

No. 26-2060

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

- v. -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK; KRISTEN
ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the
Board of Elections of the State of New York; RAYMOND RILEY, III, in his official
capacity as Co-Executive Director of the Board of Elections of the State of New
York; PETER KOSINSKI; ANTHONY CASALE; HENRY BERGER; ESSMA
BAGNUOLA; STATE OF NEW YORK,
Defendants-Appellees

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED
PEOPLE; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE NEW YORK STATE CONFERENCE; LEAGUE OF
WOMEN VOTERS OF NEW YORK STATE,
Intervenors-Defendants-Appellees

On Appeal from the U.S. District Court
for the Northern District of New York
1:25-cv-01338 (Hon. Judge Mae A. D'Agostino)

**BRIEF OF *AMICUS CURIAE* PROJECT CIVICA IN SUPPORT OF
PLAINTIFF-APPELLANT AND REVERSAL**

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DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), Project Civica states that it is a non-profit 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 Project Civica has no stock nor issued any stock, no corporation owns 10% or greater ownership interest.

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STATEMENT OF INTEREST¹

Project Civica is a New York-based, nonpartisan, tax-exempt social welfare organization dedicated to promoting civic engagement, citizen oversight of government, and public confidence in lawful and verifiable elections. The organization educates, supports, and develops citizen participation in oversight of governmental processes, including the election system through legislative, legal, educational, and advocacy efforts. Its work includes promoting responsible governance, encouraging competitive elections that provide meaningful voter choice, and supporting citizen involvement in ensuring that election procedures are transparent, lawful, and reliable.

Project Civica conducts research, public education, and civic engagement initiatives focused on election administration, ballot handling, voter access, and procedural safeguards designed to preserve the integrity and accuracy of electoral outcomes. The organization works with community members, volunteers, and institutional partners to study election processes, promote compliance with governing law, and foster informed public participation in election oversight.

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 *amicus curiae*, its members, or its counsel contributed money intended to fund preparing or submitting the brief.

Project Civica is engaged in longitudinal analysis of New York’s voter registration data. Through multi-year analysis of official voter file snapshots and related datasets, the organization has identified patterns and anomalies that cannot be fully evaluated without access to underlying system records, including audit trails, list maintenance documentation, and personal information.

This case presents legal questions directly affecting the administration and interpretation of election procedures - issues central to Project Civica’s mission and ongoing work. This case has practical consequences for how election safeguards are implemented and how public trust in electoral systems is maintained. Project Civica therefore has a substantial institutional interest in assisting the Court by providing perspective on the civic and systemic implications of the issues presented. Project Civica submits this brief solely to aid the Court’s consideration of matters affecting election administration and citizen oversight.

As a nonpartisan organization, Project Civica does not support or oppose any political party or candidate and participates only to advance its commitment to lawful, transparent, and accountable governance.

Congress enacted the National Voter Registration Act (“NVRA”)², the Help America Vote Act (“HAVA”)³, and Title III of the Civil Rights Act of 1960

² Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. 20501–20511).

³ Pub. L. No. 107-252, 116 Stat. 1666 (codified at 52 U.S.C. 20901–21145).

(“CRA”)⁴ to impose nationwide standards for the maintenance, retention, and inspection of voter registration records, and to empower the United States to ensure that state voter rolls are accurate, current, and administered in a uniform and nondiscriminatory manner. Those statutes protect not only the franchise of eligible voters but also the integrity of each individual ballot by requiring states to remove ineligible registrants while safeguarding qualified electors from erroneous removal.

The decision below — holding that New York’s statewide voter registration list is neither a “record or paper” covered by Title III nor a “record[] concerning the implementation of programs and activities” subject to disclosure under NVRA, and that HAVA confers enforcement authority without any corresponding right of inspection — effectively denies the federal government access to the core data needed to enforce those federal safeguards. By insulating New York’s NYSVoter⁵ database from federal review, the ruling undermines Congress’s Elections Clause judgment that voter registration records and list-maintenance practices are part of the “Manner” of holding federal elections and must be subject to uniform federal standards and oversight.

⁴ 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.

⁵ The statewide voter registration list/system (“SVRL”) of New York State is known as NYSVoter.

Amicus has a significant and concrete stake in the outcome of this appeal because it will determine whether federal law can effectively safeguard the accuracy, transparency, and oversight of New York’s statewide voter registration system — the very infrastructure on which its mission depends.

INTRODUCTION

The decision below (“decision”) does not apply settled precedent; it consciously aligns itself with a very recent cluster of Trump-era district court decisions⁶ that come together to construct a novel, self-reinforcing regime for Title III, NVRA, and HAVA. This new regime cannot be squared with the Fifth Circuit’s 1960s CRA precedent or with established Elections Clause/Supremacy Clause framework, and it effectively insulates statewide voter lists from federal scrutiny at the very moment Congress has made list maintenance central to election integrity.

This original regime is temporally and politically distinctive. The decision below expressly notes that it mirrors “dozens” of similar actions brought by the

⁶ Only one Circuit Court of Appeals in this line of recent cases has weighed in on this matter as of the date of this brief. A sharply divided three-judge panel in the Sixth Circuit affirmed the district court’s decision in *USA v. Benson*, No. 26-1225, 2026 WL 1815425, *1 (6th Cir. June 24, 2026). Other recently filed cases include *USA v. Fontes*, No. 2:26-cv-00066 (D. Ariz. Jan. 6, 2026); *USA v. DeMarinis*, No. 1:25-cv-03934 (D. Md. Dec. 1, 2025); *USA v. Oregon*, Case No. 6:25-cv-01666-MTK, 2026 WL 318402 (D. Or. Feb. 5, 2026); *USA v. Weber*, Case No. 2:25-cv-09149-DOC-ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026); *USA v. Scanlan*, No. 1:25-cv-00371 (D.N.H. June 29, 2026); *USA v. Wisconsin Elections Commission*, No. 3:25-cv-01036 (W.D. Wis. May 21, 2026).

Government across the country and cites only decisions from 2025–26, all arising during President Trump’s second administration. JA Vol. II at 452. Those contemporaneous cases collectively redefine “records and papers” under Title III and “all records concerning the implementation of programs and activities” under NVRA in ways that narrow federal access to statewide voter databases. Each court then cites the others as proof that “every court to have addressed this issue” has rejected DOJ’s view, thereby transforming a short-lived cluster of lower-court opinions into de facto new law in federal election administration. *Id.* at 472.

DOJ’s June 30th letter asked for detailed information about HAVA compliance, including voter list maintenance, duplicate and felony/death record removal, registration verification, security measures, and a copy of the statewide voter registration list. The letter frames the request in terms of HAVA § 21083(a)(5) verification and related agreements. The language includes “...Social Security Administration under HAVA § 21083(a)(5)(B)(ii)” (implying use of SSN data for verification) and “the State’s motor vehicle authority” and the required HAVA § 21083(a)(5)(B)(i) agreement with that authority (implying use of driver’s license/motor vehicle data). JA Vol. I at 85-87.

DOJ’s August 14th follow-up insisted that the SVRL must be produced with all fields and explained the federal authority for the request and the privacy

protections that will apply. JA Vol. I at 92-94. This letter uses precise HAVA-style phrasing and repeats it several times:

- Describes the required fields in the SRVL as including:
 - “driver’s license number or the last four digits of the registrant’s social security number as required under the Help America Vote Act (‘HAVA’) to register individuals for federal elections. See 52 U.S.C. § 21083(a)(5)(A)(i).” *Id.* at 2.
 - Restated as: “state driver’s license number, or the last four digits of the registrant’s social security number as required under the Help America Vote Act (‘HAVA’)...See 52 U.S.C. § 21083(a)(5)(A)(i).” *Id.* at 3.
- Addresses privacy treatment of these identifiers:
 - “HAVA specifies that the ‘last 4 digits of a social security number...shall not be considered a social security number for purposes of section 7 of the Privacy Act of 1974’ (5 U.S.C. § 552a note); 52 U.S.C. § 21083(c).” *Id.*
 - Refers to “any prohibition of disclosure of a motor vehicle record contained in the Driver’s License Protection Act, codified at 18 U.S.C. § 2721(b)(1), is exempted when the disclosure is for use by a government agency...” *Id.* at 4.
- A footnote also uses: “state driver’s license number or the last four digits of the registrant’s social security number as required by HAVA.” *Id.*

New York did not agree to provide the requested information as the Board of Elections did not have consensus.

ARGUMENT

I. THE DECISION ENTRENCHES A NEW REGIME THAT CONFLICTS WITH CASE PRECEDENT AND THE CONSTITUTIONAL STRUCTURE OF FEDERAL ELECTION LAW.

Selectively treating Fifth Circuit authority as anachronistic and non-binding, the district court expressly “joins” recent 2025–26 decisions in holding that the Federal Rules of Civil Procedure fully apply and that Rule 12(b)(6) is the proper lens for evaluating CRA claims. In doing so, it helps cement a new, mutually reinforcing line of cases — anchored in *Benson* and *Nago*⁷ and cross-cited by *Fontes*, *DeMarinis*, *Oregon*, *Weber*, *Scanlan*, and *Wisconsin Elections Commission* — under which (1) SVRLs are categorically excluded from Title III and NVRA disclosure, and (2) DOJ’s purely investigatory demands are subjected to full Rule 12(b)(6) scrutiny. Each decision cites the others as “every court to have addressed this issue,” elevating contemporaneous district court consensus over earlier appellate precedent and the constitutional structure of federal election administration.

A. The Court’s Treatment of Title III Conflicts with *Lynd* and *Coleman*’s “Special Statutory Proceeding” Framework.

In *Lynd* and its companion cases, the Fifth Circuit held that Title III creates a “special statutory proceeding” under which the Attorney General’s written demand need only state a general basis and purpose — typically that records are sought to investigate “possible violations of a Federal statute” — and that questions about the factual sufficiency of that statement are “completely foreign” to Title III enforcement. *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962). Those decisions

⁷ *USA v. Nago*, No. 1:25-cv-00522 (D. Haw. Dec. 11, 2025), pending; no merits decision.

expressly rejected motions to dismiss and similar procedural devices as vehicles for testing whether the Attorney General (“AG”) had enough evidence to justify an investigation, and they treat Title III demands as analogous to administrative subpoenas in grand-jury-like investigative proceedings.

The decision below repudiates that framework. It announces that it will “join[] the many other district courts” that have applied the full Federal Rules and used Rule 12(b)(6) to scrutinize CRA claims, thereby importing *Powell’s* IRS-summons analysis into a statute that lacks the “unnecessary examination” limitation that drove *Powell*. *USA v. Powell*, 379 U.S. 48 (1964). It treats *Lynd* and related Fifth Circuit authority not as the leading appellate construction of § 20703⁸ but as outdated, non-binding historical curiosities, and it converts what Congress designed as an investigative, summary mechanism into ordinary plenary civil litigation.

Under *Lynd*, *Bruce*, and *Coleman II*, a statement that DOJ seeks records “for the purpose of investigating possible violations of a Federal statute” is sufficient for both basis and purpose, and courts may not demand a quasi-probable-cause showing or a detailed recitation of anomalies in the demand letter itself. *Kennedy v. Bruce*, 298 F.2d 860, 861, 863 & n.2 (5th Cir. 1962); *Coleman v. Kennedy*, 313 F.2d 867, 868 (5th Cir. 1963) (per curiam) (“*Coleman II*”).

⁸ 52 U.S.C. § 20703 is the “demand” provision of Title III.

The New York decision nonetheless insists that DOJ’s August 14 letter “did not explicitly state a ‘basis’” and treats its express investigative purpose — to ascertain New York’s compliance with NVRA and HAVA list-maintenance provisions — as legally insufficient, refusing to recognize “possible noncompliance” as a basis at all. JA Vol. II at 457. That narrowing of “basis and purpose” is a direct departure from the Fifth Circuit’s functional reading in *Lynd*, *Coleman II*, *Bruce*, and *Gallion*, and reflects a new gloss on § 20703 that has materialized only in the recent wave of anti-DOJ voter list decisions. *Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848 (M.D. Ala. 1960).

B. The Narrow Reading of “Records and Papers” Is Irreconcilable with Title III’s Text and Purpose.

The decision further adopts the *Benson/DeMarinis* interpretation that SVRLs are categorically excluded from § 20701 because they are “created by state officials” and thus “do not come into [their] possession” within the meaning of Title III. The decision holds that “the Court need not even reach § 20703’s ‘basis and purpose’ requirements because Plaintiff’s CRA claim fails at the outset for an even more fundamental reason — the Attorney General is simply not entitled to the NYSVoter List under Title III.” JA Vol. II at 467. The district court relies solely and entirely on the six recent cases from 2026 for this holding.

Relying on *Benson*’s dictionary definitions and baker analogies, the decision construes “come into [their] possession” to cover only documents received from

external sources, and concludes that a dynamic, internally maintained statewide database lies outside Title III even when it is nothing more than a compilation of constituent records that individually do “come into” election officials’ possession.

That reading is in deep tension with Title III’s text and history. § 20701 covers “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,” and *Lynd* described the records covered by Title III as “sweeping,” with no externally-sourced limitation. Early CRA cases understood Title III to reach election records preserved precisely so DOJ could investigate discrimination and other voting rights violations, not merely documents received from outside actors.

By contrast, the *Benson* line allows a state to avoid Title III’s retention and disclosure duties simply by consolidating covered records into an aggregated format and labeling that aggregation as a separate, self-generated database; in practice, a state may evade federal access by changing the architecture of its voter file.

That approach erodes Title III’s effectiveness and creates a “catch-22”: DOJ must identify anomalies in SVRLs to justify a demand yet is categorically denied the very lists it needs to detect those anomalies. In tandem, NVRA and HAVA are narrowed because once SVRLs are deemed outside § 20701 with later courts now treating NVRA’s and HAVA’s enforcement mechanisms as similarly incapable of reaching the core voter file.

The result of this catch-22 is a closed loop in which Title III is narrowed by *Benson*; NVRA disclosure is narrowed by *Nago–Benson*; and HAVA disclosure is barred because NVRA and Title III have been narrowed, with each opinion citing the others as “every court” to have addressed this issue.

C. The Court’s NVRA Analysis Misuses *Bellows* and *Nago* to Strip § 20507(i) of its Elections Clause Force.

In *Bellows*, the First Circuit held that the SVRL is within NVRA, “all records” and “concerning the implementation of” list maintenance activities are read broadly, and state restrictions on disclosure are preempted under the Elections Clause. *Public Interest Legal Foundation, Inc. v. Bellows*, 92 F.4th 36 (1st Cir. 2024). *Bellows* held that NVRA compels public inspection of the SVRL and preempts contrary state privacy law.⁹ This Court found Maine’s “Use Ban” (including prohibition on making the SVRL accessible to the general public, e.g., via Internet) preempted because it obstructed NVRA’s purpose of enabling public analysis and dissemination of voter file data to detect and correct roll inaccuracies.¹⁰

⁹ With proper redaction of particularly sensitive personal information in the context of public disclosure to private organizations

¹⁰ Hans von Spakovsky, *The National Voter Registration Act Mandates Public Access to Voter Registration Records and Preempts All State Laws to the Contrary* (Advancing Am. Freedom, June 22, 2026), <https://advancingamericanfreedom.com/memos/the-national-voter-registration-act-mandates-publicaccess-to-voter-registration-records-and-preempts-allstate-laws-to-the-contrary>

Bellows reads § 20507(i) broadly to encompass statewide voter registration files as “records concerning the implementation of programs and activities” that ensure accurate and current rolls. *Bellows* recognized that public access to SVRLs is central to NVRA’s goals of protecting electoral integrity and maintaining accurate rolls and invalidated Maine’s restrictions because they obstructed those federal purposes.

The New York decision, however, cites *Bellows* only for its acceptance of redaction of uniquely or highly sensitive personal information, and then turns to *Benson* and *Nago* to reject *Bellows*’s broader conception of § 20507(i). It holds that § 20507(i) “does not require the disclosure of voter registration lists at all,” limiting the phrase “all records concerning the implementation of programs and activities” to administrative documents “about the process” of list maintenance and expressly excluding the SVRL itself. JA Vol. II at 474. *Bellows*’s Elections Clause-based reasoning about preemptive federal access to voter files is dismissed as “unpersuasive,” and the opinion instead adopts *Nago*’s dictionary-based parsing that tugs § 20507(i) toward a narrow class of implementation records. *Id.* at 476.

This selective use of *Bellows* completes the doctrinal loop. *Benson* holds that Title III does not reach SVRLs and that § 20507(i) does not require disclosure of voter files; *Bellows* reads § 20507(i) broadly, but district courts now rely on *Benson/Nago* to narrow it back down, citing *Bellows* only for redaction. The decision

then (1) quotes *Benson*’s “come into [their] possession” analysis and applies it to NYSVoter; (2) adopts *Nago*’s narrow reading of “concerning the implementation of programs and activities”; and (3) concludes that, because Title III and NVRA do not authorize disclosure of lists, HAVA’s enforcement mechanism cannot be used to obtain them either, since Congress did not add an explicit inspection provision.

The result is a self-reinforcing set of lower-court decisions that systematically block DOJ’s list-based enforcement, while each opinion cites the others as proof that every court has rejected DOJ’s view. This doctrinal loop arose only in 2025–26 and is driven by the same set of lower-court decisions generated during President Trump’s second administration (“*Benson* line”, *supra*). Those decisions repeatedly elevate state concerns and database architecture over federal enforcement needs, even where *Bellows* and *Torrez* recognize NVRA’s disclosure mandate as preemptive of contrary state law. *Voter Reference Foundation, LLC v. Torrez*, 160 F.4th 1068 (10th Cir. 2025).

D. The Decision Subordinates Elections Clause and Supremacy Clause Interests to State Preferences and Database Architecture.

Voter registration systems and statewide voter rolls are part of the “Manner of holding” federal elections, and Congress has exercised its Elections Clause power through NVRA, HAVA, and Title III to set federal standards for list maintenance, record retention, and access. Once Congress legislates in this domain, state authority is derivative: state statutes and database formats may shape modalities of disclosure,

but they cannot be used to frustrate federal enforcement or deny DOJ access to records Congress has required states to retain and preserve.

This method is inconsistent with *Bellows* and *Torrez*, which treat NVRA's disclosure mandate as preemptive of state laws and recognize that voter files are part of the federally regulated manner of elections. It ignores DOJ's constitutionally grounded need for unredacted lists, rooted in Congress's choice to regulate list maintenance, accuracy, and anti-intimidation, and it assumes that state concerns may be used to categorically deny federal access rather than addressed through federal safeguards. This is discussed further below.

II. THE CONSTITUTION AND FEDERAL STATUTES PRESUPPOSE ROBUST FEDERAL ACCESS TO VOTER INFORMATION.

A. Constitutional foundation: Elections Clause, Supremacy Clause, and limited state role

The Elections Clause assigns primary responsibility for regulating the “Times, Places and Manner” of federal elections to the states but gives Congress power to “make or alter” those regulations. U.S. Const. art. I, § 4, cl. 1. Once Congress enacts federal-election rules, state authority is derivative and may not be used to frustrate or nullify those commands, including as to voter registration and recordkeeping.

Similar to *Bellows*, *Torrez* held that New Mexico's restrictions on use, sharing, and Internet publication of voter registration and history data were preempted by NVRA because Congress intended “transparency and circulation” of voter data to

enable public audits and detection of errors; bans on sharing and publication “obstruct” that purpose. *Torrez*, 160 F.4th 1068, 1080.

This means state authority is derivative and subject to displacement whenever Congress legislates on federal election administration, including voter registration and recordkeeping. Once Congress has enacted national rules, states may not invoke their residual time, place, and manner power to frustrate or nullify those federal commands.

Voter registration systems and voter rolls are themselves part of the “Manner” of holding federal elections. Congress has chosen to regulate this domain through statutes like NVRA, HAVA, and CRA, and those federal enactments necessarily carry with them authority to obtain the information needed to enforce them. State laws cannot redefine “manner” so narrowly — e.g., as polling hours or physical polling locations — that they exclude recordkeeping and disclosure; that would contradict both modern practice and the federal statutory framework.

B. NVRA and HAVA embed federal oversight.

NVRA was passed to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal Office;” “protect the integrity of the electoral process;” and “ensure that accurate and current voter registration rolls are maintained.” § 20502(b)(1),(3),(4). NVRA requires every state to conduct “a general program that makes a reasonable effort” to remove ineligible

registrants. § 20507(a)(4). The statute mandates, in detailed instruction, that they keep records of list-maintenance activities and “make such records available for public inspection.” § 20507(i)(1). Programs to maintain accurate and current VRLs must be uniform and nondiscriminatory. § 20507(b)(1).

Congress further authorized the AG to sue states to enforce these obligations, which presupposes access to underlying registration data sufficient to assess compliance. § 20510(a) provides, “The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this chapter.” It is difficult, even nonsensical, to argue that Congress empowered DOJ to police list maintenance yet simultaneously barred it from seeing the full lists and records necessary to evaluate whether states have made “reasonable” efforts that their programs “remove the names of ineligible voters from the official lists of eligible voters...” § 20507(a)(4).

HAVA requires states, in detailed instruction, to maintain a computerized SVRL and to implement a list-maintenance system that removes ineligible voters while protecting eligible voters from erroneous removal. § 21083(a)(1)(A) and (a)(2)(A)–(B). This statute also gives the AG enforcement authority, which is meaningless if federal officials can be blocked from obtaining the very database whose compliance they must evaluate. § 21111. DOJ guidance on federal election law underscores that enforcement of voting rights and election crimes provisions

“often depend[s] on documentation generated during the voter registration, voting, tabulation, and election certification processes.”¹¹ DOJ Guidance at 2.

Because NVRA and HAVA regulate the “manner” of federal elections and authorize federal enforcement, they should be read to carry the authority to obtain complete, unredacted records where necessary to discharge those enforcement responsibilities. State privacy regimes cannot strip federal authorities of information Congress has effectively required them to obtain in enforcing federal law.

C. Title III expressly envisions federal access.

Title III requires election officials to “retain and preserve 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 federal elections for 22 months. § 20701. DOJ Guidance notes that these obligations extend to electronic records and that their purpose is to ensure federal investigators can access records needed to enforce voting-rights and election-crime statutes.

Title III also authorizes the AG, upon written demand, to inspect, reproduce, and copy those records. § 20703. The statute provides a mechanism to compel disclosure in federal court: “The United States district court for the district in which

¹¹ *Federal Law Constraints on Post-Election “Audits”* published July 28, 2021 (“DOJ Guidance”) <https://www.justice.gov/archives/opa/press-release/file/1417796/dl> (last accessed August 30, 2026) citing *The Federal Prosecution of Election Offenses, Eighth Edition 2017* at 75.

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.” § 20705. DOJ invokes this statute to demand voter registration lists, emphasizing that those lists “fall within Title III’s preservation and disclosure requirements.” SDRI Explainer at 15. The statute contains no carve-out for particular data; it speaks broadly in terms of “all records and papers” relating to acts requisite to voting, which naturally encompasses unredacted registration files used by states to determine eligibility.¹²

Title III is a direct federal regulation of election records for federal contests. States may regulate time, place, and manner in the first instance, but Congress has already “made or altered” those regulations by specifying retention, preservation, and federal inspection rights. A state cannot redefine its own role or privacy law to override an express federal authorization for DOJ inspection.

The Elections Clause allocates power to Congress to “make or alter” state regulations for federal elections; the Supremacy Clause requires that conflicting state law yield; and *Bellows* and *Torrez* recognize that NVRA preempts contrary state restrictions on voter file use. DOJ’s need for unredacted lists is constitutionally grounded in Congress’s choice to regulate list maintenance, accuracy, and

¹² Without access to underlying records, it is impossible to determine whether anomalies reflect lawful processes, system limitations, or compliance failures.

anti-intimidation — privacy concerns should be addressed through federal safeguards, not categorical denial of access.

The decision never meaningfully engages with these arguments. It places “federalism and the separation of powers” rhetorically “at the forefront,”¹³ yet then resolves every statutory question in the way most protective of state control over voter data: Title III cannot reach the statewide list; NVRA’s disclosure provision does not require list access; HAVA’s enforcement mechanism confers no inspection authority absent an explicit textual provision; and privacy-law questions are deemed “unnecessary” because the DOJ is held to have no statutory right to the lists in the first place. By reading “come into [their] possession” and “all records concerning the implementation of programs and activities” in the narrowest possible way, the court treats state control over the format of voter data — a dynamic, internally generated statewide database — as sufficient to nullify Congress’s decision to preserve and inspect “all records and papers” related to acts requisite to voting.

That method is inconsistent with *Bellows* and *Torrez*, which treat NVRA’s disclosure mandate as preemptive of state privacy laws and recognize that voter files are part of the federally regulated “manner” of elections. It subordinates Elections Clause-based federal standards to state preferences and recent lower-court doctrine,

¹³ JA Vol. II at 453.

allowing state officials and database architects to shrink federal oversight of the very records Congress singled out for retention and inspection.

III. THE COURTS ARE CREATING A DOCTRINAL LOOP.

Benson says Title III does not reach statewide lists and NVRA's § 20507(i) does not require disclosure of voter files; the First Circuit in *Bellows* reads § 20507(i) broadly, but district courts now rely on *Benson/Nago* to narrow it back down, then cite *Bellows* only for redaction. The New York decision completes that loop by:

- quoting *Benson*'s district and circuit decisions and applying their “come into [their] possession” analysis to New York's NYSVoter system;
- adopting *Nago*'s dictionary-based parsing of “concerning the implementation of programs and activities,” ensuring that “all records” is “tugged” toward a narrow class of administrative documents rather than core voter files; and
- concluding, in alignment with *Benson*, that because Title III and NVRA do not authorize disclosure of lists, HAVA's enforcement mechanism cannot be used to obtain them either, since Congress did not explicitly include an inspection provision.

This is a self-reinforcing set of lower-court decisions: Title III is narrowed by *Benson*; NVRA disclosure narrowed by *Nago/Benson*; HAVA disclosure barred because NVRA/Title III are narrowed; each opinion cites the others as “every court to have addressed this issue,” thereby entrenching a doctrinal position that only arose in 2025–26 and systematically blocks the DOJ's list-based law enforcement.

IV. REAL-WORLD IMPLICATIONS OF LIMITING THE DOJ'S ACCESS TO ELECTION RECORDS

Project Civica has spent years attempting to answer a straightforward question: *Is New York complying with CRA, NVRA, and HAVA?* To answer that question, the organization has analyzed multiple NYSVoter snapshots, obtained county voter rolls through New York’s Freedom of Information Law, compared county records to statewide records, compared successive databases over time, analyzed interstate comparisons, reviewed National Change of Address (“NCOA”) data, and researched federal statutory requirements governing voter registration administration. That work has repeatedly led to the same conclusion: *Public records identify questions, but they rarely answer them.*

Project Civica’s research has identified apparent duplicate registrations, registrants in multiple states, records associated with deceased individuals, inconsistencies between county and statewide records, unexpected changes in voter status, voter history records that later disappeared, voter registrations that appeared in one official statewide dataset but later vanished or were deleted, and other significant changes reflected in successive statewide voter registration snapshots.

Project Civica’s analysis has uncovered an even more troubling pattern: *voter files from at least fourteen New York counties contain records for approximately 10,700 individuals flagged as non-citizens, and some of those individuals appear to have voted in past elections.* Yet the State’s official NYSVoter database does not identify these individuals as non-citizens at all. Instead, many of the same records

appear in the statewide ledger as purged for “duplicate” status, with no explanation of the true basis for removal and no indication that non-citizen status was ever considered. That is not a minor inconsistency; it is a concrete indication that ineligible persons, including non-citizens, may be registered — and may have cast ballots — while the SVRL obscures the real reason those records were altered or removed.

https://projectcivica.org/images/documents/Project_CIVICA_secure_Open_Doors_Non-Citizens_NY_2026_Full_Report.pdf

The decision below effectively insulates the very records that could explain this mismatch. If county files show non-citizen registrants and apparent voting history, but the statewide ledger recodes those same entries as generic “duplicate” purges and the administrative records documenting how and why those changes were made are shielded from federal inspection, then the core enforcement mechanisms of the CRA, NVRA, and HAVA are rendered meaningless. These are not abstract statistical anomalies; they are the exact kind of irregularities that Congress expected federal authorities to be able to investigate. Limiting the DOJ to public snapshots while denying access to the underlying administrative ledger ensures that serious questions about ineligible registration, unlawful voting, and inaccurate state-level purge coding will remain unanswerable by design.

Standing alone, redacted/public records establish only that a change occurred. They do not explain **why** it occurred, **who** authorized it, **when** it occurred, **what administrative process** was followed, or **whether** the action complied with CRA, NVRA, HAVA, or applicable state law.

For example, if voter history appears in one official statewide database but is absent from a later statewide database, the public records reveal only that the information changed. They cannot determine whether the change resulted from correction of an error, implementation of a court order, routine database maintenance, a system migration, application of state election procedures, or some other lawful administrative action.

Likewise, if a voter registration appears in one official statewide database but later disappears, the public records alone cannot explain whether the registration was lawfully canceled, merged with another record, removed in error, or affected by another administrative process. Those answers are typically found only in the administrative records documenting how the statewide voter registration system was maintained.

Those records may include audit logs, maintenance histories, duplicate resolution records, merge histories, confirmation notices required under NVRA, records documenting NCOA processing, death processing records, HAVA verification records, interstate verification records, chain-of-custody or audit records

where applicable, administrative notes explaining voter status changes, and other records documenting how the statewide voter registration system has actually been administered. Those are the records that often determine whether an apparent anomaly represents proper administration or a compliance problem. In other words: The public records identify the issue, and the administrative records explain it.

V. SVRL AS AN ADMINISTRATIVE LEDGER

The SVRL is analogous to a corporation's general ledger. A voter registration application is simply a source document, much like an invoice. An invoice records how a transaction begins. It is not the company's accounting system. The general ledger is the official administrative record reflecting the company's financial activity over time.

An auditor begins with the ledger — not the invoices — because the ledger reflects how the accounting system has actually been administered. The auditor then examines journals, reconciliation records, audit trails, supporting documentation, and work papers to determine whether the entries in the ledger accurately reflect what occurred and whether the company complied with applicable accounting standards. The statewide voter registration system functions much the same way.

The voter registration application explains how an individual entered the system. The statewide voter registration database is the official administrative ledger reflecting how that registration has been administered over time. The supporting

administrative records explain why entries changed, who made those changes, when they occurred, and whether those changes complied with federal law. Without both the administrative ledger and the records supporting it, meaningful evaluation of compliance becomes substantially more difficult, if not impossible.

The same principle applies in other fields. If Congress authorized the DOJ to enforce federal bridge safety laws, engineers would explain that meaningful inspection requires examining the bridge itself together with maintenance records, repair histories, and inspection reports—not merely the original construction plans.

Election administration is no different. The source documents explain how a voter entered the system. The administrative records demonstrate how that system was operated and whether it was maintained in compliance with federal law. Although this appeal arises from New York’s SVRL, the district court’s reasoning has implications far beyond this case. If records documenting compliance fall outside the DOJ’s investigative authority simply because they were created by election officials rather than submitted by voters, that reasoning could substantially affect the DOJ’s ability to evaluate compliance with CRA, NVRA, and HAVA in every state.

Project Civica’s experience has consistently demonstrated that source documents often identify potential issues, but the administrative records documenting how the statewide voter registration system has been maintained are

frequently necessary to determine whether those issues reflect compliance or noncompliance with federal law. From the perspective of Project Civica, an organization that has spent years attempting to evaluate compliance with these statutes using the public records available to citizens, the NYSVoter database falls naturally within the broad category of records described in § 20701 which applies to “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.”

VI. THE DECISION RELIES ON A HOBSON’S CHOICE.

A. Overreading § 20702’s “alteration” prohibition

The decision asserts that if the NYSVoter List were deemed a § 20701 “document,” “then § 20702 would prohibit the [NYSVoter List] from being altered,” and concludes that this would “directly conflict” with NVRA and HAVA, which require states to modify their SVRLs under specified conditions. That analysis conflates Title III’s prohibition on willful destruction, concealment, mutilation, or improper alteration with ordinary, lawful list maintenance updates. Preservation obligations do not require freezing a database after each transaction; agencies preserve records by maintaining the system and records documenting its maintenance (keys, logs, delimiters, backups, retention schedules, etc.), not by treating every lawful update as a forbidden “alteration.” Under that ordinary

records-management understanding, § 20702 and NVRA/HAVA’s list-maintenance requirements operate in parallel rather than in conflict.

B. False conflict between Title III and NVRA/HAVA

The decision reasons that interpreting § 20701 to include NYSVoter would “produce an absurd result” because § 20702 would prohibit alteration of the list even as NVRA and HAVA affirmatively require states to update and maintain it. The actual practical risk lies in the opposite direction: if the official statewide voter registration system is categorically excluded from § 20701 “simply because it is continuously updated,” then the principal administrative system HAVA required states to create is “largely insulated from meaningful federal review precisely because it is dynamic,” which is difficult to reconcile with Congress’s decision both to mandate a centralized statewide voter registration list and to assign the AG responsibility for enforcing federal election laws.

C. Failure to account for HAVA’s “interactive” list

The decision treats the dynamic, continuously updated status of NYSVoter as a reason to keep it outside the category of records Congress expected election officials to preserve under Title III. HAVA’s requirement of an “interactive computerized statewide voter registration list” presupposes that the list will be updated as voters register, move, change party affiliation, or become ineligible. The fact that the database changes over time does not logically place it outside the

category of records Congress expected election officials to preserve. The decision does not grapple with this statutory choice, and instead treats dynamism as disqualifying, rather than as a feature of the very records Congress wanted retained and available for federal oversight.

D. Misplaced “static copy” concern

Although the decision does not itself use the phrase “new static copy after every modification,” this concern is implicit in the court’s reluctance to treat a continuously updated voter registration database as a § 20701 record. This is a Hobson’s choice. Many official government records — including tax rolls, land records, motor vehicle databases, criminal history systems, and financial accounting systems — are living administrative records that are updated continuously while remaining official government records subject to applicable retention requirements, underscoring that record-retention regimes regularly apply to dynamic systems without requiring a frozen snapshot after each change. Because the decision’s “absurdity” analysis rests on the premise that including NYSVoter within § 20701 would effectively block the continuous updates NVRA and HAVA demand, it implicitly relies on the same flawed assumption that preservation and dynamism are incompatible.

E. Resulting analytical gap

Once one accepts that Title III can apply to a dynamic statewide voter registration system, the conclusion — that recognizing NYSVoter as a § 20701 record necessarily “prohibit[s]” the list-maintenance updates NVRA/ HAVA require — no longer follows. The more coherent reading is that NVRA/HAVA require ongoing, lawful updates to the interactive statewide list, while Title III ensures preservation of that system and the administrative records documenting how those updates occur, thereby enabling federal oversight instead of disabling it.

CONCLUSION

The district court’s approach is not a neutral application of law. It selectively adopts a very recent line of decisions that collectively create a regime under which statewide voter lists are categorically excluded from Title III and NVRA disclosure, and the DOJ’s investigatory demands are subjected to full Rule 12(b)(6) scrutiny, contrary to Fifth Circuit’s “special statutory proceeding” cases from the 1960s. That regime then becomes a self-reinforcing closed loop of novel authority, as each district court cites the others as the relevant authority, while sidelining older precedent and the constitutional structure of federal election law.

By importing *Powell*’s IRS-summons framework into Title III, refusing to recognize Title III as a distinct enforcement mechanism outside ordinary civil pleading, and embracing *Benson*’s and *Nago*’s narrowing of “records and papers”

and “all records concerning the implementation of programs and activities,” the decision below helps entrench a doctrinal drift that Congress did not authorize. It sidelines the only appellate body to have robustly interpreted § 20703 and replaces that precedent with a regime that treats Title III as ordinary litigation and thus hamstringing the DOJ’s investigatory power.

This Court should decline to follow the new regime, reaffirm the precedential understanding of Title III as a special statutory proceeding, restore *Bellows’s* Elections Clause/Supremacy Clause reading of NVRA, and hold that the DOJ’s demand for New York’s SVRL is authorized by the integrated federal scheme governing voter registration records.

Amicus respectfully requests that this Court reverse the decision of the district court.

DATED: August 31, 2026

Respectfully submitted,

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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 6,498 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 31, 2026

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on August 31, 2026 with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the Court's Electronic Filing System which will send notification of that filing to all counsel of record in this litigation.

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