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18 **IN THE UNITED STATES DISTRICT COURT**

19 **FOR THE DISTRICT OF ARIZONA**

20 United States of America,

21 Plaintiff,

22 v.

23 Adrian Fontes, in his official capacity as  
24 Secretary of State for the State of Arizona,

25 Defendant.

26 Case No. 2:26-cv-00066-SMB

27 **AMICUS BRIEF OF THE**  
28 **DEMOCRATIC NATIONAL**  
**COMMITTEE**

(Assigned to the Hon. Susan M.  
Brnovich)

1           **I. INTRODUCTION**

2           Federal law authorizes the Attorney General to demand voter registration records,  
3 but she cannot do so based on a misrepresentation. Rather than disclosing “the basis and  
4 the purpose” for its demand for the complete, unredacted Arizona voter file—as Title III  
5 of the Civil Rights Act of 1960, 52 U.S.C. § 20703, requires—the U.S. Department of  
6 Justice (“DOJ”) suggests it is engaged in routine enforcement of federal civil rights laws.  
7 To the contrary, DOJ is consolidating state databases into a national voter file and  
8 seemingly intends to transfer the personally identifying information and party affiliation  
9 of every registered voter in Arizona to the Department of Homeland Security (“DHS”).  
10 This deception invalidates the Title III demand. A DOJ that cannot be forthright with  
11 state officials cannot be trusted with the personal information of every registered voter in  
12 Arizona. The Democratic National Committee (“DNC”) submits this amicus brief to  
13 protect the privacy of its members and the interests of its candidates and campaigns in  
14 free and fair elections and respectfully requests that this Court deny DOJ’s Motion for  
15 Order to Compel and grant Secretary Fontes’s Motion to Dismiss.

16           **II. INTEREST OF AMICUS CURIAE**

17           The DNC is the oldest continuing party committee in the United States. Its  
18 purposes and functions are to communicate the Democratic Party’s position on issues,  
19 protect voters’ rights, and aid the election of Democratic candidates nationwide, including  
20 by organizing citizens to register to vote and to cast ballots in favor of Democratic  
21 candidates. The DNC represents millions of voters, including more than 1.2 million  
22 registered Democrats in Arizona.

23           DOJ has demanded a copy of the State of Arizona’s complete, unredacted voter  
24 registration list. This demand forces Democrats to choose between participating in  
25 elections and the privacy and security of their personal information. Conditioning the  
26 right to vote on the release of private information “creates an intolerable burden on that  
27 right.” *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012). The  
28 concerns of ordinary Democrats are amplified by uncertainty as to the intended use of

1 their data. In turn, the DNC has a significant protectable interest in the success of  
2 Democratic candidates, and pressure on Democrats to avoid registration or even remove  
3 themselves from the voter rolls would impose an intolerable burden on that interest. *See*,  
4 *e.g.*, *Paher v. Cegavske*, No. 3:20-cv-243, 2020 WL 2042365, at \*2–3 (D. Nev. Apr. 28,  
5 2020); *cf. Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 519–21 (2026).

### 6 III. BACKGROUND

7 In June 2025, DOJ began sending letters demanding complete, unredacted copies  
8 of state voter files, and a senior official eventually acknowledged that DOJ intends to  
9 send demands to all 50 states. *See* Jonathan Shorman, *DOJ Plans to Ask All States for*  
10 *Detailed Voting Info*, Stateline, Aug. 1, 2025, <https://perma.cc/526V-97C3>. Early letters  
11 indicated that the files would be used to oversee “HAVA compliance” (*i.e.*, compliance  
12 with the Help America Vote Act of 2002) or “full compliance with the NVRA,” the  
13 National Voter Registration Act of 1993. *See, e.g.*, Ltr. from Maureen Riordan, U.S.  
14 Dep’t of Justice, to Steve Simon, Minn. Sec’y of State (June 25, 2025),  
15 <https://perma.cc/NZ9N-FCDC>; Ltr. from Michael E. Gates, U.S. Dep’t of Justice, to  
16 Deirdre Henderson, Lt. Gov. of Utah (July 15, 2025), <https://perma.cc/FV8G-W965>.  
17 DOJ has since confirmed that it is sharing lists with DHS and developing a national voter  
18 file. *See* Tr. 120:6–121:2, *United States v. Weber*, No. 2:25-cv-09149 (C.D. Cal. Dec. 12,  
19 2025), ECF No. 92; The Independent Institute, *Harmeet Dhillon | Trump DOJ: Ensuring*  
20 *Election Integrity and Fixing Immigration* (Dec. 9, 2025),  
21 <https://www.youtube.com/watch?v=FLtqQqt2FwA> (at 1:59) (describing data comparison  
22 between states); Jonathan Shorman, *DOJ Is Sharing State Voter Roll Lists with Homeland*  
23 *Security*, Stateline, Sept. 12, 2025, <https://perma.cc/C6RQ-6ATP> (quoting DOJ and DHS  
24 statements); Devlin Barrett and Nick Corasaniti, *Trump Administration Quietly Seeks to*  
25 *Build National Voter Roll*, N.Y. Times, Sept. 9, 2025, <https://perma.cc/9PM4-2A6R>.  
26 Collectively, these admissions and recent DOJ actions cast “serious doubt as to the true  
27 purposes for which [DOJ] is seeking voter registration lists in this and other cases.”  
28

1 *United States v. Oregon*, No. 6:25-cv-1666, 2026 WL 318402, at \*11 (D. Or. Feb. 5,  
2 2026).

3 On July 28, 2025, DOJ sent a letter to Arizona Secretary of State Adrian Fontes  
4 demanding “[t]he current electronic copy of the State of Illinois’ computerized statewide  
5 voter registration list,” along with specific information about voter registration list  
6 maintenance practices. July 28 Ltr. at 1–2, ECF No. 8-1. The letter asserted that Section  
7 8(i) of the NVRA, 52 U.S.C. § 20507(i), required disclosure of the voter file and  
8 requested transfer of the voter file within 14 days. *Id.* at 1, 3. Fourteen days later,  
9 Secretary Fontes sent a letter informing DOJ that the proposed timeline was infeasible  
10 due to preparations for a federal special election on September 23. Aug. 8 Ltr., ECF No.  
11 8-2. On August 14, DOJ sent a second letter demanding a disclosure of the Arizona voter  
12 file within seven days and clarifying that it sought “all fields” of the voter file, “including  
13 the registrant’s full name, date of birth, residential address, his or her state driver’s license  
14 number or the last four digits of the registrant’s [S]ocial [S]ecurity number.” Aug. 14 Ltr.  
15 at 1–2, ECF No. 8-3. The second letter also invoked Title III of the Civil Rights Act of  
16 1960 (“Title III”), 52 U.S.C. §§ 20701–06, as authority for the demand and stated, “The  
17 purpose of this request is to ascertain Arizona’s compliance with the list maintenance  
18 requirements of the NVRA and HAVA.” Aug. 14 Ltr. at 2. On August 29, Secretary  
19 Fontes sent a second letter providing extensive information regarding list maintenance in  
20 Arizona but declining to release the complete, unredacted Arizona voter file. Aug. 29  
21 Ltr., ECF No. 8-4.

22 On January 6, 2026, DOJ filed suit against Secretary Fontes, demanding production  
23 of the complete, unredacted Arizona voter file, solely pursuant to Title III. Compl. ¶¶  
24 31–33, ECF No. 1. The next day, DOJ filed a “motion for order to compel.” DOJ Mot.,  
25 ECF No. 7. On February 27, Secretary Fontes filed a brief in opposition to DOJ’s motion  
26 and moved to dismiss. *See* Def. Opp., ECF No. 26; Def. Mot., ECF No. 25.<sup>1</sup>

27 <sup>1</sup> To date, DOJ has sued 29 states and the District of Columbia for unredacted voter files.  
28 *See* U.S. Dep’t of Justice, *Justice Department Sues Five Additional States for Failure to*  
*Produce Voter Rolls* (Feb. 26, 2026), <https://perma.cc/YAV8-KGEZ>. DOJ also claims it

1           **IV.    LEGAL STANDARD**

2           Title III of the Civil Rights Act of 1960 (Title III), 52 U.S.C. §§ 20701–06,  
3 mandates that “every officer of election shall retain and preserve, for a period of twenty-  
4 two months from the date of any [federal election] . . . all records and papers which come  
5 into his possession relating to any application, registration, payment of poll tax, or other  
6 act requisite to voting in such election” or transfer them to another officer of election or  
7 designated custodian. 52 U.S.C. § 20701. In turn,

8                   Any record or paper required by [Title III] to be retained and preserved  
9 shall, upon demand in writing by the Attorney General or his representative  
10 directed to the person having custody, possession, or control of such record  
11 or paper, be made available for inspection, reproduction, and copying at the  
principal office of such custodian by the Attorney General or his  
representative.

12           52 U.S.C. § 20703. “This demand shall contain a statement of the basis and the purpose  
13 therefor.” *Id.* “The United States district court for the district in which a demand is made  
14 pursuant to [Title III], or in which a record or paper so demanded is located, shall have  
15 jurisdiction by appropriate process to compel the production of such record or paper.” 52  
16 U.S.C. § 20705.

17           **V.    ARGUMENT**

18           DOJ cannot obtain the complete, unredacted Arizona voter file—including voters’  
19 Social Security numbers, driver’s license numbers, dates of birth, and partisan  
20 affiliations—based on a facially deficient Title III demand. By offering mere pretext  
21 rather than an honest statement of “the basis and the purpose” for the demand, the  
22 Attorney General has forfeited Title III authority. 52 U.S.C. § 20703. Title III requests  
23 are subject to “appropriate process,” 52 U.S.C. § 20705, scrutiny the instant request  
24 cannot bear.

25  
26  
27           \_\_\_\_\_ has obtained or is obtaining roughly 18 states’ complete, unredacted voter files through  
28 voluntary disclosures. *See Unmasking Election Corruption*, Just the News Not the Noise  
(Dec. 9, 2025), <https://justthenews.com/podcasts/john-solomon-reports/unmasking-election-corruption-insights-harmeet-dhillon-and-j> (at 20:55).

1           **A. DOJ Has Obscured the True Basis and Purpose for Its Title III Demand.**

2           DOJ’s Title III claim seeking the complete, unredacted Arizona voter file should  
3 be dismissed because the demand did not state “the basis and the purpose therefor.” 52  
4 U.S.C. § 20703; *see also* Def. Mot. at 5–6, 9–10; Def. Opp. 12–14. Title III requires  
5 candor between federal officials and state and local election administrators who safeguard  
6 voters’ sensitive personal information. Thus, DOJ cannot use Title III to obtain records  
7 “under the guise of a pretextual investigative purpose.” *United States v. Weber*, No. 2:25-  
8 cv-9149, 2026 WL 118807, at \*12 (C.D. Cal. Jan. 15, 2026); *see also CFPB v.*  
9 *Accrediting Council for Independent Colleges & Secondary Schs. (ACICS)*, 854 F.3d 683,  
10 690 (D.C. Cir. 2017) (emphasizing that the validity of a civil investigating demand “is  
11 measured by the stated purpose,” making notification of purpose “an important statutory  
12 requirement”). DOJ demanded the complete, unredacted voter file “to ascertain  
13 Arizona’s compliance with the list maintenance requirements of the NVRA and HAVA.”  
14 Aug. 14 Ltr. at 2. But “[b]ehind this screening, there appears to be a different purpose.”  
15 *Weber*, 2026 WL 118807, at \*11 (addressing California request). DOJ has publicly  
16 confirmed that it is sharing voter files with DHS and compiling a national voter file. *See,*  
17 *e.g., DOJ Is Sharing State Voter Roll Lists with Homeland Security, supra; see also*  
18 *Weber*, 2026 WL 118807, at \*11. As explained below, neither action is related to NVRA  
19 or HAVA enforcement. *See Oregon*, 2026 WL 318402, at \*10 n.4 & n.5, \*13 (addressing  
20 parallel litigation).<sup>2</sup>

21           Title III demands a statement of “*the* basis and *the* purpose” for the demand, not  
22 merely *a* basis and *a* purpose. 52 U.S.C. § 20703 (emphases added). By twice using the  
23 definite article, Title III requires the Attorney General to offer “a discrete thing”: the  
24 complete basis and purpose of the request and not merely one basis and purpose among  
25 many. *Niz-Chavez v. Garland*, 593 U.S. 155, 166 (2021); *see also, e.g., Corner Post, Inc.*

26 \_\_\_\_\_  
27 <sup>2</sup> DOJ similarly invoked HAVA when requesting 2020 election records, even while  
28 asserting an interest in “transparency.” Oct. 30 Ltr., <https://perma.cc/WCM3-FVTW>. Repeat demands for records based on pretextual invocation of HAVA undercut purported reliance on that statute here.

1 *v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 817 (2024) (emphasizing  
2 distinction between definite and indefinite article). Without a complete statement of the  
3 basis and the purpose of the demand, state officials and reviewing courts “cannot  
4 accurately determine whether the inquiry is within the authority of the [Justice  
5 Department] and whether the information sought is reasonably relevant.” *ACICS*, 854  
6 F.3d at 691; *see also In re Gordon*, 218 F. Supp. 826, 827 (S.D. Miss. 1963) (indicating  
7 that Title III requests cannot be “used without restraint”). Ultimately, “half-truths—  
8 representations that state the truth only so far as it goes, while omitting critical qualifying  
9 information—can be . . . misrepresentations.” *Universal Health Servs. v. United States*  
10 *ex. rel. Escobar*, 579 U.S. 176, 188 (2016); *cf. Dep’t of Commerce v. New York*, 588 U.S.  
11 752, 781–85 (2019) (remanding agency action due to pretextual invocation of the Voting  
12 Rights Act). Thus, DOJ’s refusal to be forthright with state officials about the intended  
13 use of sensitive personal information is fatal to the demand. *Cf. United States v.*  
14 *Raffensperger*, No. 5:25-cv-548, 2026 WL 184233 (M.D. Ga. Jan. 23, 2026) (dismissing  
15 Georgia Title III request for failure to comply with statutory requirements).

16 DHS has broad authority over counterterrorism, emergency management,  
17 immigration, and border protection, but its powers do not extend to NVRA or HAVA  
18 enforcement. *See* 6 U.S.C. § 111(b); *cf.* 52 U.S.C. §§ 20510(a), 21111 (DOJ authority).  
19 Even if DOJ were only interested in comparing the Arizona voter file with DHS data to  
20 identify voters who may not meet state eligibility requirements—which might not require  
21 transferring the voter file to DHS custody—such database matching would not advance  
22 NVRA or HAVA enforcement. The NVRA’s affirmative list maintenance mandate  
23 concerns only deceased registrants and those who are no longer eligible based on a change  
24 of address. *See* 52 U.S.C. § 20507(a)(4); *see also, e.g., Am. Civ. Rights Union v. Phila.*  
25 *City Comm’rs* (“*ACRU*”), 872 F.3d 175, 182 (3d Cir. 2017) (“By its terms, the mandatory  
26 language in Section 8(a)(4) only applies to registrants who have died or moved away.”).  
27 HAVA specifies that appropriate officials must remove voters from statewide voter  
28 registration lists using a “system of file maintenance that makes a reasonable effort to

1 remove registrants who are ineligible to vote from the official list of eligible voters . . .  
2 consistent with the [NVRA],” *id.* § 21083(a)(4)(A), and this provision does not  
3 “broaden[] the scope of the NVRA’s list-maintenance obligations.” *Bellitto v. Snipes*,  
4 935 F.3d 1192, 1202 (11th Cir. 2019); *see also ACRU*, 872 F.3d at 184–85 (rejecting  
5 contention that HAVA “augment[s]” NVRA list maintenance requirements); 52 U.S.C.  
6 § 21083(a)(2)(B) (guidelines for list maintenance); 52 U.S.C. § 21145(a)(4) (directing  
7 that nothing in HAVA supersedes the NVRA). Federal data concerning deaths and  
8 changes of address is held by the Social Security Administration (“SSA”) and the U.S.  
9 Postal Service (“USPS”) respectively, not DHS. *See* 42 U.S.C. § 1306c(d) (defining SSA  
10 Death Master File); 52 U.S.C. § 20507(c)(1) (describing use of USPS address information  
11 by election officials); *see also* 39 C.F.R. § 122.2(b) (providing for prompt transmission  
12 of change-of-address information to election officials); Exec. Order. No. 14,248, § 3(a),  
13 90 Fed. Reg. 14005, 14007 (Mar. 25, 2025) (ensuring that SSA allows election officials  
14 to access the Death Master File). Thus, DHS data is not relevant to NVRA and HAVA  
15 enforcement.

16 Adding the complete, unredacted Arizona voter file to a DOJ national voter  
17 database also does not advance even the pretextual purpose of investigating Arizona’s  
18 NVRA and HAVA compliance. The NVRA requires that states conduct only a  
19 “reasonable effort to remove the names of ineligible voters by reason of the death of the  
20 registrant[] or a change in the residence of the registrant.” 52 U.S.C. § 20507(a)(4). With  
21 respect to movers, the “reasonable effort” requirement can be met using Postal Service  
22 data alone. 52 U.S.C. § 20507(c)(1). In any case, joining the Arizona voter file to another  
23 state’s voter file—a file Arizona does not possess and is not legally required to obtain—  
24 does not help DOJ determine whether Arizona has met the “reasonable effort”  
25 requirement. *Cf.* 52 U.S.C. § 21083(a)(2)(A)(ii) (requiring voter file coordination with  
26 in-state databases on felony status and death records). HAVA merely reiterates the  
27 NVRA’s list maintenance requirements, *see, e.g., Bellitto*, 935 F.3d at 1202; *ACRU*, 872  
28 F.3d at 184–85, and comparison to another state’s database has no bearing on HAVA

1 database design mandates, such as consolidation of duplicate records. 52 U.S.C.  
2 § 21083(a)(2)(B)(iii).<sup>3</sup>

3 Even if Title III required the Attorney General’s representative to provide only “a  
4 purpose” and not “the purpose” of a demand—and it does not—DOJ’s demand for the  
5 complete, unredacted Arizona voter file is unrelated to “Arizona’s compliance with the  
6 list maintenance requirements of the NVRA and HAVA.” Aug. 14 Ltr. at 2.<sup>4</sup> For nearly  
7 two decades, DOJ has neither demanded nor required a complete, unredacted voter file to  
8 investigate NVRA violations or oversee compliance with a remedy. *See, e.g.*, Press  
9 Release, U.S. Dep’t of Justice, *United States Announces Settlement with Kentucky*  
10 *Ensuring Compliance with Voter Registration List Maintenance Requirements*, July 5,  
11 2018, <https://perma.cc/G2EZ-UUA5> (describing 2017 letters to all 44 states covered by

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13 <sup>3</sup> Through the Electronic Registration Information Center—a membership organization  
14 made up of 24 states and the District of Columbia—Arizona obtains cross-state mover  
15 reports based on voter registration and motor vehicle data. *See* Electronic Registration  
16 Information Center, *FAQ’s*, <https://perma.cc/AY53-TF3Z>; *see also* Electronic  
17 Registration Information Center, *Technology & Security Overview*,  
18 <https://perma.cc/CY4E-85VL>. However, 25 states that register voters do not participate  
19 in this exchange, and federal law does not mandate interstate comparison of voter  
20 registration records. DOJ suggests that states participate in interstate data exchanges to  
21 help identify and remove “duplicate voter registrations.” DOJ Mem. at 11, ECF No. 8.  
22 This makes little sense, as HAVA addresses only the presence of duplicates within a  
23 single statewide database, not double registration or double voting across states.

24 <sup>4</sup> In other states, DOJ asserted that the purpose of obtaining the unredacted voter file is  
25 to ascertain compliance only with the NVRA or only with HAVA. *See, e.g.*, Aug. 18 Ltr.,  
26 *United States v. Scanlan*, 1:25-cv-371 (D.N.H. Sept. 30, 2025), ECF No. 6-9 (HAVA  
27 only); Aug. 21 Ltr., *United States v. Weber*, No. 2:25-cv-9149 (C.D. Cal. Nov. 7, 2025),  
28 ECF No. 37-2 at 24 (NVRA only). DOJ has also incorporated a demand for the  
unredacted voter file as a purported oversight measure in a recent consent decree. *See*  
Consent Decree ¶ 11, *United States v. N.C. State Bd. of Elections*, No. 5:25-cv-283  
(E.D.N.C. Sept. 8, 2025), ECF No. 72. The Attorney General’s assertion of varying  
purposes for identical voter file demands suggests that the claimed enforcement aims here  
are mere pretext. *Cf. Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S.  
252, 267 (1977) (deeming departures from substantive and procedural norms to be  
evidence of pretext). Shockingly, immediately after the shooting of Alex Pretti, the  
Attorney General tied the handover of Minnesota’s unredacted voter file to the “chaos in  
Minnesota.” Ltr. from Att’y Gen. Bondi to Gov. Walz (Jan. 24, 2026),  
<https://perma.cc/9WT4-HQF4>; *see also* U.S. Notice of Corrections to the Record,  
*AFSCME v. Social Security Admin.*, No. 1:25-cv-596 (D.D.C. Jan. 16, 2026), ECF No.  
197 (disclosing “Voter Data Agreement” under which Social Security Administration  
agreed to “analyze state voter rolls” with the aim of “overturn[ing] election results in  
certain States”).

1 the NVRA requesting list maintenance information but not demanding voter files). And  
2 with good reason. As noted above, the NVRA’s affirmative list maintenance mandate  
3 requires only a “reasonable effort” to remove deceased registrants and movers. *See* 52  
4 U.S.C. § 20507(a)(4); *see also id.* § 20507(c)(1) (allowing the requirement concerning  
5 movers to be met as a matter of law using safe harbor procedures). DOJ has recognized  
6 this flexible standard since the Act’s passage. *See, e.g.,* U.S. Dep’t of Justice, *The*  
7 *National Voter Registration Act of 1993* (last updated Nov. 1, 2024),  
8 <https://perma.cc/D8YZ-F9AM>; U.S. Dep’t of Justice, *NVRA List Maintenance Guidance*  
9 (Sept. 2024), <https://perma.cc/J3C2-WSSE>. Thus, state and local procedures establish  
10 compliance; voter files that result from those procedures do not. *See Pub. Int. Legal*  
11 *Found. v. Benson*, 136 F.4th 613, 624–26 (6th Cir. 2025), *petition for cert. pending*, No.  
12 25-437 (filed Oct. 7, 2025) (defining “reasonable effort” as “a serious attempt that is  
13 rational and sensible” and rejecting any “quantifiable, objective standard”); *Bellitto*, 935  
14 F.3d at 1205 (finding a “reasonable effort” based on safe harbor procedures alone). Even  
15 if DOJ could use unredacted voter data to find deceased voters on the registration rolls,  
16 *see* DOJ Mem. at 12, ECF No. 8, this would not indicate that state actions to remove such  
17 voters did not meet the “reasonable effort” requirement. *See Benson*, 136 F.4th at 626–  
18 27 (rejecting identification of “27,000 ‘potentially deceased’ voters on Michigan’s  
19 registration rolls” as evidence of an NVRA violation); *see also Judicial Watch v.*  
20 *Griswold*, 554 F. Supp. 3d 1091, 1108 (D. Colo. 2021) (recognizing that procedures may  
21 be reasonable as a matter of law); 52 U.S.C. § 20507(d)(1) (limiting removal of movers).  
22 Ultimately, the NVRA places responsibility for voter registration list maintenance with  
23 the States and does not authorize the Justice Department to search for individual  
24 registrants who federal officials suspect may not meet state eligibility requirements.<sup>5</sup>

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<sup>5</sup> In 2006 and 2008, DOJ sought and obtained two state voter registration files, including Social Security numbers, for the ostensible purpose of assessing NVRA compliance. *See* Compl. ¶ 9, *United States v. Georgia*, No. 1:06-cv-2442 (N.D. Ga. Oct. 12, 2006); Consent Decree, *United States v. Georgia*, No. 1:06-cv-2442 (N.D. Ga. Oct. 30, 2006); Tex. MOU (May 13, 2008), *available at United States v. Toulouse Oliver*, No. 1:25-cv-1193 (D.N.M.), ECF No. 51-6. DOJ did not pursue an enforcement action based on either

1 HAVA enforcement also does not require or use complete, unredacted voter files.  
2 Although HAVA requires that statewide voter registration databases have specific list  
3 maintenance capabilities, *see* 52 U.S.C. § 21083(a)(2), (4), these requirements are  
4 implemented pursuant to state discretion, *id.* § 21085. DOJ previously recognized as  
5 much when it entered a consent decree requiring “reasonable steps” to identify possible  
6 duplicate registrations and movers and “review” of registrants previously identified “as  
7 potentially deceased”—not perfect removal of ineligible registrants and consolidation of  
8 duplicate records. Consent Decree ¶¶ 4, 8–9, *United States v. State of New Jersey*, No.  
9 06-4889 (D.N.J. Oct. 12, 2006), <https://perma.cc/TF6V-NUY4>; *see also* U.S. Election  
10 Assist. Comm’n, *Voluntary Guidance on Implementation of Statewide Voter Registration*  
11 *Lists* 11-14 (July 2005), <https://perma.cc/KJX9-ZZ3W> (“recogniz[ing] the fallibility of  
12 databases” and prioritizing “[s]afeguards to ensure that eligible voters are not removed in  
13 error from the official list of eligible voters”). And once a HAVA-compliant system was  
14 in place, the decree required reporting of list maintenance statistics but did not demand  
15 copies of complete, unredacted voter files. *See* N.J. Consent Decree ¶ 11. Although DOJ  
16 now claims it needs unredacted voter files to determine if voters have been registered  
17 since HAVA went into effect without submitting a driver’s license or Social Security  
18 number, *see* DOJ Mem. at 11; *see also* 52 U.S.C. § 21083(a)(5), that inquiry at most  
19 requires production of voter records *lacking* these identifiers, along with associated  
20 registration dates. Producing records that include driver’s license and Social Security  
21 numbers does not assist bona fide HAVA enforcement.

22 **B. Title III Requests Are Subject to Ordinary Judicial Oversight.**

23 DOJ cannot avoid scrutiny of the basis and purpose for its Title III demand by  
24 claiming that the Civil Rights Act of 1960 authorizes a “special statutory proceeding.”  
25 *See, e.g.*, DOJ Mem. at 6 ; *see also Ensuring Election Integrity and Fixing Immigration*,  
26 *supra* (at 2:41) (“The 1960 Civil Rights Act is actually very clear. The Attorney General  
27 \_\_\_\_\_  
28 file, *see* U.S. Dep’t of Justice, *Cases Raising Claims under the National Voter*  
*Registration Act*, <https://perma.cc/A3JG-CNZA>, and for the next 17 years abandoned any  
attempt to use voter files to assess NVRA compliance.

1 doesn't have to show her homework as to what she is going to do with it, and I am her  
2 designee. So, I get to ask for that information and they have to give it."). In fact, Title  
3 III requires an honest statement of "the basis and the purpose" of the request. 52 U.S.C.  
4 § 20703. Thus, this Court's role "is not so limited." *Oregon*, 2026 WL 318402, at \*8.  
5 The grave issues at stake in this litigation require this Court to subject the Attorney  
6 General's request to exacting scrutiny under the procedures mandated by the Federal  
7 Rules and fundamental due process. *See* Def. Mot. at 10–12; Def. Opp. at 5–10.

8 Title III does not authorize the "special statutory proceeding" that DOJ demands.  
9 DOJ relies on the 1962 decision of the U.S. Court of Appeals for the Fifth Circuit in  
10 *Kennedy v. Lynd*, 306 F.2d 222, to make this claim. *See* DOJ Mem. at 6–7, 13–14. To  
11 be sure, *Lynd* indicated that "the factual foundation for, or the sufficiency of, the Attorney  
12 General's 'statement of the basis and the purpose' contained in the written demand is not  
13 open to judicial review or ascertainment." *Lynd*, 306 F.2d at 226 (quoting former 42  
14 U.S.C. § 1974b). But *Lynd* was decided in the early 1960s, an era of racist  
15 disenfranchisement and massive resistance to civil rights, even within the federal  
16 judiciary. *See, e.g., Kennedy v. Bruce*, 298 F.2d 860, 862 (5th Cir. 1962) (reversing  
17 dismissal in conflict with controlling law). As the Supreme Court has recognized,  
18 "history did not end in 1965." *Shelby County v. Holder*, 570 U.S. 529, 532 (2013). In  
19 1965, the Voting Rights Act removed the exigency that might have justified paltry process  
20 by suspending disenfranchising tests and devices that Title III had been used to investigate  
21 and imposing preclearance on states that had used them. *See South Carolina v.*  
22 *Katzenbach*, 383 U.S. 301, 313 (1966) (describing case-by-case use of Title III); *see also*  
23 *id.* at 319, 333–34 (upholding suspension in covered states). Six decades since DOJ last  
24 litigated a Title III action, basic principles of federal law dictate that the requisite  
25 statement of the basis and the purpose for a Title III request is subject to judicial oversight.

26 Rule 81(a)(5) of the Federal Rules of Civil Procedure now establishes that the Rules  
27 "apply to proceedings to compel testimony or the production of documents through a  
28 subpoena issued by a United States officer or agency under a federal statute, except as

1 otherwise provided by statute, by local rule, or by court order in the proceedings.” Fed.  
2 R. Civ. P. 81(a)(5). These rules protect the rights of recipients and guarantee that “an  
3 adversary hearing, if requested, is made available.” *Becker v. United States*, 451 U.S.  
4 1306, 1308 (1981). Indeed, just two years after the Fifth Circuit decided *Lynd*, the  
5 Supreme Court decided *United States v. Powell*, 379 U.S. 47 (1964), which required the  
6 government to establish statutory requirements before a tax subpoena may be enforced.  
7 *See id.* at 57–58. Even after a federal official has met that burden, the recipient of a  
8 summons or subpoena must be afforded the opportunity to rebut the prima facie case or  
9 establish an abuse of process. *See, e.g., United States v. Gilleran*, 992 F.2d 232, 233 (9th  
10 Cir. 1993). Such due process is the prerequisite to judicial enforcement of a records  
11 request issued by another branch of government. *See, e.g., Trump v. Mazars USA, LLP*,  
12 591 U.S. 848, 862–63 (2020) (addressing whether a subpoena was “related to, and in  
13 furtherance of, a legitimate task of the Congress”). Ultimately, the “Supreme Court’s  
14 holding in *Powell* squarely rejects [DOJ’s] contention and reliance on *Lynd*.” *Oregon*,  
15 2026 WL 318402, at \*8.

16 The text of Title III does not insulate the demand from such judicial review. 52  
17 U.S.C. § 20703; *cf.* Fed. R. Civ. P. 81(a)(5) (allowing exclusion from the Federal Rules  
18 as “provided by statute”). Rather, Title III’s jurisdictional provision authorizes only  
19 “appropriate process to compel the production” of documents. 52 U.S.C. § 20705; *see*  
20 *also Raffensperger*, 2026 WL 184233, at \*3 (requiring strict adherence to the text of Title  
21 III). Where Congress authorizes alternative procedures to the Federal Rules of Civil  
22 Procedure, it does so explicitly and in detail. *See, e.g.,* 42 U.S.C. § 2000a-5 (procedures  
23 under Title II of the Civil Rights Act of 1964); *see also Katzenbach v. McClung*, 379 U.S.  
24 294, 295–96 (1964) (describing these procedures as “a special statutory proceeding”).  
25 Moreover, the statutory requirement that the Attorney General must offer “the basis and  
26 the purpose” for a Title III request would serve no purpose if—as DOJ contends—federal  
27 courts may adjudicate only whether a demand has been made and the custodian of  
28 documents has received notice of the proceeding. *See Oregon*, 2026 WL 318402, at \*9.

1 It remains possible that an “assertion that the demand was made for the purpose of  
2 investigating possible violations of a Federal statute” could meet the basis and purpose  
3 requirement, *Coleman v. Kennedy*, 313 F.2d 867, 868 (5th Cir. 1963), but only when the  
4 assertion is complete and accurate, *cf. SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943)  
5 (“[T]he orderly functioning of the process of review requires that the grounds upon which  
6 the administrative agency acted be clearly disclosed and adequately sustained.”). Here,  
7 DOJ suggested that it needed the complete, unredacted Arizona voter file to investigate  
8 NVRA and HAVA compliance. At best, this is a baseless and ill-conceived fishing  
9 expedition. At worst, it is simple pretext. While DOJ might ordinarily be presumed to  
10 be acting in good faith, “appropriate process” requires an opportunity to prove otherwise.  
11 *See In re Coleman*, 208 F. Supp. 199, 201 (S.D. Miss. 1962). Moreover, district courts  
12 have recently “identified serious defects in the government’s explanations and  
13 representations . . . prompting judges to discount government submissions, compel  
14 expedited discovery, and withhold the presumption.” Ryan Goodman et al., *The*  
15 *“Presumption of Regularity” in Trump Administration Litigation* (Nov. 20, 2025),  
16 <https://perma.cc/PL5G-BTAN>; *see also Oregon*, 2026 WL 318402, at \*11 (“The  
17 presumption of regularity that has been previously extended to [DOJ] that it could be  
18 taken at its word—with little doubt about its intentions and stated purposes—no longer  
19 holds.”).<sup>6</sup>

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22 <sup>6</sup> The U.S. District Court for the Western District of Michigan recently declined to  
23 consider whether DOJ’s “request is in bad faith,” but that decision is procedurally  
24 distinguishable and led to avoidable error. *United States v. Benson*, No 1:25-1148, 2026  
25 WL 362789, at \*8 (W.D. Mich. Feb. 10, 2026). On the procedural side, the court  
26 considered only a motion to dismiss—not a motion for order to compel—and so it rejected  
27 arguments over bad faith as going “to the truth of the DOJ’s allegations.” *Id.*; *cf. id.* at  
28 \*7 (recognizing opportunity to establish bad faith in subpoena enforcement actions).  
Even on a motion to dismiss, however, the court should have considered the plausibility  
of DOJ’s allegations. *See id.* at \*2 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
555 (2007)). Had the court done so, it might have recognized the incompatibility between  
the data requested and the statutes DOJ purported to enforce. *See, e.g., id.* at \*9  
(addressing categories of voters not subject to NVRA and HAVA list maintenance  
requirements).

1           Thus, the U.S. District Court for the Central District of California recently  
2 determined that “Title III cannot transform an election records request by the federal  
3 government from an ordinary civil action into an action comparable to an order to show  
4 cause.” *Weber*, 2026 WL 118807, at \*8; *see also id.* (confirming that “[n]othing in the  
5 text of Title III requires a special statutory proceeding or any abbreviated procedures”  
6 and that “appropriate process” allows courts to “determine that the DOJ has not met Title  
7 III[’s] statutory requirements”). Soon thereafter, the District of Oregon applied “the  
8 Federal Rules of Civil Procedure” to a Title III claim and dismissed the suit for failure  
9 “to state an adequate basis and purpose.” *Oregon*, 2026 WL 318402, at \*8; *see also id.* at  
10 \*13 (describing the request as “chilling” “overreach”). And earlier this month, the  
11 Western District of Michigan dismissed a third Title III suit. *See Benson*, 2026 WL  
12 362789, at \*11. This Court should follow the emerging consensus, impose rigorous  
13 scrutiny, and dismiss the Title III claim.

#### 14           **VI. CONCLUSION**

15           For the reasons set out above, this Court should deny DOJ’s Motion for Order to  
16 Compel and grant Secretary Fontes’s Motion to Dismiss.

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Respectfully submitted this 2nd day of March, 2026.

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