosure of the unredacted voter file.[19] *Id.*; *see* Compl. ¶¶ 25–27.

Consistent with the statutory text, contemporaneous case law immediately following the enactment of Title III of the CRA consistently treated "the basis" and "the purpose" as two related, but distinct, concepts. *See Kennedy v. Lynd*, 306 F.2d 222, 229 n.6 (5th Cir. 1962); *In re Coleman*, 208 F. Supp. 199, 199–200 (S.D. Miss. 1962), *aff'd sub nom.*, *Coleman v. Kennedy*, 313 F.2d 867 (5th Cir. 1963). The "basis" is the statement of *why* the Attorney General believes there may be a violation of federal civil rights law in the first place, whereas the "purpose" explains *how* the requested records would help the Attorney General ultimately determine if there is, in fact, a violation of the law. *Lynd*, 306 F.2d at 229 n.6.

The basis-and-purpose requirement under the CRA is a "critical safeguard that ensures the request is legitimately related to the purpose of the statute." *Weber*, 2026 WL 118807, at *9. It prevents the statute from being used for a "fishing expedition" to obtain records for reasons that are speculative, unrelated to the CRA's aims, or otherwise impermissible or contrary to law. *Id.* The statutory basis-and-purpose requirement therefore is not perfunctory but requires a specific statement as to the reason for requesting the information and how that information will aid in the investigatory analysis. That is consistent with other federal

[19] Intervenors assume for purposes of this Motion that the statewide electronic voter file may constitute a "record" or "paper" "relating to any application, registration, payment of poll tax, or other act requisite to voting" that has "come into [the Secretary's] possession." 52 U.S.C. § 20701. However, no court has ever addressed the question.

statutes allowing federal agencies to obtain records in service of investigations, where courts have found that the test of whether federal demands for records are enforceable includes an evaluation of whether the underlying investigation is "conducted pursuant to a legitimate purpose," *Equity Inv. Assocs., LLC v. United States*, 40 F.4th 156, 161–62 (4th Cir. 2022) (quoting *United States v. Powell*, 379 U.S. 48, 57 (1964)), and that such subpoenas are not in service of "unnecessary examination or investigations," *United States v. Rosinsky*, 547 F.2d 249, 253 (4th Cir. 1977) (internal quotation marks omitted). Indeed, courts have explained that such a purpose requirement ensures that the information sought is relevant to the inquiry and not unduly burdensome. *See, e.g.*, *F.D.I.C. v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995) (reciting requirements for investigation pursuant to an administrative subpoena).

As set forth below, the United States failed to articulate in its demand and in the Complaint "the basis and the purpose" for its request for Virginia voters' sensitive voter information. The United States' demand fails to meet this requirement of the CRA for at least three distinct reasons. These failures warrant dismissal of the case.

First, the United States simply has not stated a proper "basis" for its demand. The United States alleges that its August 14 Letter, which first invoked Title III, "explained that the basis of the [] request was that the CRA requires the [voter file] to be made available to the Attorney General upon her demand." Compl. ¶ 26. But the United States never quotes the August 14 Letter in the Complaint or appends it, and to the extent the United States alleges without quoting or including the document that it actually set forth the "basis" for its request in the letter, that allegation would be implausible. The tranche of identical letters sent on August 14 actually state: [p]ursuant to the foregoing authorities, including the CRA, the Attorney General is demanding an electronic copy of [the state's] complete and current [voter file]. The purpose of the request is to

ascertain [the state's] compliance with the list maintenance requirements of the NVRA and HAVA." Compilation of August 14 Letters at 2, 5, 8, 11, 14, 17. These letters never state the basis for the request. Where a plaintiff's complaint is contradicted by the documents incorporated by reference therein, "crediting the document over conflicting allegations in the complaint is proper." *E.g.*, *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 167 (4th Cir. 2016). That is the case here with respect to the August 14 Letter, which is incorporated by reference in the Complaint and which almost certainly contains identical operative text to the other six letters that were all sent on the same day to other states by the Assistant Attorney General.[20]

And even taking the Complaint at face value, the "basis" that the United States claims it "explained" in its Complaint, Compl. ¶ 26, is circular and facially deficient. Again, the "basis" for a CRA request is a statement of *why* the United States believes there is some relevant violation of law. *See Lynd*, 306 F.2d at 229 n.6; *accord Weber*, 2026 WL 118807, at *9 ("The basis is the reasoning provided by the DOJ regarding the evidence behind its investigation of a particular state and specific, articulable facts pointing to the violation of federal law."); *see also Basis*, Merriam-Webster, https://www.merriam-webster.com/dictionary/basis ("something on which something else is established or based"). The assertion that "the CRA requires the [voter file] to be made available to the Attorney General upon her demand," Compl. ¶ 26, says nothing about *why* the United States seeks the requested information or even what potential violations of law it is investigating. When the Attorney General requests records pursuant to Title III, she necessarily asserts her belief that the CRA entitles her to those records. If merely claiming "the CRA requires [it]" was all that was needed to meet the express statutory obligation to specifically set forth, "in

[20] Intervenors reserve the right to update this submission to include a copy of the August 14 Letter to Commissioner Beals once one is obtained or otherwise made public.

writing," the "basis" for the request, 52 U.S.C. § 20703, that obligation would be rendered "wholly superfluous," violating the cardinal need "'to give effect, if possible, to every clause and word of a statute.'" *E.g.*, *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)).

Nor is other potential "basis" for the request pleaded. The Complaint alleges that DOJ was at one point "seeking information regarding Virginia's compliance with federal election law," specifically the NVRA and HAVA, based on its review of the Election Administration and Voting Survey 2024 Comprehensive Report from the U.S. Election Assistance Commission ("2024 EAVS Report"). Compl. ¶ 20-21; *see* July 15 Letter. The United States generally alleges that, for the 2024 EAVS Report, Virginia and other participating states "reported data on their efforts to keep voter registration lists current and accurate, known as list maintenance." Compl. ¶ 20. But notwithstanding general references to the statistics in the 2024 EAVS Report, the Complaint does not allege evidence of anything inconsistent with reasonable list maintenance efforts in the data Virginia reported to EAVS. *See* Compl. ¶¶ 20-24. And again, if it was indeed the same demand letter that was sent to other states on that date, the August 14 Letter where the United States actually made its "demand in writing" pursuant to Title III never asserted that anything in the 2024 EAVS Report was the "basis" for the request. 52 U.S.C. § 20703; *see* Compilation of August 14 Letters The United States's failure to properly set forth any "basis" for the demand is sufficient grounds for dismissal of this action. *See Weber*, 2026 WL 118807, at *9.

Second, even if the United States had provided a proper "basis" for its demand—and it did not—it also did not explain, and has not explained, any connection between its stated "purpose" and the vast scope of its records request here, seeking the full and unredacted Virginia statewide voter file. The Complaint does not even attempt to articulate *how* unredacted voter files are

necessary to "ascertain Virginia's compliance with the list maintenance requirements of the NVRA and HAVA," Compl. ¶ 27. Neither DOJ's letter nor the Complaint explains how this information will enable the United States to determine whether Virginia is doing what the statute actually says it must do, namely, "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" by virtue of "death" or "a change in the residence of the registrant," 52 U.S.C. § 20507. *See* Compl. ¶ 27. Nor could it, because such unredacted files would not assist DOJ in examining this question: A single snapshot of a state's voter list does not and could not provide enough information to determine if the state has made a "reasonable effort" to remove ineligible voters under Section 8 of the NVRA. *Id.*; 52 U.S.C. § 20507(a)(4).

The NVRA and HAVA both leave the mechanisms for conducting list maintenance within the discretion of the State. *See* 52 U.S.C. § 20507(a)(4), (c)(1); § 21083(a)(2)(A); § 21085. Even if the United States used voter file data to identify voters who had moved or died on Virginia's voter list at a single point in time, that would not amount to Virginia failing to comply with the "reasonable effort" required by the NVRA or HAVA. *See, e.g.*, *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 624–27 (6th Cir. 2025) (describing a "reasonable effort" as "a serious attempt that is rational and sensible" and rejecting any "quantifiable, objective standard" in this context).[21] It is the *procedures* carried out by a state or locality that establish its compliance with federal list maintenance requirements; the unredacted voter file itself does not.

[21] Indeed, the inclusion on Virginia's voter registration list at any particular point in time of some voters who may have moved out of state is, if anything, to be expected. Section 8(d) of the NVRA explicitly sets out a specific set of rules and requirements for removals from the voter rolls based on changes of residence, whereby states "shall not remove" voters on these grounds unless these voters directly confirm their change of residence in writing, or unless states first provide notice and then abide by a statutory waiting period until the second general federal election after providing notice. 52 U.S.C. § 20507(d).

Moreover, even if some portion of the voter file were necessary to "ascertain Virginia's compliance with the list maintenance requirements of the NVRA and HAVA," Compl. ¶ 27, the United States has not pleaded or otherwise pointed to any justification for why the full unredacted voter file is necessary to carry out this purported purpose. It is telling that, for decades, DOJ has neither sought nor required a full and unredacted voter file in its investigations regarding compliance with the NVRA. *See, e.g.*, Press Release, U.S. Dep't of Just., *United States Announces Settlement with Kentucky Ensuring Compliance with Voter Registration List Maintenance Requirements* (July 5, 2018), https://perma.cc/G2EZUUA5 (describing letters to all 44 states covered by the NVRA with requests for list maintenance information, but without demanding voter files). For this reason, too, the Complaint does not plausibly plead that DOJ has met the basis and purpose requirements of the CRA.

Third, even if the United States had plausibly set forth some facially sufficient statement of the basis and the purpose for its request related to compliance with the NVRA and HAVA, the CRA claim would also be subject to dismissal because DOJ's stated reason for requesting the sensitive personal data of millions of Virginia voters is pretextual.

Section 303 of the CRA requires a statement of "*the* basis and *the* purpose" of a records request. 52 U.S.C. § 20703 (emphasis added). By twice using the definite article, the statute requires not just *a* basis or purpose among many, but *the* complete basis and purpose underlying the request. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165–66 (2021); *see also, e.g.*, *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 817 (2024) (emphasizing distinction between the definite and the indefinite article). But the United States has not disclosed the actual purpose for its requests, and this Court "is not obliged to accept a contrived statement and purpose" in place of an accurate one. *Weber*, 2026 WL 118807, at *10.

Public reporting and public, judicially noticeable documents confirm that the United States' *actual* purpose is not to ensure compliance with the NVRA and HAVA, but to build an unprecedented national voter file through novel, error-prone, DOGE-inspired forms of data-matching and then to use this tool to identify ostensibly ineligible voters and challenge their right to vote. *See supra* 9-15 & nn.7-18. As the *Weber* court characterized it, considering the same robust set of public reporting and documents, "[i]t appears that the DOJ is on a nationwide quest to gather the sensitive, private information of millions of Americans for use in a centralized federal database." 2026 WL 118807, at *10.

The creation of a national voter database—much less one designed for targeting and mass-challenging voters—has never been authorized by Congress, and would violate (among other provisions of federal law) the federal Privacy Act's prohibition on the creation or maintenance of any database "describing how any individual exercises rights guaranteed by the First Amendment," which necessarily includes exercising the right to vote. *See* 5 U.S.C. § 552a(e)(7).

Now consider the MOU that the United States has recently sought for states to sign in connection with its requests for statewide voter files. *See supra* 13-14. Far from indicating a purpose of ensuring compliance with the NVRA and HAVA, this MOU runs directly afoul of those statutes.[22] For one, the MOU seeks to place authority to identify supposed ineligible voters in the hands of the federal government, directly contrary to statute's requirement that procedures for complying with HAVA be "left to the discretion of the State." 52 U.S.C. § 21085; MOU at 2, 5. In addition, the MOU's substantive terms would allow DOJ to compel states to remove supposedly

[22] This Court can take judicial notice of the MOU as a government document produced by DOJ. *See, e.g., Shore v. Charlotte-Mecklenburg Hosp. Auth.*, 412 F. Supp. 3d 568, 573 (M.D.N.C. 2019); *see also, e.g.*, *Navigators Ins. Co. v. Under Armour, Inc.*, No. 25-1068, --- F.4th ----, 2026 WL 137123, at *6 n.9 (4th Cir. Jan. 20, 2026).

ineligible voters "within forty-five (45) days," MOU at 5, in a manner that would violate multiple protections of the NVRA, including the requirement to provide voters with notice prior to their removal from the rolls, and the firm bar against systematic voter removals within 90 days of an election. 52 U.S.C. § 20507. The MOU confirms that DOJ's stated purpose of ensuring compliance with the NVRA and HAVA is not accurate or plausible, and that its actual purpose for seeking to ingest the sensitive personal information of millions of Virginia voters involves defying those statutes and the procedural protections they afford in order to unlawfully centralize control over state voter rolls in the hands of the federal executive.

And now consider the Attorney General's recent letter to Minnesota Governor Tim Walz, demanding that Minnesota turn over voters' private data in order to help "support ICE officers" and "bring an end to the chaos" being inflicted on the civilian population there by DHS agents ostensibly tasked with enforcing the immigration laws. *See supra* 15. The Bondi Letter, purporting to connect DOJ's request for state voter data with the Administration's draconian immigration-enforcement efforts, further highlights DOJ's failure to disclose the true purpose of the request here.

The United States' failure to honestly disclose what it is doing and will do with voters' sensitive personal information—to state *the* true purpose for the demand for Virginians' protected personal data—is independently fatal to the CRA claim. "Congress passed the NVRA, Civil Rights Act, and HAVA to protect voting rights. If the DOJ wants to instead use these statutes for more than their stated purpose, circumventing the authority granted to them by Congress, it cannot do so under the guise of a pretextual investigative purpose." *Weber*, 2026 WL 118807, at *12.

B. The United States' Demand Is Invalid Because It Does Not Allow for Redactions and Modifications to Protect the Privacy and Constitutional Rights of Voters.

Even had the United States provided a valid basis and purpose sufficient to support its demands—which it did not— its request would also be legally deficient because it does not allow for redactions, omissions, or other modifications to protect the privacy rights of Virginia voters. The text of Title III of the CRA does not prohibit redactions to protect voter privacy and ensure compliance with federal and state law and the Constitution. Indeed, courts have found that redaction may be required to prevent the disclosure of sensitive personal information that would create an intolerable burden on the constitutional right to vote. But the United States has nevertheless sought only the full and unredacted voter file. Compl. ¶¶ 22, 25 & p.10. Its CRA claim is accordingly defective and may be dismissed on that ground as well.

Redaction and modification of voting records to ensure voters' privacy is commonplace before a State discloses such records to a requesting party. Title III of the CRA has not been invoked in decades, but the NVRA provides a ready analogue. The NVRA requires States to maintain "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" and to make such records available for "public inspection" upon request. 52 U.S.C. § 20507(i); *see also* Compl. ¶¶ 11–13 (discussing the NVRA). Anyone—including individual voters, groups that protect the right to vote, and government officials—has the same right to such records under the NVRA. Voting rights advocates have thus consistently relied on the NVRA to investigate infringements of the right to vote, including whether election officials have improperly denied or cancelled voter registrations. *See, e.g., Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 333 (4th Cir. 2012) (nonprofit investigating improper rejection of voter registrations submitted by students at a

historically Black university). And courts have consistently held that redacting voters' sensitive personal data is necessary under the NVRA.

The text of the NVRA does not address redaction, but the Fourth Circuit has recognized that, in disclosing voting-related information pursuant to the NVRA's public records provisions, "uniquely sensitive information" may properly be redacted. *Long*, 682 F.3d at 339; *accord Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024) (because "nothing in the text of the NVRA prohibits the appropriate redaction of uniquely or highly sensitive personal information in the Voter File," such redaction of "certain personal information" may be required to "assuage the potential privacy risks implicated by the public release of the Voter File"). Courts must interpret the disclosure provisions in statutes like the NVRA and the CRA in a manner that does not unconstitutionally burden the right to vote. *See United States v. Simms*, 914 F.3d 229, 251 (4th Cir. 2019) ("We are obligated to construe a statute to avoid constitutional problems" where "such a reading is fairly possible") (cleaned up). Federal courts throughout the country have consistently struck this balance, interpreting the "all records concerning" language in Section 8(i) to permit—and even in some cases require—redaction and the protection of confidential material. *See, e.g.*, *Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 264 (4th Cir. 2021) (NVRA disclosure provisions "must be read in conjunction with the various statutes enacted by Congress to protect the privacy of individuals and confidential information held by certain governmental agencies" and protecting sensitive information from disclosure); *see also Pub. Int. Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1015–16 (D. Alaska 2023); *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 942 (C.D. Ill. 2022), *clarified on denial of reconsideration*, No. 20-CV-3190, 2022 WL 1174099 (C.D. Ill. Apr. 20, 2022); *Pub. Int. Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 561–63 (M.D. Pa. 2019).

Just like the NVRA, the CRA is also silent as to how sensitive personal information should be treated during disclosure. *Compare* 52 U.S.C. § 20703 *with* § 20507(i)(1). Courts' treatment of information requests under the NVRA is thus highly instructive in this case—and as with the NVRA, the disclosure provisions of Title III of the CRA must be construed to avoid intolerable burdens on critical privacy rights. *See Long*, 682 F.3d at 339; *see also Bellows*, 92 F.4th at 56; *N.C. State Bd. of Elections*, 996 F.3d at 264. *Cf. Sheetz v. Cnty. of El Dorado, Cal.*, 601 U.S. 267, 281–82 (2024) (Gorsuch, J., concurring) ("[O]ur Constitution deals in substance, not form. However the government chooses to act, . . . it must follow the same constitutional rules.").

Redaction of voters' personal identifying information would be required here for that reason. Disclosure of voters' sensitive personal information would "create[] an intolerable burden on [the constitutional right to vote] as protected by the First and Fourteenth Amendments." *Long*, 682 F.3d at 339 (quotation marks and citation omitted). For example, the Fourth Circuit in *Long*, even while granting access to a state's voter registration applications for inspection and photocopying pursuant to the NVRA's disclosure provisions, ensured the redaction of Social Security numbers, which are "uniquely sensitive and vulnerable to abuse."[23] *Id.* In coming to this conclusion, the court emphasized that the NVRA reflected Congress's view that the right to vote was "fundamental," and that the unredacted release of voters' personal information risked deterring citizens from registering to vote in the first place, and thus created an "intolerable burden" on this

[23] The United States itself has stated—on multiple occasions—that the NVRA does not prohibit the States from redacting "uniquely sensitive information" when disclosing voting records. *See, e.g.*, Br. for the United States as Amicus Curiae, *Pub. Int. Legal Found., Inc. v. Bellows* ("United States Amicus Brief"), No. 23-1361 (1st Cir. July 25, 2024), 2023 WL 4882397 at *27–28; Br. for the United States as Amicus Curiae, *Pub. Int. Legal Found. v. Schmidt*, No. 23-1590 (3d Cir. Nov. 6, 2023), https://perma.cc/3BQ9-36UJ ("States may redact certain information before disclosing Section 8(i) records."); Br. for the United States as Amicus Curiae at 11, 25–26, *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012) (No. 11-1809), 2011 WL 4947283, at *11, 25–26.

fundamental right. *Id.* at 334, 339. The danger of imposing those burdens on Virginia voters and good-government civic groups like Common Cause is present here. *See* Ex. A to Mot. to Intervene, Declaration of Suzanne Almeida at ¶¶ 11-13.

Federal statutory law would meanwhile require (at a minimum) both substantial redaction of sensitive information like Social Security and Driver's License Number information, as well as significant additional procedural steps such as a "privacy impact statement" and hard limitations on interagency sharing in order to comply with the guardrails mandated by the Federal Privacy Act, the E-Government Act, and the Driver's Privacy Protection Act. *Weber*, 2026 WL 118807, at *17-*19 (holding that United States' request for complete California voter file would violate each of these statues). [24]

The limited case law considering records requests under the CRA is not contrary to any of this. Even in the very different context of the Jim Crow South in the early 1960s, the CRA cases expressly acknowledge that courts retain the "power and duty to issue protective orders," *Lynd*, 306 F.2d at 230, and to shield voters' private, sensitive personal information from disclosure. *See id.* at 231 ("[W]e are not discussing confidential, private papers and effects. We are, rather dealing with public records which ought ordinarily to be open to legitimate reasonable inspection"); *see*

[24] The Privacy Act flatly prohibits collecting and maintaining records of First Amendment activity, which includes voting history and party affiliation. 5 U.S.C. §§ 552a(a)(3), (a)(5), (e)(4), (e)(7), (f). It also requires the publication of notice in the Federal Register before the collection of data, *id.* § 552a(e)(4), which the United States does not allege it did here, *see Weber*, 2026 WL 118807, at *18. The E-Government Act requires the publication of a "privacy impact assessment" "prior to 'initiating a new collection of information' that 'includes any information in an identifiable form permitting the physical or online contacting of a specific individual' if the information encompasses '10 or more persons.'" *Id.* at *19 (quoting E-Government Act § 208(b)). Again, the United States does not allege it did that here. Finally, the Driver's Privacy Protection Act "prevents the disclosure of 'personal information' that is obtained by" a state Department of Motor Vehicles "in connection with a 'motor vehicle record.'" *Id.* (quoting 18 U.S.C. §§ 2721(a), 2725(1), (3), & (4); *Reno v. Condon*, 528 U.S. 141, 143 (2000)). Virginia receives voter information from its Department of Motor Vehicles.

also In re Coleman, 208 F. Supp. at 200 (noting, in the context of a records request under Title III of the CRA, multiple considerations not at issue in that case but which could be "[s]ignificant," including that "[i]t is not claimed that these official records are privileged, or exempt from discovery for any sound reason of public policy," or "that an inspection of these records would be oppressive, or any unlawful invasion of any personal constitutional right").

Despite the need for privacy protections for voters' sensitive personal information, the United States nevertheless demands the full, unredacted voter file with no redactions, modifications, and/or other procedural steps to protect voters' and ensure compliance with federal law. That is a fatal deficiency. Even were the United States entitled to records under Title III after having provided a valid statement of the basis and the purpose therefor (which it failed to do here), sensitive personal identifying information would need to be redacted or omitted. Conditioning the right to vote on the release of voters' sensitive private information "creates an intolerable burden on that right." *Long*, 682 F.3d at 339 (cleaned up). The United States's claim seeking the full and unredacted voter file and the sensitive personal identifying information of every registered Virginia voter must be dismissed.

CONCLUSION

The United States' Complaint should be dismissed.

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Respectfully submitted,

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** application for admission pro hac vice forthcoming*