No. 26-1783

# United States Court of Appeals for the First Circuit

UNITED STATES OF AMERICA,
*Plaintiff-Appellant,*

– v. –

DAVID M. SCANLAN, New Hampshire Secretary of State; STATE OF NEW HAMPSHIRE; NEAL KURK; ROBERT PERRY; LOUISE SPENCER; CHRISTOPHER COLE,
*Defendants-Appellees*

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

**BRIEF OF *AMICUS CURIAE* LIBERTY LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

Stacey Bucci (No. 1203282)
BUCCI LAW
595 New Loudon Road
Suite 215
Latham, New York 12110
(413)248-7622
berkshirelegal@gmail.com
*Counsel for Amicus Curiae*

## DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), Liberty Legal Foundation states that it is a non-profit legal organization that has issued no shares to the public, and does not have any parent company, subsidiary, or affiliate that has issued shares to the public. Because Liberty Legal Foundation has no stock nor issued any stock, no corporation owns 10% or greater ownership interest.

# TABLE OF CONTENTS

**PAGE**

## TABLE OF AUTHORITIES

**STATUTES (cont.)** **PAGE**



**RULE**

## STATEMENT OF INTEREST[1]

Liberty Legal Foundation ("Liberty Legal") is a Delaware corporation exempt from income tax under 26 U.S.C. § 501(c)(3). It is a nonprofit public interest organization whose mission is to promote the rule of law, protect due process, and defend equal protection under the Constitution. This case presents legal questions central to the administration of federal election law and to Liberty Legal's ongoing election-related work. Liberty Legal works closely with organizations dedicated to election integrity and security as well as with attorneys who are engaged in the subject matter. Liberty Legal and its New Hampshire supporters are vitally concerned with the outcome because it affects the integrity and security of federal elections in the State.

Liberty Legal writes to encourage the First Circuit to reverse the decision by the District Court of New Hampshire so that the United States[2] can obtain the records necessary to enforce federal election law.

Liberty Legal therefore has a substantial institutional interest in the outcome of this case. Liberty Legal submits this brief solely to aid the Court's consideration of the matter. Its brief offers legal analysis and insights into the dispositive issues

---

[1] No party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.
[2] "Attorney General," "AG," "United States," "USA," "Department of Justice," and "DOJ" are used interchangeably throughout this brief.

involved in the District Court case that are not merely duplicative of the parties' arguments. As a nonpartisan organization, it does not support or oppose any political party or candidate and participates only to advance its commitment to the rule of law.

## INTRODUCTION

The district court's order ("order") narrows Title III of the Civil Rights Act of 1960 ("CRA")[3], the Help America Vote Act ("HAVA")[4], and the National Voter Registration Act ("NVRA")[5] in a way that would substantially limit federal oversight of statewide voter-registration databases. It treats the statewide voter registration list ("SVRL") as a state-created database outside Title III, imposes an unduly demanding "basis and purpose" requirement on the Department of Justice's records request, and dismisses the HAVA claim on the theory that the statute contains no disclosure obligation. *See United States v. Scanlan,* No. 25-cv-371-JL, 2026 DNH 085, at 14–20, 21–25 (D.N.H. June 29, 2026).

First, the district court erred in treating Title III as ordinary Rule 12(b)(6) litigation. Title III has long been understood as a special statutory enforcement mechanism, more akin to summary enforcement of an investigative demand than to

---

[3] Pub. L. No. 86-449, title III, 74 Stat. 86, 88–89 (codified at 52 U.S.C. 20701–20706). "Title III" and "CRA" are used interchangeably.
[4] Pub. L. No. 107-252, 116 Stat. 1666 (codified at 52 U.S.C. 20901–21145).
[5] Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. 20501–20511).

plenary civil litigation. Early appellate precedent held that the Attorney General need only state a general basis and purpose for the request and rejected attempts to test the evidentiary sufficiency of the government's investigation at the pleading stage.

Second, the district court incorrectly held that the SVRL falls outside Title III because it is allegedly "self-generated" rather than a record that comes into election officials' possession. That reading is too cramped and would allow states to evade federal retention and inspection duties simply by aggregating covered voter records into a database format. The SVRL is the functional repository or general ledger of the records Congress intended to preserve. See *id.* at 8–14; *infra* Part II. In other words, the SVRL is a compilation of information supplied by registrants and obtained from other sources relating to registration. The State's act of entering, organizing, updating, and maintaining that information in a centralized system does not remove it from Title III.

Third, the district court imposed an improper factual-basis requirement on the DOJ's demand letter. Title III requires a statement of "the basis and the purpose," but not a quasi-probable-cause showing, detailed evidentiary proffer, or proof of a completed violation in the demand letter itself. The court's interpretation erroneously converts an investigative statute into a merits-based threshold inquiry.

Fourth, the HAVA claim should not have been dismissed. HAVA's enforcement scheme depends on access to the computerized SVRL and the records necessary to assess list maintenance, duplicate removal, and other compliance obligations. A statute that authorizes enforcement of list-maintenance requirements cannot be read to deny the federal government access to the very list whose compliance it must evaluate.

Finally, the district court's approach sits uneasily with the federal structure governing federal elections. Congress has enacted a coordinated federal scheme governing voter registration, list maintenance, and election administration, and that scheme is meant to operate uniformly across states. The district court's narrow reading of Title III and HAVA defies preemption and undermines that constitutional structure. State administration remains important, but a state may not use database design, state confidentiality rules, or a heightened judicial inquiry to defeat federal inspection authority.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN TREATING TITLE III AS ORDINARY RULE 12(B)(6) LITIGATION.

The order treated the United States' Title III claim as a standard civil complaint subject to full Rule 12(b)(6) scrutiny. It reasoned that because the government also pled a HAVA claim — which lacks an administrative-subpoena component — the case as a whole must be treated as ordinary civil litigation. *See*

*Scanlan*, 2026 DNH 085, at 2 n.2, 7–8. That approach conflicts with the foundational Title III cases, *infra*, which understood Title III as creating a special investigative enforcement mechanism more akin to summary enforcement of a document demand than to plenary civil litigation.

In fact, the "chief purpose" of Title III "is to facilitate the investigation of the records *before suit is filed*." *United States v. Ass'n of Citizens Councils of La.*, 187 F. Supp. 846, 847 (W.D. La. 1960) (per curiam) (emphasis added). "[T]he function sought to be exercised by the Attorney General is … purely investigative," *Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 854 (M.D. Ala. 1960), to evaluate "possible violations of a Federal statute," *Coleman v. Kennedy*, 313 F.2d 867, 868 (5th Cir. 1963) (per curiam) ("*Coleman II*"). *See also Kennedy v. Lynd,* 306 F.2d 222 (5th Cir. 1962); *Kennedy v. Bruce,* 298 F.2d 860, 861, 863 & n.2 (5th Cir. 1963).

In those cases, courts held that the Attorney General need only state a general statement expressing a basis and purpose for the request and rejected attempts to test the evidentiary sufficiency of the government's investigation at the threshold pleading stage. In fact, under *Lynd,* "[s]ince it is a special statutory proceeding, it does not require pleadings which satisfy usual notions under the federal rules of civil procedure." *Lynd,* 306 F.2d at 225-226.

Title III invests the Attorney General with a power akin to a grand jury which "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Bisceglia*, 420 U.S. 141, 148 (1975). The Supreme Court has recognized that statutes that vested investigative powers in Executive Branch agencies provide such agencies with grand jury-like powers and latitude. *See, e.g.*, *United States v. Powell*, 379 U.S. 48, 57 (1964) (recognizing that the IRS Commissioner has grand jury-like powers); *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950) (same with respect to the Federal Trade Commission). Investigative powers that the Attorney General derives from Title III fall comfortably within this paradigm.

By inventing a stricter civil-complaint framework, the district court effectively rewrote Title III's enforcement scheme. The order wrongfully requires the government to meet a heightened pleading standard that the statute does not impose and that early appellate precedent expressly disapproved.

The same conclusion follows from the statutory structure. Section 303 does not create a conventional damages action or invite a fact-intensive adjudication before the Attorney General may inspect records. It directs that covered records "shall, upon demand in writing by the Attorney General or his representative," be made available for inspection, reproduction, and copying, so long as the demand contains a statement of the basis and purpose. 52 U.S.C. § 20703. The enforcement proceeding therefore should determine whether the statutory prerequisites for the demand have been satisfied — not whether the government has already proved the underlying election-law violation.

That distinction is essential. Investigative authority would have little practical value if the government had to establish the very irregularities it seeks to investigate before it could obtain the records bearing on those irregularities. The district court's approach reverses the ordinary sequence of investigation and proof and makes the federal enforcement authority dependent on information that the state's refusal has withheld.

## II. THE STATEWIDE VOTER REGISTRATION LIST IS A COVERED "RECORD OR PAPER" UNDER TITLE III.

The district court also erred in holding that the SVRL falls outside Title III because it is allegedly "self-generated" rather than a record that comes into election officials' possession. That reading is too cramped and would allow states to evade federal retention and inspection duties simply by aggregating covered voter records into a database format. *See* 52 U.S.C. § 20701; *Scanlan,* 2026 DNH 085, at 8–14.

Title III requires "[e]very officer of election" to retain and preserve for twenty-two months "all records and papers which come into [the officer's] possession relating to any application, registration, payment of poll tax, or other act requisite to voting." 52 U.S.C. § 20701. The New Hampshire SVRL is built from those very records. The SVRL contains or reflects information supplied by registrants in connection with applications and registrations, together with election-related information received, maintained, or processed by election officials. As the functional repository of the information voters submit and the acts they perform to register and remain eligible to vote, it is composed of precisely the information covered by § 20701. *See Lynd,* 306 F.2d at 464 (describing Title III retention duty as "sweeping"); *Scanlan,* 2026 DNH 085, at 8–14.

The district court's concern that a dynamic, continuously updated database would be "impractical" to treat as a single record is misplaced. *See Scanlan,* 2026 DNH 085, at 10–14. The statute was designed to preserve election records, and modern election administration relies on computerized statewide lists. The State's act of entering, organizing, updating, and maintaining that information in a centralized computerized system does not transform the underlying records into something unrelated to voter registration. Allowing states to shield those lists by labeling them "self-generated" would frustrate Congress's purpose and create a loophole that undermines Title III's enforcement logic. *See* 52 U.S.C. § 20703; *Scanlan*, 2026 DNH 085, at 11–14.

The ordinary meaning of "come into" does not require that every item in a covered database have been physically handed to the particular official who maintains the database. Election officials receive applications, registrations, checklists, changes of address, cancellations, and other voting-related records; they then enter, organize, reconcile, and preserve that information in the state's computerized system. The resulting database is not an abstraction unrelated to those records. It is the State's maintained compilation of them.

Nor does the reference to "record or paper" freeze the statute in a paper-only era. Congress used both terms to reach election records in the form in which custodians maintain them. Reading the statute functionally avoids a technology-based loophole: a state could otherwise defeat federal inspection merely by transferring paper records into a database, while a State using less sophisticated files would remain subject to inspection.

The SVRL is also the record most directly tied to the federal interest identified in the complaint. HAVA requires each state to maintain "a single, uniform, official, centralized, interactive computerized statewide voter-registration list." 52 U.S.C. § 21083(a)(1)(A). The list must contain the name and registration information of every legally registered voter and must include each voter's information when provided to the appropriate official. Id. § 21083(a)(1)(A)(ii), (vi). Congress thus contemplated that voter-registration information would be received by election officials and compiled into a statewide list. It would be anomalous, even nonsensical, to conclude that Congress required states to create and maintain that list but simultaneously placed the list beyond the inspection authority Congress enacted to preserve and enforce federal voting protections.

The State cannot avoid Title III by complying with HAVA's command to centralize the information. If centralization removed the resulting list from § 20701, the more faithfully a State complied with HAVA, the less subject its records would be to federal inspection. That would create a technology-based loophole or catch-22 inconsistent with both statutes.

Nor does the fact that the SVRL is dynamic place it outside Title III. A record does not cease to be a record because it is updated. The list is preserved through the State's continuing maintenance of it — adding registrations, correcting information, recording changes, and removing or inactivating records where appropriate.

The phrase "come into his possession" identifies the records subject to the retention duty; it does not establish a source-based exemption for records later compiled by the custodian. An election official comes into possession of a registration record when it is submitted, transmitted, or otherwise received for official purposes. The subsequent act of entering or compiling it does not erase its origin or change its relationship to registration.

Even if the statute were understood to distinguish between externally received records and internally generated material, the SVRL would remain covered. Its substantive contents originate in applications, registrations, attestations, and other information received from registrants or obtained from sources relating to registration. The State's compilation is a ministerial and statutory function, not authorship of an unrelated record.

The district court's construction would undermine Title III's enforcement purpose. Section 20703 authorizes inspection of records relating to applications and registrations, and the statewide list is the most direct and comprehensive compilation of those matters. The SVRL is therefore a covered record or paper under §§ 20701 and 20703.

## III. THE DISTRICT COURT IMPOSED AN IMPROPER FACTUAL BASIS REQUIREMENT ON THE DOJ'S DEMAND LETTER.

Even if the SVRL is covered, the district court wrongly concluded that the DOJ's demand letter failed because it did not recite specific anomalies, complaints, or other factual predicates. Title III requires a statement of "the basis and the purpose," but not a quasi-probable-cause showing or detailed evidentiary proffer in the demand letter itself. 52 U.S.C. § 20703; *Scanlan,* 2026 DNH 085, at 14–20.

The court's interpretation converts an investigative statute into a merits-based threshold inquiry. Title III has historically allowed the Attorney General to investigate whether violations may exist; it does not require the DOJ to prove those violations before obtaining the records needed to evaluate them. The district court's demand for specific factual triggers in the letter is inconsistent with case precedent and with the statute's text and history. It raises the bar on the government in a way Congress did not intend and that would make it substantially more difficult for the DOJ to fulfill its oversight function.

The statutory language confirms that the required statement is one of purpose and basis, not proof. Congress could have required the Attorney General to identify particular suspected violations, particular voters, or particular factual anomalies. It did not. Courts should not add those conditions to an otherwise direct command that covered records "shall" be made available upon a written demand containing the specified statement.

The Fifth Circuit's decision in *Lynd* is especially instructive. It held that the factual foundation and sufficiency of the Attorney General's statement were not open to judicial review or ascertainment in the enforcement proceeding. The court stated, "the factual foundation for, or the sufficiency of, the Attorney General's 'statement of the basis and the purpose' contained in the written demand is not open to judicial review or ascertainment." *Lynd*, 306 F.2d at 226. That rule respects both the statutory text and the institutional allocation Congress selected: the Attorney General determines what records are needed for the investigation, while the court enforces the demand when the statutory requisites are met.

This does not leave the State without protection against an unlawful demand. The demand must still be in writing, directed to the proper custodian, concern records covered by § 20701, and contain a general statement of basis and purpose. But those statutory safeguards do not authorize a court to conduct an evidentiary inquiry into the government's motives or require it to decide whether the government has already demonstrated a violation.

The requirement imposed by the district court inverts the statute. The records sought may be the best evidence of whether New Hampshire's list-maintenance practices are effective, whether the list contains inaccurate or ineligible registrations, and whether federal election laws are being followed. The government cannot reasonably be required to prove what the records may reveal before it is permitted to inspect them.

The district court's rule would make Title III practically ineffective. It would permit a state to withhold the statewide list, force the government to rely on incomplete information, and then argue that the government has not shown enough evidence to obtain the records in the first place. Congress enacted § 20703 to prevent that circular obstruction of federal law.

## IV. THE HAVA CLAIM SHOULD NOT HAVE BEEN DISMISSED.

The district court further held that HAVA contains no disclosure provision and therefore no basis for requiring production of the SVRL. *See Scanlan,* 2026 DNH 085, at 20–25. But that reading ignores the structure of HAVA's enforcement scheme, which depends on access to the computerized SVRL and the records necessary to assess list maintenance, duplicate removal, and other compliance obligations. 52 U.S.C. §§ 21083(a)(1), (a)(2), 21111; *Scanlan,* 2026 DNH 085, at 5–6, 20–25.

HAVA requires states to maintain a single, computerized SVRL with unique identifiers and to implement list-maintenance programs that remove ineligible voters while safeguarding eligible ones. 52 U.S.C. § 21083(a)(1)–(2). It authorizes the Attorney General to bring civil actions "as may be necessary to carry out" these requirements. 52 U.S.C. § 21111. A statute that authorizes enforcement of list-maintenance requirements cannot be read to deny the federal government access to the very list whose compliance it must evaluate.

At minimum, the DOJ plausibly alleged that the State's refusal to produce the requested records frustrated the federal enforcement function. The district court's formalistic reading of HAVA would render its enforcement authority largely hollow. The argument is not that HAVA's enforcement provision itself silently supplies every procedural detail for obtaining records. Rather, HAVA supplies the substantive federal duties of technical security and enforcement interest, while Title III supplies an independent and complementary mechanism for inspecting the records necessary to determine compliance. The statutes should be read together where possible, not in a manner that makes one statute's enforcement authority practically unusable.

HAVA's text reinforces the point. The statewide list is not incidental to the statutory scheme; it is the central instrument through which the State implements the federal requirements. The Attorney General's authority to bring an action "as may be necessary to carry out" those requirements necessarily includes the ability to seek judicial relief when a state refuses access to records that are indispensable to evaluating compliance, particularly where Title III independently requires those records to be made available. *Id.*

## V. THE BROADER FEDERAL ELECTION LAW STRUCTURE SUPPORTS DISCLOSURE.

The district court's approach also sits uneasily with the Elections Clause framework. Congress has enacted a coordinated federal scheme governing voter registration, list maintenance, and election administration, and that scheme is meant to operate uniformly across states. *See* 52 U.S.C. §§ 20501 et seq., 20901 et seq., 20701 et seq.

The NVRA's disclosure provisions and HAVA's list-maintenance requirements reinforce the same basic principle: states may administer voter-registration systems, but they may not use database design or state rules to defeat federal oversight. *See* 52 U.S.C. § 20507(i). Under the Elections Clause and Supremacy Clause, once Congress legislates in this domain, state authority is derivative, and conflicting state restrictions must yield. U.S. Const. art. I, § 4, cl. 1; id. art. VI, cl. 2. The district court's narrow reading of Title III and HAVA, and its reluctance to recognize implied disclosure authority, undermines that constitutional structure.

The Elections Clause gives Congress authority to make or alter the regulations governing the times, places, and manner of federal elections. U.S. Const. art. I, § 4, cl. 1. Congress exercised that authority here through statutes that prescribe federal recordkeeping, voter-registration, statewide-list, and list-maintenance requirements. The State retains an important administrative role, but that role does not include authority to nullify federal inspection requirements through a contrary confidentiality rule.

The Supremacy Clause produces the same result. If Title III requires a custodian to make covered records available to the Attorney General, a state-law rule that categorically forbids that production cannot control the federal enforcement proceeding. *See Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210–11 (1824); *United States v. California*, 921 F.3d 865, 878–79 (9th Cir. 2019). The relevant question is not whether New Hampshire may regulate its election records in the first instance, but whether it may use that regulation to obstruct a federal command enacted within Congress's constitutional authority.

Nor would enforcement of the federal demand displace the State's administration of elections. Federal access to records does not itself require New Hampshire to remove voters, alter eligibility rules, or conduct elections according to federal preferences. It permits the federal government to inspect records Congress made relevant to federal election oversight. That limited remedy respects state administration while preserving federal supremacy.

## CONCLUSION

New Hampshire may administer its elections and maintain its voter-registration database. But state administration does not include authority to place the State's principal federal election record beyond federal inspection. The Attorney General's request does not require New Hampshire to change eligibility rules, remove voters automatically, or administer elections according to federal preferences. It seeks access to records so that the federal government can determine whether federal requirements are being followed. Inspection is distinct from adjudication, and investigation is distinct from compelled alteration of the State's voter rolls.

Under the Supremacy Clause, a state-law rule that categorically prevents production of records required to be made available under federal law cannot control the federal enforcement proceeding. If compliance with state and federal law is impossible, or state law stands as an obstacle to federal objectives, state law must yield.

Federal access need not mean unrestricted public dissemination. The Court can enforce the demand subject to appropriate protections for handling, storage, and use. But a categorical refusal based on state confidentiality rules would permit state law to defeat Congress's inspection command.

For these reasons, and for the reasons stated above, the Court should reverse the district court's order and remand with instructions to enforce the United States' demand for the records covered by Title III and to permit the HAVA claim to proceed.

The District Court's order of dismissal should be reversed.

DATED: August 10, 2026

Respectfully submitted,

/s/ Stacey Bucci
STACEY BUCCI (No. 1203282)
595 New Loudon Road, Suite 215
Latham, New York 12110
(413)248-7622
buccilawllc@gmail.com

Counsel for *Amicus Curiae*

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation for an *amicus* under the Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,829 words, excluding the parts exempted by the Federal Rule of Appellate Procedure 32(f).

This brief also complies with the typeface requirements of the Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(2)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in a 14-point Times New Roman font.

Dated: August 10, 2026

/s/ Stacey Bucci
STACEY BUCCI
*Counsel for Amicus Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on August 10, 2026 with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the Court's Electronic Filing System which will send notification of that filing to all counsel of record in this litigation.

/s/ Stacey Bucci
STACEY BUCCI
*Counsel for Amicus Curiae*