

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(WESTERN DIVISION - LOS ANGELES)

UNITED STATES OF AMERICA,	)	CASE NO: 2:25-cv-09149-DOC-ADSx
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Los Angeles, California
	)	
SHIRLEY WEBER, ET AL,	)	Thursday, December 4, 2025
	)	( 7:38 a.m. to 9:09 a.m.)
Defendants.	)	(12:01 p.m. to 12:58 p.m.)
	)	( 2:00 p.m. to 2:31 p.m.)
	)	( 2:31 p.m. to 2:33 p.m.)

HEARING RE:

MOTION TO DISMISS [DKT.NO.67];

PLAINTIFF'S REQUEST FOR ORDER TO PRODUCE RECORDS  
(52 USC 20701)  
[DKT.NOS.87,88,89]

BEFORE THE HONORABLE DAVID O. CARTER,  
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

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1 Los Angeles, California; Thursday, December 4, 2025; 7:38 a.m.

2 (Call to Order)

3 THE COURT: -- Shirley Weber.

4 (Pause)

5 THE COURT: And, counsel, as you're seated, let me  
6 take one more matter. Just remain seated for a moment.

7 (Pause)

8 THE COURT: All right. Thank you then. I think that  
9 resolves the rest of the morning calendar. So first of all,  
10 good morning.

11 MR. NEFF: Good morning, Your Honor.

12 THE COURT: This is the matter of United States v.  
13 Shirley Weber. It's case number 25-09149. And, counsel, you  
14 can just remain seated. You can pretend it's state court if  
15 you want to, but make your appearances.

16 MR. NEFF: Eric Neff on behalf of the United States.  
17 Good morning, Your Honor.

18 THE COURT: Thank you.

19 MR. BRUDIGAM: Deputy Attorney General Malcolm  
20 Brudigam on behalf of defendants Secretary of State Shirley  
21 Weber and the State of California.

22 THE COURT: Okay, thank you very much.

23 MR. SETRAKIAN: Deputy Attorney General Will  
24 Setrakian on behalf of defendants State of California and  
25 California Secretary of State Shirley Weber.

1           **THE COURT:** Thank you very much. I appreciate it.

2           **MR. DODGE:** Chris Dodge on behalf of Intervenors  
3 NAACP and Siren.

4           **MS. ZELPHIN:** Grace Zelphin on behalf of Intervenors  
5 League of Women Voters of California.

6           **THE COURT:** Is anybody here representing what I call  
7 the County case?

8           **MS. SHOAI:** Good morning, Your Honor.

9           **THE COURT:** Come on up. What we're doing here may be  
10 of interest to you. So we want your appearance.

11           **MS. SHOAI:** Thank you, Your Honor. Deputy County  
12 Counsel --

13           **THE COURT:** No, no, wait, wait till we get a good  
14 recording of you.

15           **MS. SHOAI:** Good morning, Your Honor. Deputy County  
16 Counsel Suzanne Schoai on behalf of --

17           **THE COURT:** I see. Why don't you have a seat? Do  
18 you have any other colleague with you today?

19           **MS. SHOAI:** No, Your Honor.

20           **THE COURT:** All right. So first, I'd like to address  
21 plaintiff's motion for order to produce records pursuant to 52  
22 U.S.C. 20701 that was filed on Monday, set for hearing  
23 today. I appreciate the speed, but not at the expense of due  
24 process. And although I've encouraged us to move forward as  
25 quickly as possible concerning the substantive issues, this is



1 not the due process because there needs to be at least 28 days'  
2 notice before a date for hearing under CD California Rule 6-1.

3 The plaintiff is seeking to reach the ultimate  
4 question in this case regarding the production of records and  
5 thousands of voters' lives will be impacted by this case. And  
6 the Court will not be setting the matter on any legal -- I  
7 don't want to say gamesmanship, but therefore, the motion for  
8 order to produce records pursuant to 52 U.S.C. 20701 is  
9 denied.

10 Now, you can once again follow the process and  
11 procedure in terms of due process. We'll have time  
12 potentially, but this doesn't supply the due process needed.

13 Second, I'd like to hear arguments if there are any  
14 on two motions regarding amicus briefs. First, there was a  
15 motion for leave to file an amicus brief brought by 16 states.  
16 Those states are Arizona, Colorado, Delaware, Hawaii, Illinois,  
17 Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico,  
18 New York, Oregon, Rhode Island, Vermont, and Washington.

19 The second request was to file an amicus brief and it  
20 was filed by the former secretaries of state and the proposed  
21 amicus briefs are allegedly from a bipartisan group of state  
22 secretaries for the states of Colorado, Connecticut, Minnesota,  
23 Nebraska, Oregon, Pennsylvania, and Washington.

24 Does any party have a statement to make regarding  
25 these amici briefs and any wisdom on your part that if I allow

1 these amici briefs, whether I should then extend for some  
2 period of time the opportunity for additional briefs from  
3 interested parties, because these are the parties that have  
4 directly contacted the Court, but there may be other parties  
5 that piecemeal choose to come in, and then I'm deciding that on  
6 an almost ex-parte basis, case by case as they come to me,  
7 unless you're flying out here for every single hearing for  
8 every requested amici brief.

9           So I was thinking if I was going to allow these, that  
10 I should throw this open for 7 days or 14 days for the amici  
11 briefs to come in during the period of argument and try to sort  
12 through whatever the Court's opinion would be and give you that  
13 courtesy and simply extend it. But I'm looking for your wisdom  
14 on that because you can anticipate if I'm getting these amici  
15 requests now, I promise you, as soon as you leave the  
16 courtroom, there's going to be another request. And I don't  
17 want to do that ex parte without your wisdom on both parties'  
18 parts.

19           So let's start with the first group. This motion for  
20 leave to file an amici brief by 16 states, and one of my  
21 concerns was whether this would become a bipartisan effort, for  
22 instance, of Democrats and Republicans using the Court in a  
23 sense, in a political sense, not necessarily a substantive  
24 sense. But I noticed there are what I consider some swing  
25 states, New Mexico certainly was during the last election,

1 Minnesota was, Michigan certainly was, Arizona was and has been  
2 what is popularly referred to as a swing state in a number of  
3 elections, and I don't know the voting history, for instance,  
4 of Illinois or Maryland, for instance. I don't know how  
5 they've swung in different elections between the parties, and I  
6 don't know if that's even a consideration, but I was inclined  
7 to accept this amici brief, but only after discussing this with  
8 you folks.

9 So why don't you talk amongst each other or to  
10 yourself, and then state what your respective positions might  
11 be on this.

12 **(Pause)**

13 **(Recessed at 7:46 a.m.; reconvened at 7:48 a.m.)**

14 **THE COURT:** Well, let me start with plaintiffs in  
15 this matter. What are your thoughts?

16 **MR. NEFF:** The United States' biggest concern is that  
17 this is resolved. The United States' foremost and only concern  
18 is that this is resolved in a manner that, as the Court shares  
19 the concern, that it needs to be handled expeditiously. As  
20 long as --

21 **THE COURT:** Yeah, because it's got to get to the  
22 Ninth Circuit and probably the Supreme Court.

23 **MR. NEFF:** And then there's, yes, and as long as  
24 amici don't get in the way of that, we have no objection.

25 **THE COURT:** Okay. And then I'll ask, if we do this,

1 what the time period is and how, but let me turn, and I've got  
2 my entities turned around, so please, once again, on behalf of?

3 **MR. NEFF:** The State, Your Honor.

4 **THE COURT:** The State.

5 **MR. NEFF:** Yeah. So we consent to the filing of  
6 these amici briefs, and we're happy to do a blanket consent.

7 **THE COURT:** Okay. That way you're not flying down or  
8 up in each occasion, because I'm a little hesitant to start  
9 parsing out which ones. I just assumed to give a time period,  
10 and those that are relevant, et cetera, we can all focus on.  
11 Those that aren't, we'll read anyway. Counsel?

12 **MR. DODGE:** The NAACP intervenors joined the State's  
13 position and agreed to blanket consent.

14 **THE COURT:** Okay, and Women, League of Voters?

15 **MS. ZELPHIN:** Same. We --

16 **THE COURT:** And just a case for the County, we don't  
17 want to exclude them. What would your position be?

18 **MS. SHOAI:** We have the same position, we don't have  
19 any objection, although the Court knows that the case against  
20 the County is stayed, but for the record.

21 **THE COURT:** Yeah, but no objection really.

22 **MS. SHOAI:** Correct.

23 **THE COURT:** All right. What time period would I give  
24 these and how would -- I think I would simply docket this. I'm  
25 going to put this case on a public website also, which we often

1 do in federal court, and that way the public has access to the  
2 transcripts, they have access with transparency when we have  
3 matters of this import. How long? Two weeks, three weeks? In  
4 other words, we'll hear the arguments today, but it's going to  
5 take a while for the Court to write.

6 **MR. BRUDIGAM:** I think two weeks would be fine, Your  
7 Honor.

8 **THE COURT:** Two weeks?

9 **MR. BRUDIGAM:** Yeah.

10 **THE COURT:** Counsel, what's your wisdom?

11 **MR. DODGE:** I would join in two weeks as I was  
12 explaining to co-counsel. I think, you know, the Department of  
13 Justice has now brought something like 14 of these suits  
14 against various states, and so I think that has given the  
15 public good awareness of these proceedings, and so I think two  
16 weeks is sufficient to give any interested amici time to --

17 **THE COURT:** Okay. What's your wisdom on behalf of  
18 the Women, League of Voters and NAACP?

19 **MS. ZELPHIN:** I agree with the --

20 **THE COURT:** Two weeks? What's your wisdom on behalf  
21 of plaintiff?

22 **MR. NEFF:** As long as it doesn't delay this  
23 proceeding.

24 **THE COURT:** Well, two weeks won't delay it.

25 **MR. NEFF:** Yeah. So that two weeks --

1           **THE COURT:** It's actually pretty quick for amici  
2 briefs.

3           **MR. NEFF:** Two weeks sounds fine to the United  
4 States.

5           **THE COURT:** Now, you just said something that this  
6 case is one now of 14 cases. I didn't know that before. Are  
7 we, in a sense, the lead case, or are cases more recently  
8 filed?

9           **MR. NEFF:** This is, I think, the case moving at the  
10 fastest speed, Your Honor. There were two cases filed before  
11 this one, but this one is out ahead of all of them.

12           **THE COURT:** I see. All right. Would you reach a  
13 joint stipulation for me, then, and help the Court with the  
14 wording that amici briefs are requested by the Court. Give  
15 that a two-week period of time. Certainly that way we're  
16 before the holidays. Well, just a moment. We've got  
17 Thanksgiving coming up, don't we?

18           **MR. NEFF:** We just had Thanksgiving, yeah.

19           **THE COURT:** Yeah, we just passed it, so we're through  
20 that holiday, thank goodness. No, I mean with goodness.  
21 Thanksgiving, good. You know, it's perfect. Two weeks because  
22 we're not going to get caught on the Jewish/Christian holidays  
23 anyway, and if we do, it's a short period of time for the  
24 Jewish faith. So, all right, then two weeks.

25           Could you fashion that for me today by agreement, and

1 I'll send out that docketed minute order today and get copies  
2 to you.

3 **MR. NEFF:** We will.

4 **THE COURT:** All right, this is the time for argument.  
5 You can take as long as you want, and there will be two rounds.  
6 I'm going to ask the intervenors to argue in this matter. If  
7 the County wants to contribute in any way, you're welcome to,  
8 although in a sense you're not involved today. But if you have  
9 something to say, I don't want to shortchange that.

10 And as intervenors, when I appointed two of you, that  
11 doesn't mean you necessarily agree. I'm not looking for a  
12 concerted position on some issues. There may be a variance.  
13 So you're not here as a uniform body. When I appointed each of  
14 you, I think you're a broad and representative group, and  
15 therefore, in a sense, as intervenors, you're arguing your  
16 position either collectively, if you decide to, or  
17 individually. And let's begin with who?

18 **MR. NEFF:** I think it would be the people that  
19 brought -- the party that brought the motion, but submitted to  
20 the Court, Your Honor.

21 **THE COURT:** Let's do it by procedure and start with  
22 them. So, counsel, go to the lectern then and restate your  
23 name, because we're on Court Smart. Otherwise, we don't have a  
24 very good record.

25 **MR. BRUDIGAM:** Deputy Attorney General Malcolm

1 Brudigam, on behalf of Defendants Secretary of State Shirley  
2 Weber and the State of California. And for the Court's  
3 awareness, Your Honor, I'm going to be handling the portion of  
4 the State's motion related to Title III of the Civil Rights Act  
5 of 1960, the National Voter Registration Act, and the Help  
6 America Vote Act, while my colleague, Will Setrakian, is going  
7 to handle the balance of the arguments concerning the federal  
8 privacy laws.

9 **THE COURT:** Thank you.

10 **MR. BRUDIGAM:** So, this case is before you today,  
11 Your Honor, because DOJ has insisted that California send it an  
12 unredacted electronic copy of its statewide voter registration  
13 list, which contains the personal information of over 23  
14 million California voters. Now, when DOJ approached California  
15 requesting this information, as federal law requires,  
16 California did make some records available for their  
17 inspection. And as California law also requires, it only did  
18 so with appropriate redactions to voters' most sensitive  
19 personal information. But DOJ, they didn't accept this offer,  
20 and they brought this lawsuit.

21 And so I want to be clear that this lawsuit is about  
22 DOJ wanting to get the social security numbers, the driver's  
23 license numbers, and the personal information of California  
24 voters, and it wants them all in an electronic format. But  
25 federal law doesn't require this, and in fact, California law



1 prohibits it.

2           So, as you can tell, there's a, at the heart of this  
3 case, there is a question of whether federal law preempts state  
4 law. That's a key issue. But before we even get to that  
5 question, Your Honor, there's a series of initial legal and  
6 pleading hurdles that DOJ cannot even overcome. And so I'm  
7 going to address those initial legal hurdles claim by claim.

8           So first, with respect to Title III of the Civil  
9 Rights Act of 1960, that claim faces both a jurisdictional and  
10 a substantive defect. So to start, DOJ sued in the wrong  
11 court. The text of Title III is clear that the court that has  
12 jurisdiction to compel relief is the one where the records were  
13 demanded or where the records were located. And here, that's  
14 Sacramento. And so the proper district court to compel relief  
15 would be the Eastern District of California. And the only  
16 response that DOJ provides for this jurisdictional defect in  
17 their opposition is that it erroneously asserts that millions  
18 of these records are created and maintained in the Central  
19 District, but the fact of the matter is, is that the records  
20 are located and they can only be accessed in Sacramento. And  
21 also, their assertion isn't entirely true either, because a  
22 vast majority of the records within the statewide voter  
23 registration database, they flow in there through the DMV or  
24 the statewide online voter registration form.

25           And, you know, last year that accounted for almost 90

1 percent of the records -- that 90 percent of the registrations  
2 or updates to registrations. So on that ground, Your Honor,  
3 you should dismiss this Title III claim because the Court lacks  
4 jurisdiction to compel any relief under that statute.

5           So even if the Court does decide to take  
6 jurisdiction, DOJ encounters another statutory hurdle in Title  
7 III's text, which is that the demand doesn't contain a valid  
8 statement of the basis and the purpose for the records sought.  
9 So DOJ's demand lacks any basis at all. None has been alleged  
10 in the complaint. And the alleged purpose, evaluating -- a  
11 single sentence saying that they want all these records to  
12 evaluate compliance, to evaluate California's compliance with  
13 the NVRA, that's not a valid purpose under Title III.

14           A valid purpose would be one that relates to a civil  
15 rights investigation into discrimination in voting, and DOJ has  
16 admitted that that's not the purpose of their investigation  
17 here. So we have two hurdles already that DOJ can't  
18 overcome. But beyond that, even the relief that they seek in  
19 the complaint is inconsistent with the text of Title III. The  
20 Title III only requires that the Secretary make records  
21 available at her principal office, and that's something that  
22 the Secretary already offered them. And that's demonstrated  
23 through the letters that were exchanged between the Secretary  
24 and DOJ in advance of this litigation and which have been  
25 incorporated into the complaint and are properly before the

1 Court on this motion to dismiss.

2 And so what those records show is that DOJ can't --  
3 has not pled any plausible entitlement to relief based on  
4 what's already been offered. And so again, there's another  
5 legal hurdle that DOJ cannot overcome. And even assuming they  
6 could get past all three of those, Your Honor, then we're faced  
7 with the preemption question: whether this Title III law would  
8 even preempt California's voter information protections. And  
9 there's no precedent involving Title III preempting a state  
10 law, but I would say that the analysis would be very similar to  
11 cases evaluating the NVRA and whether that law's disclosure  
12 provision would preempt a state law.

13 **THE COURT:** What's the Court's standard in deciding  
14 that issue?

15 **MR. BRUDIGAM:** I'm sorry, what was that?

16 **THE COURT:** What's the Court's standard in deciding  
17 that issue.

18 **MR. BRUDIGAM:** So yes, that standard is first, the  
19 Court would look at the text, of course, and see if there is a  
20 conflict between the text of the federal law and the state  
21 law. And so here, Title III's text, it says nothing about  
22 prohibiting or redacting sensitive voter information. And I  
23 would point Your Honor to a First Circuit case, Public Interest  
24 Law Foundation v. Bellows, where the same silence in the text  
25 on this question of redaction in the NVRA was found to be

1 sufficient to find that the State could properly redact records  
2 that were being disclosed. So that's the first question that  
3 the Court looks at.

4           The next thing that the Court should consider is  
5 whether the State law would, you know, get in the way of the  
6 objective of this federal law, you know, hinder whatever Title  
7 III is aimed to do. And here, there's just no connection  
8 between protecting voters' personal information, on the one  
9 hand, and then an investigation into a civil rights violation  
10 or discrimination in voting. There's just a disconnect between  
11 these two goals of these two laws. And I think it's important  
12 to remember that states didn't begin collecting this sensitive  
13 information until 2002, when the Help America Vote Act was  
14 enacted. That's over 40 years after Title III was  
15 enacted. And so they weren't even contemplating social  
16 security numbers and driver's license numbers being turned over  
17 in those records.

18           And if you look at the Kennedy v. Lynd decision, a  
19 Fifth Circuit decision that DOJ basically -- their whole case  
20 relies on this decision, which is obviously nonbinding. But if  
21 you go through that, you'll notice at the very end that they  
22 talk about the records that are being turned over were public  
23 records. They didn't contain the type of sensitive information  
24 that we're dealing with here. And so --

25           **THE COURT:** What's the sensitive information in this

1 case?

2 **MR. BRUDIGAM:** What's the sensitive information?

3 **THE COURT:** Let's start with social security  
4 numbers. The government certainly already has access to  
5 those. Is it the linking of those social security numbers to  
6 the individual voter that causes a privacy concern or a Title  
7 III concern?

8 **MR. BRUDIGAM:** Yeah. I mean, it's the linking of  
9 that social security number with not just the voter's name, but  
10 their address, their method of registering to vote, their voter  
11 participation history, their political party registration.

12 **THE COURT:** Just a moment. So voter registration  
13 history?

14 **MR. BRUDIGAM:** Yeah. And voter participation, which  
15 elections they voted in, which party they're registered with.  
16 It's the connection of all of this information.

17 **THE COURT:** Would the government be able to ascertain  
18 how that person voted?

19 **MR. BRUDIGAM:** No. No. That's -- yeah, the secret  
20 ballot is protected, but --

21 **THE COURT:** So the privacy concerns so far that I'm  
22 hearing in your papers are the social security numbers, the  
23 addresses of the voter, the history -- I'm sorry, voter  
24 registration, the history of the turnout at the poll, in other  
25 words, the fact whether they voted or not, but not the way that

1 they voted.

2           **MR. BRUDIGAM:** So to be clear, Your Honor, the  
3 specific information we're concerned about, which is protected  
4 by California law, is driver's license numbers and social  
5 security numbers. That other information, they are entitled to  
6 inspect that information, and we've given them that opportunity  
7 already.

8           **THE COURT:** All right.

9           **MR. BRUDIGAM:** But the big problem is --

10          **THE COURT:** Go through a list for me what you've  
11 given them.

12          **MR. BRUDIGAM:** Well, we haven't given them anything.  
13 What we did is we offered them to come to the office and  
14 inspect all these records.

15          **THE COURT:** What did you offer them?

16          **MR. BRUDIGAM:** We offered them to inspect the entire  
17 statewide voter registration.

18          **THE COURT:** No, I want you to list it for me now. In  
19 other words, I want to parse out what you believe is worthy of  
20 protection and what you've already offered to disclose, and I  
21 want a clear record of that.

22          **MR. BRUDIGAM:** Sure.

23          **THE COURT:** So slow down and go through that, point  
24 by point.

25          **MR. BRUDIGAM:** Of course, Your Honor. So what we

1 want to protect are the social security numbers and the  
2 driver's license numbers in voters' records, and there's other  
3 information protected by California law.

4 **THE COURT:** Other? Not good enough for my record.

5 **MR. BRUDIGAM:** Which is the voter's signature.

6 **THE COURT:** Okay, signature.

7 **MR. BRUDIGAM:** Whether they made a choice of a  
8 language preference of how they want to receive their ballot.

9 **THE COURT:** All right.

10 **MR. BRUDIGAM:** And also related to driver's license  
11 number, if they have an ID number rather than a driver's  
12 license number.

13 **THE COURT:** All right. Thank you.

14 **MR. BRUDIGAM:** And everything else we've made  
15 available.

16 **THE COURT:** And I want you to list everything else.

17 **MR. BRUDIGAM:** So everything else, I'm not sure if I  
18 have a comprehensive list, but it would be name.

19 **THE COURT:** If you don't, I don't.

20 **MR. BRUDIGAM:** So that comprehensive list is located  
21 in a regulation that we cited in our brief.

22 **THE COURT:** Then recite it to me. We've got lots of  
23 attorneys here. I've got lots of time.

24 **MR. BRUDIGAM:** Sure. I believe I'd have to look up.

25 **THE COURT:** Would you step over?

1           **MR. BRUDIGAM:** Okay.

2           **THE COURT:** This lumping together isn't going to get  
3 it for me. All right. So I want to know exactly what you're  
4 seeking to protect and what you're not.

5           **(Pause)**

6           **THE COURT:** Thank you.

7           **MR. BRUDIGAM:** Of course. So the regulation that  
8 specifies exactly what they're permitted to inspect is Title II  
9 of the California Code of Regulations, Section 19-001  
10 subdivision H. That includes name, address, phone number,  
11 email, birth dates, voter participation history, registration  
12 method, their current registration status. Are they active?  
13 Are they inactive? And I believe that's everything. That is  
14 everything.

15           **THE COURT:** And you're seeking to protect that?

16           **MR. BRUDIGAM:** No.

17           **THE COURT:** You're seeking to turn that over?

18           **MR. BRUDIGAM:** Yes. We've offered it.

19           **THE COURT:** Go through that again very slowly.

20 Names, addresses, voter participation.

21           **MR. BRUDIGAM:** Yeah.

22           **THE COURT:** Registration method.

23           **MR. BRUDIGAM:** Right.

24           **THE COURT:** What else?

25           **MR. BRUDIGAM:** Registration status.



1           **THE COURT:** Registration status.

2           **MR. BRUDIGAM:** And contact information, phone number  
3 and email.

4           **THE COURT:** Okay.

5           **MR. BRUDIGAM:** Not every voter necessarily provides  
6 an email.

7           **THE COURT:** Okay. Thank you.

8           **MR. BRUDIGAM:** Okay. And so that's what we've made  
9 available. And so I just want to, and again, the focus is just  
10 the --

11           **THE COURT:** Once again, you have not made available  
12 social security numbers and driver's license.

13           **MR. BRUDIGAM:** Correct, Your Honor.

14           **THE COURT:** Okay.

15           **MR. BRUDIGAM:** Okay. So I want to just bring us back  
16 to the preemption question. So we have no direct conflict  
17 between state law and federal law, and I think it's also  
18 important to look at the federal law that requires the State to  
19 collect social security numbers and driver's license numbers.  
20 That statute is the Help America Vote Act. And in requiring  
21 states to collect that information, they did not limit the  
22 state's ability to make that information confidential. In  
23 fact, HAVA specifically stated that the choices on the methods  
24 of complying with this requirement shall be left to the  
25 discretion of the states. That's 52 U.S.C. Section 21085.

1           So California, in its discretion delegated under  
2 HAVA, chose to keep voters' social security numbers and  
3 driver's license numbers confidential. And if you look at the  
4 state law making them confidential, this is Elections Code  
5 Section 2194(b)(1). It says that information added to the  
6 voter registration records to comply with the requirements of  
7 the Federal Help America Vote Act of 2002 are confidential and  
8 shall not be disclosed to any person.

9           So the bottom line is that the best way to read Title  
10 III with California's state law protections and HAVA is a  
11 reading where there is no conflict.

12           **THE COURT:** And what part of jurisprudence deals with  
13 this issue? Is there any?

14           **MR. BRUDIGAM:** So there is no jurisprudence  
15 specifically dealing with Title III preemption of state laws.  
16 And that's why we think the case law evaluating NVRA  
17 preemption, which has a disclosure provision, is the most  
18 suitable vehicle for that analysis.

19           And so, Your Honor, what I just went through were  
20 three legal hurdles that the Government cannot overcome in  
21 their Title III claim. And even if they were able to get past  
22 these three legal hurdles, the state law protecting this  
23 specific information is not preempted by Title III. And so  
24 that's our argument on Title III of the Civil Rights Act.

25           I want to move on to the NVRA claim. This is the

1 second count.

2 **THE COURT:** Sure. Let me ask you a question along  
3 the way, and we've got plenty of time.

4 **MR. BRUDIGAM:** Sure.

5 **THE COURT:** On one hand, you're arguing that this  
6 Court would use a procedural means and find that this Court  
7 didn't have jurisdiction and potentially the Eastern District  
8 did or Sacramento, as you've termed it. That then would not  
9 resolve this case on the merits.

10 **MR. BRUDIGAM:** It wouldn't resolve that claim on the  
11 merits.

12 **THE COURT:** Well, resolve that claim. But I thought  
13 each of you were looking for a broader resolution. In other  
14 words, I don't what I'm going to do with the jurisdictional  
15 issue right now, but I do know that it's important to all of us  
16 to get this issue resolved in some form, get it to the circuit,  
17 get it to the Supreme Court, but that could take place in  
18 another state. That could become your lead case.

19 So do you want this resolved on substantive grounds,  
20 or are you seeking to have this resolved on procedural grounds?  
21 And if I accept your jurisdictional argument, you're not going  
22 to have a substantive ruling. Maybe Michigan issues it, or New  
23 Jersey. I mean, think about that for a while. You don't have  
24 to respond right now, but make sure you don't, in a sense, win  
25 a battle and lose a war, okay? Because I thought that you were

1 here for one reason, and that was to get this resolved as a  
2 precedent-setting case by both sides. And then if there's a  
3 conflict in another jurisdiction, it goes up in another  
4 circuit, et cetera, or it goes up on appeal, however this Court  
5 decides these issues for the Ninth Circuit.

6 So think about whether you really want this resolved  
7 substantively or not. Now, that doesn't mean you give up your  
8 argument, of course, but if I did rule in your favor, then  
9 you're going to have a substantial portion of this case that's  
10 not resolved here. It'll be resolved in some other  
11 jurisdiction, like Arizona, maybe, okay? Up to you. So think  
12 about that. All right. Now, your next argument.

13 **MR. BRUDIGAM:** Yeah, we will think about that. Thank  
14 you, Your Honor.

15 **THE COURT:** I want to hear from the Women League of  
16 Voters. Do we want these issues resolved here, or do we want  
17 to potentially piecemeal these out, okay, and the NAACP as  
18 intervenors, okay? I'll be asking those questions.

19 Counsel, thank you, but please continue.

20 **MR. BRUDIGAM:** Of course. So turning to the NVRA  
21 claim. So DOJ just simply hasn't alleged a plausible violation  
22 under the NVRA. So as I mentioned at the beginning, the  
23 alleged facts in this case, they show that the Secretary has  
24 complied with that law's public inspection provision. As I've  
25 mentioned, the Secretary made the statewide voter registration

1 list available to DOJ for its inspection, and nothing more is  
2 required under that statute. And so they haven't plausibly  
3 alleged a violation of the NVRA's public inspection provision.  
4 And here, we have a lot better case law on the question of  
5 redactions. And courts have universally permitted that  
6 disclosures under the NVRA are that states can redact highly  
7 sensitive information like social security numbers and driver's  
8 license. And DOJ doesn't cite any contrary authority. And, in  
9 fact, until this case, it has repeatedly taken the position in  
10 legal briefs before court of appeals, federal court of appeals,  
11 that the NVRA does permit these kind of redactions.

12 **THE COURT:** In those cases and the circuits that  
13 they're in.

14 **MR. BRUDIGAM:** Sure. So the most recent one would be  
15 the Public Interest Foundation v. Benson, which is a Sixth  
16 Circuit case that was decided earlier this year, and the brief  
17 that DOJ filed stated that position.

18 **THE COURT:** And is that in the briefing that was  
19 submitted to the Court?

20 **MR. BRUDIGAM:** That's cited. It isn't. It's not in  
21 our briefing, but it is in --

22 **THE COURT:** Because I've missed that, so that's why  
23 I'm slowing you down.

24 **MR. BRUDIGAM:** Sure, sure.

25 **THE COURT:** I'd like to see that briefing. I'd like

1 to see if DOJ has taken a contradictory position in the past  
2 and what their argument was on one hand if you're arguing today  
3 that they're changing their position. So you've got time.

4 **MR. BRUDIGAM:** Sure.

5 **THE COURT:** As colleagues, you don't have to dig that  
6 out right now. Just make a note of that. I want to see if  
7 there's a constant, as I call it, in terms of DOJ's position or  
8 if it's contradictory. I didn't see that reading the record or  
9 at least I didn't pick that up.

10 **MR. BRUDIGAM:** So there's that case. And I think the  
11 one that we do cite in our moving papers is the First Circuit  
12 case, Public Interest Law Foundation v. Bellows. And in that  
13 case, DOJ, again, takes the same position. That's a 2024 case.

14 **THE COURT:** But at least then, if both cases were  
15 before the Court, the Court would see in both the First and the  
16 Sixth Circuit. From your standpoint, Judge, this just isn't  
17 the First Circuit as a one-off. This is a consistent position.  
18 Do you know of a contradictory position that the DOJ has taken  
19 prior to arguments today in another circuit?

20 **MR. BRUDIGAM:** I do not. And, in fact, I'll give you  
21 one more brief. In the Fourth Circuit, this is a 2012 case,  
22 and I think their brief was submitted in 2011. This is the  
23 Long case.

24 **THE COURT:** Public Interest v. Long?

25 **MR. BRUDIGAM:** No, it's -- it's Project Vote v.

1 Long.

2 **THE COURT:** Is this in the briefing?

3 **MR. BRUDIGAM:** That's -- it's in Intervenor's NAACP  
4 Siren's briefing.

5 **THE COURT:** All right. When you argue that, please  
6 call that back to my attention because you've got briefing  
7 that's pretty scattered right now. I'm going to want all of  
8 those, and I'm going to want any contradictory position or any  
9 synonymous position that DOJ has taken so I can see the  
10 reasoning before different courts across the country, and if  
11 they're filed in the Sixth, the First, and the Fourth, I'd be  
12 interested to see if these are like positions or varying  
13 positions and what the arguments are.

14 **MR. BRUDIGAM:** Of course. We'd be happy to provide  
15 those. So, again, the courts have been unanimous. DOJ has  
16 been unanimous in concluding that under the NVRA's disclosure  
17 provision, highly sensitive voter information can be redacted.

18 **THE COURT:** Why is the social security number that  
19 the Government already has access to, highly sensitive  
20 information? Is it what it leads to after you obtain that  
21 information, or is it the social security number in and of  
22 itself?

23 **MR. BRUDIGAM:** I mean, I think it would be both, and  
24 I think it's a good question, Your Honor. If they have these  
25 social security numbers, why are they coming and getting them

1 --

2           **THE COURT:** Well, the argument's going to be we, the  
3 Government, already have this. What's the sensitive  
4 information if we have access to it? And therefore, I expect  
5 the argument, and the briefing argument seems to allude to the  
6 fact that it's not highly sensitive. That's going to be DOJ's  
7 position.

8           **MR. BRUDIGAM:** Well, whether or not they want to  
9 construe social security numbers as sensitive or not, the  
10 bottom line is that the claims that they're suing under do not  
11 require us to turn this over, period.

12           **THE COURT:** Driver's license information, that's  
13 uniquely California. That's not, in our case anyway, uniquely  
14 a California, what I view as a state.

15           **MR. BRUDIGAM:** I think that's right.

16           **THE COURT:** Information.

17           **MR. BRUDIGAM:** Right.

18           **THE COURT:** And in that case, much more information  
19 could be available, let's say, that you would have concerns  
20 about. There, DOJ normally, I would think, doesn't have  
21 information to California information, which could be more  
22 extensive than just a social security number. What are you  
23 concerned about concerning driver's license information?

24           **MR. BRUDIGAM:** I mean, driver's license information  
25 is connected to many different, you know, state programs,



1 participation in various programs, and so that's information  
2 that, you know, many voters wouldn't want to be --

3 **THE COURT:** So name those programs.

4 **MR. BRUDIGAM:** I don't --

5 **THE COURT:** Well, go over and talk to your counsel.  
6 Slow down. Go over and consult.

7 **MR. BRUDIGAM:** Okay.

8 **THE COURT:** Okay. This is your opportunity.

9 **MR. BRUDIGAM:** Sure. Sure.

10 **THE COURT:** And DOJ and the other parties will have  
11 the same courtesy. Because there appears from the briefing  
12 that there's a much greater, let's say, if nothing else,  
13 privacy right and much more information that can be dispersed,  
14 and that seemed to be uniquely California oriented, not  
15 federally oriented.

16 **(Pause)**

17 **MR. BRUDIGAM:** So I can't give you a list right now.

18 **THE COURT:** Sure you can. You've got lots of  
19 time. Step over and talk to your colleague now.

20 **MR. BRUDIGAM:** Well, so we don't have that  
21 information at the tip of our fingertips. We, of course, can  
22 go and talk to our client and figure out exactly what that  
23 information is connected to, but I would just say that the key  
24 point here is less what it's connected to and the fact that  
25 California law protects it. The legislature has made a

1 decision that this voter information is confidential, and the  
2 federal laws that are being invoked cannot overcome that  
3 protection. And so --

4 **THE COURT:** So no preemption.

5 **MR. BRUDIGAM:** That's right.

6 **THE COURT:** Just a moment. Eventually, I'm going to  
7 ask each of you a very broad question that you should  
8 anticipate. And that is, it may be that in some areas, such as  
9 the Social Security information, that there is a state and  
10 federal interest, and if I find that both have an interest, how  
11 does the Court balance that? What factors would I use in  
12 making my decision to citing preemption or not? In other  
13 words, in balancing the factors. And what would be my standard  
14 preponderance, clear and convincing? How do I make that  
15 decision? What standard am I basing that on? Or is it simply  
16 textual? Now, don't answer that. You've got lots of time.

17 The second is, in other areas, there may be a unique  
18 state right, or different states, whether it's Arizona or  
19 California, request information of voters. And there, there  
20 may be a much greater right, and federal preemption may not  
21 take place, but I need to know what you're protecting, because  
22 the argument from DOJ will and should be, Judge, we also should  
23 have access to this information, and I'll wait for their  
24 argument.

25 Uniquely, it seems, historically, that the states

1 have controlled the process and procedure in terms of a voter.  
2 The federal government has rarely moved into this area, except  
3 in the civil rights era in the South. And those were  
4 extraordinary circumstances. But normally, each individual  
5 state not only enforces these rights through their local  
6 district attorneys or their local law enforcement agencies, but  
7 historically, these rights have seemed to be state rights.

8 When I get to DOJ, I'm going to be asking you, why  
9 are you requesting driver's license in particular? And what's  
10 the federal, you know, nexus to this? Okay, so be forewarned  
11 about that question. So, counsel, please continue.

12 **MR. BRUDIGAM:** Sure, and I just want to make a  
13 comment in response to that, Your Honor. I think that that's  
14 really a great point. And if you look at the amicus brief  
15 submitted by the group of bipartisan former Secretaries of  
16 State, they make this point very strongly in their brief that  
17 states are the default --

18 **THE COURT:** Can I present to you something? I  
19 haven't read those carefully for one reason.

20 **MR. BRUDIGAM:** Sure.

21 **THE COURT:** I want to read all the amicus briefs if  
22 I'm going to allow them at one time. I don't want to start  
23 forming opinions in a piecemeal fashion as I get one amicus  
24 brief from one party, which is why I've delayed having this  
25 discussion with you and gotten your position if I can get these

1 amicus briefs at one time. I think it's dangerous for a court  
2 to piecemeal that, in a sense. So I want to, now that we know  
3 we're going to get amicus briefs in two weeks, I've glanced at  
4 them in terms of trying to make a determination whether I would  
5 allow them or not, but I was waiting for your input.

6 So I represent to you, it's been a quick, quick read  
7 and brief discussion with my law clerks, and that's about the  
8 extent of it.

9 **MR. BRUDIGAM:** Got it.

10 **THE COURT:** Okay? So when you refer me to that, I'll  
11 go back now and read, but --

12 **MR. BRUDIGAM:** Yes, bookmark it.

13 **THE COURT:** Yeah, okay.

14 **MR. BRUDIGAM:** Yeah, yeah.

15 **THE COURT:** I will.

16 **MR. BRUDIGAM:** Okay. So I just want to finish on  
17 this disclosure provision under the NVRA. So the last thing  
18 you said is, okay, so this doesn't preempt California law, but  
19 I want to actually just back up one step, which is that even  
20 irrespective of state law, courts that have looked at this  
21 question have allowed redactions of this highly sensitive  
22 material, whether or not there was necessarily a state law  
23 involved.

24 **THE COURT:** Which courts?

25 **MR. BRUDIGAM:** So I think the main one would be the

1 First Circuit, the Public Interest Legal Foundation  
2 v. Bellows. And that is really the lead case on this question,  
3 and it cites a number of authorities reaching the same  
4 conclusion. So I think that would be the best --

5 **THE COURT:** Behind this is your concern that there's  
6 voter suppression that would take place? In other words, as we  
7 argue the different Title III, et cetera, there's always some  
8 politics behind almost every case that the Court gets. In some  
9 way, is this, from your view, not only the protection of this  
10 information under the statutes, but also a concern that there's  
11 any voter suppression?

12 **MR. BRUDIGAM:** Well, I think that's a good question,  
13 Your Honor. And part of the problem here, first thing is we  
14 want to protect this information, but we're getting no  
15 explanation, no rationale whatsoever for all of these records,  
16 why the DOJ wants these records. So we don't even have an idea  
17 exactly what they want to do with them. But I think voter  
18 suppression is certainly something we're concerned about and a  
19 possibility, but --

20 **THE COURT:** I expect DOJ to argue that they want to  
21 stop illegal voting.

22 **MR. BRUDIGAM:** And I would say that they would need  
23 to allege some sort of facts, a statement or basis in support  
24 of their demand, a statement of the basis and the purpose, if  
25 that is their true purpose and basis, because what they've said

1 so far is not that. They've said very specifically, the  
2 purpose of these records is to evaluate compliance with the  
3 NVRA's list maintenance provisions.

4 And what those provisions require, just so you  
5 understand, is that states conduct a general program that makes  
6 a reasonable effort at removing ineligible voters from the  
7 voter list by reason of death and those who move. And so --  
8 and that really brings me to the next point about the NVRA, is  
9 that aside from not alleging a violation of the disclosure  
10 provision, they also have not alleged any violation of the  
11 NVRA's list maintenance provision that I just listed out  
12 there. There's just no facts whatsoever.

13 And they actually suggest that they can't even allege  
14 anything in support of a violation, because they're saying that  
15 these records are -- you know, not having these records  
16 prevents them from assessing compliance, which is -- which  
17 doesn't make sense under the legal standard for that claim.

18 And so that's our argument regarding the NVRA count.  
19 So I'm going to move on to the last count. This is the Help  
20 America Vote Act claim. And so again, DOJ really runs into the  
21 same problems. They haven't alleged a violation of that law in  
22 their complaint, and it should be dismissed.

23 So the first violation of HAVA that they say, or that  
24 they that they allege, is that California not turning over  
25 these records in response to their demand violates HAVA. Well,

1 that's just not true. If you read the statute, there is no  
2 disclosure provision in that law. And DOJ admits this in their  
3 opposition, and that admission is dispositive on this claim,  
4 because the Ninth Circuit has held that a government  
5 investigative demand is created solely by statute. And here,  
6 there's nothing in the statute requiring we disclose these  
7 records or turn them over. And so when we consider whether  
8 HAVA could preempt state laws, or California state law, there's  
9 just no conflict whatsoever, and so there is no preemption  
10 there.

11 And then beyond the nondisclosure of records, they  
12 also kind of -- they attempt to allege other violations of  
13 HAVA, which don't really make any sense. They just assert  
14 legal conclusions about certain provisions in HAVA, but they  
15 don't allege any facts in support of them. You know, they  
16 allege that we're violating the provision, which requires us to  
17 collect social security numbers and driver's license numbers,  
18 which doesn't make any sense, because that's why we're here  
19 today, because we have that information and we're protecting  
20 it.

21 And so I would just say, if you look at that claim,  
22 it falls far below the Twombly-Iqbal plausibility standard.  
23 And, you know, beyond not actually alleging a violation, like  
24 with the NVRA, they also suggest that they can't allege any  
25 violation, because they need -- supposedly need these records

1 to evaluate compliance.

2 I would just -- the one point they make on HAVA is  
3 that it lacks a private enforcement mechanism. It can only be  
4 enforced by the federal government. And this is, and they're  
5 basic, and they're saying that because they have the right to  
6 enforce HAVA, they have the right to demand these records from  
7 us, but there is no authority supporting that proposition, and  
8 it's directly contrary to Ninth Circuit authority. And so  
9 there's no violation here for us not turning records over in  
10 advance of litigation, simply because they can bring an  
11 enforcement action and get records in discovery. You know, we  
12 have to get past the pleading stage first.

13 And so with that, Your Honor, I would say that all  
14 three of DOJ's counts should be dismissed. And at this point,  
15 I want to turn it over to my colleague.

16 **THE COURT:** All right. Step over with your  
17 colleagues, though, as a colleague, and just see how did they  
18 do, okay? Just walk over there for a moment, and I'll pay the  
19 same courtesy to DOJ. Step over with whoever, when you argue,  
20 but step over and have a conversation with them. And just, if  
21 there's anything you missed, you'll have a second round, okay?

22 **MR. BRUDIGAM:** I appreciate it, Your Honor.

23 **THE COURT:** It'll be a little bit more brief. Now,  
24 let me ask just a couple of questions along the way. Am I  
25 going to get more requests, and you folks know, because this is



1 going to be the lead case in the country, obviously, with the  
2 other 14 cases. So far, we have the states of Arizona,  
3 Colorado, Delaware, Hawaii, Illinois, Maine, Maryland,  
4 Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon,  
5 Rhode Island, Vermont, and Washington. And when I was  
6 considering this amicus, I was wondering if I was going to have  
7 a political show of two different parties on these voter rights  
8 cases.

9 Here, you have a number of what I call border states,  
10 Arizona, Michigan, Minnesota, arguably New Mexico. So at least  
11 your acquiescence today to have this come before the Court is  
12 well received. Do you know, though, of other state attorney  
13 generals who are going to be voting just by rumor or hearsay,  
14 and are we giving them enough time in two weeks to get these  
15 amicus briefs in? And if so, inform us, because if we need  
16 three weeks, we can take it, okay? But counsel your argument,  
17 please.

18 **MR. SETRAKIAN:** Good morning, Your Honor.

19 **THE COURT:** Good morning.

20 **MR. SETRAKIAN:** Will Setrakian for Defendants,  
21 Secretary of State Shirley Weber and the State of California.

22 To start, to your most recent point, I have no  
23 special insight into whether or not future amicus briefs may be  
24 incoming from the organizations and individuals that you just  
25 identified.

1           My colleague has explained why DOJ fails to state a  
2 claim under the Civil Rights Act, the NVRA, and the Help  
3 America Vote Act. But even if the Court disagrees with  
4 everything that my colleague said, it still should grant the  
5 State's motion to dismiss, because three federal privacy laws  
6 serve as affirmative defenses to the complaint.

7           Now, I'll begin with the Privacy Act. Two Privacy  
8 Act violations appear on the face of DOJ's complaint. First,  
9 DOJ improperly seeks information on how California's registered  
10 voters exercise First Amendment protected rights, something the  
11 Privacy Act directly protects. DOJ does not dispute that the  
12 choice to register to vote constitutes protected expression.  
13 Now, DOJ thus cannot collect this information unless it falls  
14 into one of this subsection's statutory exceptions. Now, DOJ  
15 pins its hope on the exception for records collected, quote,  
16 within the scope of an authorized law enforcement activity,  
17 close quote, but the Ninth Circuit gives that exception a  
18 narrow reading. That's from the McPherson case.

19           To meet this exception, DOJ must show a good reason  
20 to believe that the records are pertinent and relevant to its  
21 claimed law enforcement basis. That comes from the Garris  
22 case, also cited in our briefing. Those two are the only Ninth  
23 Circuit cases to construe the law enforcement exception to  
24 Privacy Act Subdivision E-7.

25           DOJ cannot meet this test. DOJ claims it needs these

1 records to enforce the NVRA and the Help America Vote Act. But  
2 personalized, unredacted voter records are not pertinent or  
3 relevant to this wide ranging, amorphous investigation.  
4 Instead, this is the sort of overbroad data gathering  
5 disallowed when First Amendment protected rights are at stake.  
6 The Privacy Act thus bars this collection.

7           And the Privacy Act bars the collection for another  
8 reason. DOJ has not followed the Act's protocols for  
9 collecting sensitive information. The Privacy Act requires the  
10 Government to publish or identify something called a System of  
11 Records Notice, or SORN, before collecting data.

12           Now, a SORN tells Americans how their sensitive data  
13 will be collected, used, and shared. DOJ identifies no SORN in  
14 its complaint. It thus is out of compliance with the Privacy  
15 Act. Now, in its opposition, DOJ raises three SORNs, but none  
16 justify this collection. The first SORN identified concerns  
17 Civil Rights Division records, quote, indicating a violation or  
18 potential violation of law, and it covers information on  
19 investigations' subjects, victims, and potential witnesses.

20           Now, this SORN does not apply here for several  
21 reasons. First, California's voters are not the subjects,  
22 victims, or witnesses of DOJ's claimed investigation. That  
23 targets California, not its voters. But even overlooking this  
24 issue, this SORN fairly read allows for collection of  
25 information regarding discrete legal violations. Say, I like

1 to think of maybe the statements of witnesses interviewed while  
2 investigating a hate crime. It does not let DOJ claim an  
3 investigation covering all voters in a state, and indeed, maybe  
4 more than just one state, then collect, store, and possibly  
5 share that information based on only that representation.

6 And precedent supports this, I think, common sense  
7 instinct. In the related field of federal administrative  
8 subpoenas, this circuit restricts the Government's ability to  
9 overread text to engage in bulk information gathering. That's  
10 the Peters case cited in our briefing. There's also an ejusdem  
11 generis issue with DOJ's reading of this SORN.

12 As the court knows, observing other items in the  
13 statutory list can help interpret disputed text. This SORN  
14 covers two groups, subjects of investigations, as we've been  
15 discussing, and, quote, individuals of Japanese ancestry who  
16 were eligible for restitution benefits as a result of their  
17 internment during World War II, close quote.

18 I think that narrow pool of covered persons strongly  
19 suggests that the subjects of investigations language cannot  
20 sweep to cover all state residents. And for all those reasons,  
21 this SORN does not apply here, and the other two don't apply  
22 either. The other two cited by DOJ. First, they're not even  
23 SORNs of their own. Instead, they just revise the SORN we have  
24 been discussing. But second, those revisions target situations  
25 far afield from this one, a publicization of data after an

1 investigation ends and after a data leak.

2           The Privacy Act accordingly bars this collection. I  
3 want to address while I'm talking about this something that the  
4 Court wondered about during my friend's argument, which was  
5 whether or not the federal government just already has social  
6 security numbers. The way I view it, the federal privacy laws  
7 require data hygiene. Even if some agencies of Government may  
8 already possess a social security number, the law still  
9 restricts the Government's ability to share and use data  
10 between agencies without notice.

11           The Government is composed of many different bodies.  
12 And the mere fact that one agency, probably the Social Security  
13 Administration, is in possession of a log of, I assume, social  
14 security numbers, that does not mean that DOJ, a separate  
15 agency, can access that information. Indeed, that's what the  
16 Privacy Act was designed to slow down, to block, exactly that  
17 sort of exchange without any oversight process or  
18 publicization.

19           **THE COURT:** Okay.

20           **MR. SETRAKIAN:** I'll turn to the E-Government Act.  
21 DOJ, straightforwardly, has not complied with this law. The  
22 Act mandates that an agency take certain actions before it  
23 collects, quote, any information in an identifiable form  
24 permitting the physical or online contacting of, close quote, a  
25 person if more than 10 persons are implicated. If those

1 conditions are met, the agency must conduct something called a  
2 privacy impact assessment, have that assessment reviewed by  
3 agency staff, and publish it. Now, the assessment, in turn,  
4 must address --

5 **THE COURT:** Now, is that an administrative process  
6 decided by the executive branch, or is that statutory?

7 **MR. SETRAKIAN:** This is by statute. The E-Government  
8 Act is a statute. It leaves some elements to the executive.

9 **THE COURT:** What elements are you referring to?

10 **MR. SETRAKIAN:** Certainly. So the contents of a --

11 **THE COURT:** I'm sorry, what elements are you  
12 referring to in the Privacy Act?

13 **MR. SETRAKIAN:** Yes, the contents of a privacy impact  
14 assessment.

15 **THE COURT:** Read that to me.

16 **MR. SETRAKIAN:** Read the entire -- I have the  
17 regulation. It's 16 pages long.

18 **THE COURT:** No, you don't have to do that,  
19 counsel. But you're relying --

20 **MR. SETRAKIAN:** Yeah.

21 **THE COURT:** In other words, I want to be able to look  
22 back and find that section.

23 **MR. SETRAKIAN:** So yeah, so --

24 **THE COURT:** Mr. Mitchell, in the meantime, would you  
25 be kind enough to gather all the parties? I don't know what

1 Mr. Szabo's schedule is today, but this argument is going to  
2 take longer on the Voter Rights Act than I anticipated. So if  
3 he's only available a certain period of time. So if you could  
4 gather the parties, have them all come into court, and I'll get  
5 a time estimate. I'm sorry, counsel.

6 **MR. SETRAKIAN:** Not at all. So this is from Section  
7 208, cited in our briefing, subdivision (b) (2) (A). So the  
8 director shall issue guidance to a --

9 **THE COURT:** I'm sorry. 2-B-A?

10 **MR. SETRAKIAN:** No, (b) (2) (A).

11 **THE COURT:** (b) (2) (A), thank you.

12 **MR. SETRAKIAN:** And Section 2 is called Contents of a  
13 Privacy Impact Assessment. And Section A says the director  
14 shall issue guidance to agencies, specifying the required  
15 contents of a privacy impact assessment. Now, subdivision B  
16 explains what that guidance must contain. I'll give a couple  
17 of examples. The guidance shall require that a privacy impact  
18 assessment address what information is to be collected, why the  
19 information is being collected, with whom the information is to  
20 be shared. I could go on.

21 The specific OMB guidance is titled M-03-22 OMB  
22 Guidance for Implementing the Privacy Provisions of the  
23 E-Government Act of 2002. We cite this in our briefing.

24 **THE COURT:** Okay.

25 **MR. SETRAKIAN:** DOJ simply has not followed this law.

1 It seeks information that triggers the statute, but it has not  
2 pleaded that it completed a privacy impact assessment. And DOJ  
3 claims it need not comply with this law, but that misses the  
4 mark.

5 DOJ argues it's not collecting data from individuals  
6 themselves, but from California, but the law asks only whether  
7 the federal government is collecting individuals' personal  
8 information. It says nothing about the information's source.  
9 And to the contrary, the OMB guidance we were just discussing  
10 clarified that the E-Government Act applies when collecting  
11 information, quote, from or about members of the public. So  
12 not just from, but also, as here, about.

13 Perhaps recognizing this weakness, DOJ pivots to  
14 policy, but its arguments fail. They argue that the E-  
15 Government Act would require DOJ to conduct many privacy impact  
16 assessments before collecting this data, but the purpose of  
17 federal privacy laws is to restrict the Government from  
18 unrestrained access to individuals' records. DOJ cannot paint  
19 the intended operation of this law as running against policy.  
20 The E-Government Act thus mandates the complaints dismissal.

21 I'll briefly conclude with the Drivers Privacy  
22 Protection Act, just a couple of points on that statute. The  
23 Act prohibits the disclosure of driver's license numbers  
24 obtained by a state DMV in connection with a motor vehicle  
25 record. Now, it covers California's Secretary of State because



1 she receives these numbers from DMV when voters register there  
2 through Motor Voter.

3 Now, recognizing the law's application, DOJ argues  
4 that it fits into a statutory exception. The law exempts data  
5 collected, quote, for use by any government agency in carrying  
6 out its functions. But as precedent explains, we cite a  
7 Seventh Circuit en banc opinion that goes deeply into this, the  
8 phrase "for use" plays a key role in that analysis. The  
9 Government falls into this exception only if it plans to use  
10 the specific information collected for an identified  
11 purpose. Now weighed against that standard, DOJ's argument  
12 collapses.

13 As the Seventh Circuit recognizes, the act's purpose  
14 is to prevent all but a limited range of disclosures. Here  
15 though --

16 **THE COURT:** What was the Seventh Circuit dealing with  
17 in that case?

18 **MR. SETRAKIAN:** Yeah, it's called Senne v. City of  
19 Palatine or village of Palatine. Yes, Senne v. Village of  
20 Palatine. The cite is 695 F3rd 597. As I mentioned, that's an  
21 en banc opinion from the Seventh Circuit cited in our papers.

22 **THE COURT:** Okay.

23 **MR. SETRAKIAN:** Here, DOJ has not pleaded that it  
24 will use the specifically requested material, these unredacted  
25 driver's license numbers, to conduct its NVRA and Help America

1 Vote Act investigations. This exception thus does not  
2 apply. I'm happy to answer any further questions the Court  
3 has. Otherwise --

4 **THE COURT:** Not now. There'll be a second round, but  
5 step over with your colleagues. Make certain that there's  
6 something that you might have missed. Just take a moment as a  
7 courtesy and consult with them.

8 **MR. SETRAKIAN:** Absolutely.

9 **(Pause)**

10 **MR. SETRAKIAN:** Nothing further at this time, Your  
11 Honor.

12 **THE COURT:** Okay. LA Alliance and the City, I'll be  
13 right with you. I'm going to ask about the time constraints  
14 and the availability of witnesses in just a moment, but I want  
15 to hear one other segment.

16 For the intervenors, who would like to go first, the  
17 NAACP or the League of Women Voters?

18 **MR. DODGE:** I'll be going first on behalf of the  
19 NAACP, Your Honor.

20 **THE COURT:** All right, please. And, counsel, once  
21 again, I'm going to continually ask, if you know of any other  
22 states joining us, Arizona, Colorado, Delaware, Hawaii,  
23 Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New  
24 Mexico, New York, Oregon, Rhode Island, Vermont, or Washington,  
25 tell me immediately, in case I need to extend this briefing

1 schedule or their input.

2           Number two, with the amici that are requested so far  
3 from the Secretaries of States of Colorado, Connecticut,  
4 Minnesota, Nebraska, Oregon, Pennsylvania, Washington, once  
5 again, if we get that kind of hearsay out there, you have  
6 a contact, let's get together very quickly so we can get that  
7 briefing and the amici briefs before the Court as quickly as  
8 possible, in case we're making a mistake in terms of two  
9 weeks.

10           I've allowed you to intervene. You do not have to  
11 take the same position as the Women League of Voters. You're  
12 arguing potentially collectively, but you're arguing also  
13 individually. And I'll say to both counsel, once again, when  
14 you're asking the Court to reflect upon jurisdiction, make sure  
15 that that's what you want, because I could decide this  
16 procedurally and refer this to another district. Therefore,  
17 this may not be the lead case in the country. Arizona may  
18 decide this, New Jersey, Washington. So be careful.

19           Number two, I have the Obama birth certificate case.  
20 I could have decided that in one paragraph on standing. We  
21 took 30 some pages to anticipate that this issue would arise  
22 again under the 25th Amendment. And sure enough, in the  
23 election, it was right back to us. So just if you want this  
24 resolved on the merits, fine. If you want it, if your argument  
25 holds water with the court, then you're maybe in some other

1 jurisdictions. So decide how quickly you want this decided,  
2 because I know about 40 million voters, minimally or depending  
3 upon this, just in this case submitted to us. So counsel,  
4 please.

5 **MR. DODGE:** Good morning, Your Honor. Chris Dodge of  
6 the Elias Law Group on behalf of Intervenor NAACP.

7 **THE COURT:** Nice meeting you.

8 **MR. DODGE:** I wanted to start by getting immediately  
9 to Your Honor's concerns about what this case is really about.  
10 This case is about voter registration, and voter registration  
11 is a canonical area of state government and state domain. The  
12 elector's clause in the Constitution assigns, in the first  
13 instance, responsibility for voter registration and all that it  
14 entails to the 50 states.

15 Now, the federal government, as Your Honor has  
16 alluded to, has limited tools that permit it to supervise that  
17 process when there's a breakdown, when there's not adequate  
18 list maintenance, when there's racial discrimination, when  
19 there's suppression of the right to vote. But DOJ's tools to  
20 do that are extremely limited. They can only exercise the  
21 power that Congress has given them to intrude upon this  
22 historical state domain. And that is what this case is really  
23 about, because what's going on here is completely  
24 unprecedented.

25 To give some context to the Court, which I think gets

1 to this amici issue, this issue starts with the Department of  
2 Justice demanding the full unredacted state voter registration  
3 lists of over 40 states. It has now sued 16 of those states in  
4 three tranches. It started with Maine and Oregon. California  
5 was in the second tranche. And just two days ago, it sued  
6 another six states. I can give you those 14 states if you  
7 would like. It overlaps somewhat with the states that have  
8 submitted an amici brief. But that's sort of what's going on.  
9 This is a national issue. And this Court is out front right  
10 now in terms of the briefing and the scheduling, but those  
11 cases will be following in short order.

12           There are two others in the Ninth Circuit in  
13 Washington and Oregon that are also underway. So that's the  
14 context here.

15           So what really this case is about is, is the  
16 Department of Justice using its limited tools given to it by  
17 Congress properly to intrude upon California's state voter  
18 registration system by demanding that it turn over a full  
19 unredacted voter list? And, you know, there's extensive  
20 briefing on the three tools that they point to. They claim  
21 three tools here: the Civil Rights Act, the NVRA, and  
22 HAVA. And my colleagues from the states have sort of gone  
23 through those. You know, we've raised similar arguments in our  
24 briefing, and I don't want to, you know, waste the Court's time  
25 repeating them because they are in the papers. I want to focus

1 on some of the more discreet arguments we raise in our brief.

2 And I guess one more piece of context for the Court  
3 that I think the Court will find interesting. In its most  
4 recent tranche of cases, the six cases they filed just a couple  
5 days ago, the Department of Justice is only pursuing a single  
6 claim. They abandon their NVRA and HAVA claims in these six  
7 most recent cases against, I believe, Vermont, Rhode Island,  
8 Delaware, Maryland, New Mexico, and Washington. They only, in  
9 those most recent cases, are pursuing their Title III Civil  
10 Rights Act claim, which I think tells you something about the  
11 degree of confidence they have in their NVRA and HAVA claims.  
12 And I think the briefing very adequately explains why they do  
13 not have any plausible claim for using those two tools, HAVA  
14 and the NVRA, for the purpose they're seeking here.

15 HAVA has no disclosure provision. Period. Full  
16 stop. It is not there. There will be -- you can find nothing  
17 in the Department of Justice's briefing about how HAVA entitles  
18 them to demand documents from a state. Non-existent.

19 The NVRA, it has a limited public inspection  
20 provision that applies to everyone, but it gives no special  
21 access to the Department of Justice. It means anyone in this  
22 courtroom could make a demand of a state and say, hey, I would  
23 like to see certain documents about how you maintain your voter  
24 rolls. But that's a limited public inspection right, and it  
25 does not get them the information they're seeking here. It

1 gives them documents about sort of the mechanics of voter  
2 registration, and it gives them certain information like names  
3 and addresses that the state has offered to give here, but it  
4 doesn't give them social security numbers. It doesn't give  
5 them driver's licenses. That's not in the statute. And there  
6 is a boatload of precedent on the NVRA, the Bellows case from  
7 the First Circuit that my friend alluded to, extensive, you  
8 know, cases cited in the briefing, throughout the briefing,  
9 that uniformly say states are allowed to enforce their own  
10 privacy laws to redact information that is requested under the  
11 NVRA.

12 **THE COURT:** You're referring to the Bellows case out  
13 of the First Circuit?

14 **MR. DODGE:** That would be the best one, Your Honor.  
15 And I think, and to Your Honor's earlier point, that is the  
16 paradigmatic instance of the DOJ just flip flopping its  
17 position here. There are numerous briefs from the Department  
18 of Justice in these NVRA cases. There are a lot of NVRA cases  
19 out there.

20 **THE COURT:** Okay. Just a moment.

21 **MR. DODGE:** The Bellows case is one --

22 **THE COURT:** Counsel, slow down. We've got lots of  
23 time. So far you've cited Benson out of the Sixth Circuit.  
24 You've cited Bellows out of the First, and the Long case out of  
25 the Fourth. My question to all of you is going to be if DOJ

1 has taken a consistent position as you're arguing, I also want  
2 to know if they've taken a contra position, and I want that  
3 briefing in front of the Court so I can see what the arguments  
4 were in this different circuits. Are you relying on the  
5 Bellows case?

6 **MR. DODGE:** Yes, Your Honor.

7 **THE COURT:** All right. Thank you.

8 **MR. DODGE:** And to that point, Your Honor, what I  
9 would say is in those three cases, which are the three I'm  
10 familiar with, in each of them, DOJ took the position that the  
11 NVRA permits states to redact certain voter registration  
12 information, in every single one across administrations, that  
13 was DOJ's position. I am not aware of the DOJ ever arguing  
14 until this case or, you know, this collection of cases that the  
15 NVRA permits the federal government to demand all of this.

16 **THE COURT:** Were the redaction the same areas that  
17 this Court's dealing with? Because here, slowing all of you  
18 down, the willingness of the State and potentially the County,  
19 when I hear from the County, are the names, addresses, voter  
20 registration, registration method, status, contact information  
21 is permissible, but you have strong arguments concerning Title  
22 III Privacy Act and privacy rights, from your viewpoint,  
23 concerning social security numbers and certainly the state  
24 driver's license information, which has a larger breadth of  
25 information.



1 Are you concerned -- as your briefing seems to allude  
2 to in some of the amicus so far, concerning voter registration,  
3 in other words, as you argue statutory language behind that,  
4 there's some motivation. And you -- I think we can all note  
5 that the federal government on occasion has moved in the civil  
6 rights issues, especially in the south, but rarely in terms of  
7 states. So for DOJ, you know that that question is coming.  
8 Why the state of California? Why these different  
9 jurisdictions? What's behind this? What is your real concern?

10 **MR. DODGE:** It's a great question, Your Honor. And  
11 you know, I do not have a direct link to AG Bondi's mind on  
12 this issue, but there is some --

13 **THE COURT:** We'll call her. I'm just joking.

14 **MR. DODGE:** That there is -- you know, their stated  
15 purpose, the Department of Justice's stated purpose is to  
16 supervise each individual state's list maintenance, how they  
17 maintain their voter rolls? We think that's not -- you know,  
18 that's not really suitable for the various tools they're trying  
19 to use here.

20 There is public reporting out there that is cited in  
21 the briefing that I think the Court can take notice of that  
22 says that what the Department of Justice is trying to do  
23 through these requests is in essence to compile a national  
24 voter registration list, which is something that has simply  
25 never existed in American history before because it's a

1 state responsibility, by design, so that there is not an over  
2 centralization of the electoral process in this country to sort  
3 of, you know, avoid one person controlling the voter rolls?

4 **THE COURT:** What do I do if I find that both the  
5 state and the federal government have a substantial interest?  
6 How do I balance that? What standard do I use because there's  
7 no jurisprudence in this area?

8 **MR. DODGE:** It's governed by the statutory text, Your  
9 Honor, because DOJ, of course, the federal government is a  
10 government of limited powers. The Department of Justice does  
11 have tools in its belt. Congress has given them the tools  
12 we're discussing here today, the Civil Rights Act, the NVRA,  
13 HAVA. The problem is they are trying to expand those tools  
14 beyond what the statutory text will permit to get more than  
15 what Congress has chosen to allow them to acquire. That's the  
16 nub of the issue here.

17 You know, I think everyone would agree that the  
18 federal government has a limited role to play in supervising  
19 the voter registration process, but it is limited. It is  
20 limited by design. And what is going on here is unprecedented  
21 and they are exceeding their authorization in trying to compile  
22 these full lists from essentially every state and that's sort  
23 of the nub of the issue. So it's not a balancing  
24 inquiry. It's a -- the question is is DOJ acting within the  
25 scope of their limited authority to intrude upon the state

1 voter registration process.

2 **THE COURT:** So you're relying upon statutory?

3 **MR. DODGE:** Yes, that's exactly right, Your Honor.

4 So, you know, I've sort of briefly alluded to HAVA and the  
5 NVRA, which have -- you know, HAVA has no inspection power for  
6 DOJ, the NVRA has a universal public inspection that gives no  
7 special power to DOJ, and there's uniform case law saying that  
8 states are allowed to enforce their own privacy laws.  
9 California has a very robust state privacy law that protects  
10 voter information even when there's an VVRA request from the  
11 public.

12 So that leaves their last tool, which is the Civil  
13 Rights Act. The public documents request provision of the  
14 Civil Rights Act has collected dust over the years. It really  
15 hasn't been used much since the '60s. It was passed in 1960  
16 during the Civil Rights era to bolster DOJ's ability to  
17 collect certain kinds of records for civil rights  
18 investigations. That's what the legislative history says,  
19 that's what the case law says.

20 And I want to raise one specific statutory argument  
21 that I think the NAACP alone has raised which is that when you  
22 look at the text of that document production requirement in the  
23 Civil Rights Act, what it says is that states are required to  
24 retain and preserve all records and papers which come into  
25 their possession relating to any application, registration, or

1 payment of a poll tax back when poll taxes existed before they  
2 were eliminated by the Civil Rights Act of 1964.

3 And the key language that I want to bring to the  
4 Court's attention there is come into possession. The only  
5 kinds of documents, states are required to preserve and turn  
6 over to the federal government are those that come into their  
7 possession and that obviously might refer to something like a  
8 voter registration application that someone submits to their  
9 local registrar, that comes into their possession. When you  
10 receive a letter in the mail that comes into your possession,  
11 when you write a letter yourself, it doesn't come into your  
12 possession. You don't receive it. You don't acquire  
13 it. That's what that language means. Come into possession  
14 means to acquire or to receive. That's what Black's Law  
15 Dictionary says. That's what a litany of decisions from the  
16 Supreme Court in the Ninth Circuit say. Huddleston is the  
17 Supreme Court case, I'll give you, but it's in the briefing.

18 So the question is the records they're seeking here  
19 under the Civil Rights Act, the full statewide voter  
20 registration list, is that a document that came into the  
21 possession of California election officials? No, of course  
22 not. It's one they created. It's something they created in  
23 the first instance. They didn't receive it from voters the way  
24 they might a registration application.

25 And I understand Your Honor hasn't fully read the

1 amici briefs, but I think the Maryland brief --

2           **THE COURT:** I won't until they're all before me at  
3 one time, so I don't read them piecemeal.

4           **MR. DODGE:** One point raised in that is that the  
5 animating concern behind this document preservation and  
6 production requirement in the Civil Rights Act was that  
7 southern registrars, when a black person came in to register to  
8 vote in the '60s, they'd oftentimes just destroy it. They  
9 wouldn't preserve it and they were -- so the Act is  
10 specifically concerned with making sure that election officials  
11 preserve documents they receive from voters so that there  
12 is documentary evidence for a subsequent civil rights  
13 investigation.

14           The Department of Justice has no explanation in its  
15 briefing. They're welcome to try and explain it here today how  
16 the state registration list is --

17           **THE COURT:** Does the executive branch have to give a  
18 reason? In other words from your perspective, they have to  
19 have, for want of a better word, some noble reason behind  
20 seeking to obtain this information. With the separation of the  
21 branches, why do they have to have and why do they have to  
22 explain that right?

23           **MR. DODGE:** Because the operative constitutional  
24 provision underlying all of this is the elections clause, and  
25 the elections clause says that in the first instance, the time,

1 manner, and place of elections for Congress is determined by  
2 the states. That is the default rule. Congress and never mind  
3 the executive branch, do not get the first say on that.

4           What it does say then is that Congress may supplant  
5 state laws, specifically as to the manner of holding elections,  
6 and that's so that states don't frustrate federal elections  
7 with suppressive rules or obstruction or what-have-you. So to  
8 Your Honor's question, the issue is has Congress here chosen to  
9 supplant state prerogative to give the executive branch a tool  
10 to intrude upon the states. That's the question and, you know,  
11 as has been discussed here, they point to three purported tools  
12 from Congress: Civil Rights Act, HAVA, NVRA, but they can't  
13 really explain how any of those tools actually gives them --  
14 how the text of any of those laws authorizes them to make these  
15 demands of California or any other state. That's the essence  
16 of my argument, Your Honor.

17           **THE COURT:** Okay. Then step over just a moment and  
18 talk to your colleagues.

19           **MR. DODGE:** Sure.

20           **THE COURT:** Whether you have the same or different  
21 arguments. Take a moment.

22           **(Pause)**

23           **(Discussion regarding another case)**

24           **THE COURT:** This would be the League of Women  
25 Voters. And if you'd make your appearance, please.

1           **MS. ZELPHIN:** Thank you, Your Honor. Grace Zelphin  
2 on behalf of the League of Women Voters of California. And  
3 I'll attempt to keep it short, given the Court's calendar  
4 today.

5           **THE COURT:** We've got plenty of time, trust me.

6           **MS. ZELPHIN:** What the Department of Justice is doing  
7 here is putting the cart before the horse. It wants the  
8 sensitive personal information of 23 million Californians, but  
9 it simply does not have any legal authority by which to obtain  
10 this. And when I say that sensitive personal information, yes,  
11 it's the driver's license, it's the social security numbers,  
12 but it also includes the tranche of data, right? And these  
13 personal sensitive pieces of information in a larger context,  
14 in the whole set of 23 million Californians.

15           And as, you know, a lot of argument has already been  
16 taken here, the cases and the law cited by the Department of  
17 Justice simply do not give them any authority to obtain that  
18 information, which is housed rightly in the state of  
19 California.

20           I won't belabor the point as to preemption, but the  
21 NVRA public disclosure provision, upon which the Department of  
22 Justice originally relied heavily upon, requires disclosure of  
23 public voter rolls, but it does not require that information to  
24 include that sensitive information as prohibited by California  
25 and federal law. HAVA has no disclosure. And in its

1 opposition, the Department of Justice appears to have waived  
2 that argument, not addressing it at all in opposing the  
3 intervenor's motion to dismiss.

4 **THE COURT:** I'm sorry, you dropped your voice. State  
5 that again.

6 **MS. ZELPHIN:** Which the Department of Justice did not  
7 raise at all or argue on at all in their opposition.

8 **THE COURT:** Okay. Thank you.

9 **MS. ZELPHIN:** So that brings us to Title III of the  
10 Civil Rights Act, which also allows the Attorney General to  
11 demand records. But again, it still cannot require the  
12 sensitive data of 23 million Californians.

13 First of all, they failed to comply with the  
14 statutory regulations to request records under that statute.  
15 They have failed specifically to make a demand that contains a  
16 basis of the purpose, therefore. So they simply have not  
17 provided that. They have not said, what is the information,  
18 what is it based, what is it going to be used for? They  
19 attempt to cobble together some arguments based on their  
20 response -- the California's responses to EACS, but it just  
21 does not coincide with their request.

22 And even if they were able to put together a demand  
23 that includes a purpose and basis, that must be read in  
24 conjunction with state and federal privacy laws. And in doing  
25 that, again, there is absolutely no --



1           **THE COURT:** And let me slow you down. What's your  
2 concern about privacy? What areas are you specifically  
3 concerned about if the Government's argument is we already have  
4 access to social security numbers, the State is already willing  
5 to turn over names, addresses, voter registration, voter  
6 method, registration status, and contact information, or at  
7 least that's the representation made by your colleague. What's  
8 your concern?

9           **MS. ZELPHIN:** The League of Women Voters has used the  
10 NVRA public disclosure provision, which also provides this  
11 information, allows for public disclosure of those records,  
12 which are necessary to review to ensure that folks are not --

13           **THE COURT:** And what are those records? What are  
14 those records?

15           **MS. ZELPHIN:** That includes the state voter roll,  
16 which is what the federal government is seeking here. What it  
17 does not include in that voter roll -- right, so the voter roll  
18 is, I think, a set of data. But in that set of data, that  
19 cannot include specific information tied to each of those  
20 voters, which includes their driver's license number and their  
21 social security number, right?

22           So it's not just that the federal government doesn't  
23 have access to social security numbers anywhere, but in this  
24 tranche of data, as a voter, as someone who has registered to  
25 vote, complete information cannot be completing that data set

1 with sensitive information like driver's license. And that is  
2 exactly how it should be applied in the NVRA context, and that  
3 would also apply in the CRA context, where -- and similarly,  
4 there are instances, there have been historically, where folks  
5 are disenfranchised, and the League of Women Voters wouldn't  
6 say that that cannot be investigated, but what cannot happen is  
7 using the CRA as an unfettered discovery tool to gather  
8 tranches of information, including sensitive data, without any  
9 restriction.

10 **THE COURT:** And that's a privacy concern?

11 **MS. ZELPHIN:** Yes.

12 **THE COURT:** Okay.

13 **MS. ZELPHIN:** And to two of your other questions --  
14 or one of your other questions, the League of Women Voters is  
15 very concerned about voter suppression and the use of this  
16 data, as it could be done directly to counter the actual  
17 purpose of these statutes, which is to franchise the citizen.

18 **THE COURT:** Okay. Check with your colleagues for  
19 just a moment, if you care to. And there'll be a second round,  
20 eventually, after I hear from DOJ. You okay?

21 **MS. ZELPHIN:** Okay.

22 **THE COURT:** Okay, when we come back, you can  
23 anticipate -- the question I've got for the Government will be,  
24 while the federal government has been active in the South,  
25 especially during the Civil Rights Movement in the 1960s, what

1 are you relying upon for intervention in your request of the  
2 states for this information? And the case started with the  
3 Orange County filing, and there were either 13 or 17, I  
4 believe, subject to the county's correction of the court --

5 **MS. SHOAI:** Seventeen.

6 **THE COURT:** -- instances of what was a concern of  
7 some kind of voter manipulation or fraud.

8 **MS. SHOAI:** Your Honor, just to clarify, the request  
9 was for voter registration data related to individuals who were  
10 no longer able to vote because they didn't meet the citizenship  
11 requirements?

12 **THE COURT:** That's correct. But there were 13 or 17,  
13 I forget.

14 **MS. SHOAI:** Correct. It was 17.

15 **THE COURT:** Seventeen, thank you. But what caught  
16 the notoriety was the dog who voted twice.

17 **MS. SHOAI:** Which is not the subject of the  
18 complaint, by the way.

19 **THE COURT:** I understand. But your former colleague  
20 argued that in the court.

21 When the states set up our voting apparatus, whether  
22 it's Arizona, California, or whatever, uniquely, the states  
23 have been in charge of just how we voted a polling place.  
24 Historically, they've been in charge with the local district  
25 attorneys, at least in this state, of any kind of voter fraud,

1 and therefore, the states have had a strong interest in the  
2 past, except with those exceptional circumstances in the South,  
3 of a state's rights, if you will, not only in terms of  
4 procedure, but enforcement.

5 Eventually, during your argument, I want to hear what  
6 interest the federal government has that is unique that causes  
7 the request of this information, and if the executive branch  
8 can request this information without a purpose, because you  
9 hear the other side arguing, in a sense, that this is a fishing  
10 expedition, and behind the scenes is voter suppression, of  
11 course. You have unlimited time, but for LA Alliance and the  
12 City, how long is Mr. Szabo available today?

13 **UNIDENTIFIED SPEAKER:** Until 2:00 p.m., Your Honor.

14 **THE COURT:** Can you bear with me? You have no  
15 choice, but could you take a recess for a moment, and one of  
16 you sit in the audience so you see our time frame. We could be  
17 done in five minutes or by 2:00 p.m., okay? But we'll come  
18 back to you. We'll try to resolve this today.

19 You're from D.C. or you're from Sacramento?

20 **MR. BRUDIGAM:** I'm from Sacramento, Your Honor.

21 **THE COURT:** Okay.

22 **MR. SETRAKIAN:** I'm here in Los Angeles.

23 **MR. DODGE:** I'm from D.C., Your Honor. In theory,  
24 I'm flying to San Francisco later this afternoon for another  
25 matter.

1           **THE COURT:** No, you won't. You'll be here. Okay.  
2       Where are you from?

3           **MS. ZELPHIN:** Sacramento.

4           **THE COURT:** Sacramento.

5           **MR. NEFF:** Washington, D.C., but I'm at the Court's  
6       discretion.

7           **THE COURT:** I can hold a nice session. I can go from  
8       6:00 to 10:00, okay? That's not a threat. I'm just telling  
9       you I have unending hours, okay? So if you need it to get  
10      resolved tonight, I can reconvene in another court. This court  
11      closes at 6:00, but I can stay open until minimally 10 o'clock  
12      if you need to. So tell me -- we'll complete it today for you,  
13      okay? I promise you.

14                You have unlimited time, so when DOJ comes back,  
15      (indisc.). Don't worry about the time, okay? And if you need  
16      to make a call, I'm joking with you. They want you to call  
17      Bondi. You don't have to do that. But if you need to make a  
18      call, you're entitled to make that, all right? And then  
19      there'll be a second round. Fair enough? Okay.

20                So one of you sit out in the audience, and let's see  
21      how long this will take LA Alliance, all right?

22           **(Recessed at 9:09 a.m.; reconvened at 12:01 p.m.)**

23           **THE COURT:** If you'd come forward. If you folks come  
24      forward on the voting rights case, I'm going to make this a  
25      public case because of the nationwide interest in it. So I'm

1 going to create for you folks a public website, publish the  
2 transcripts and those will be done at court expense. They  
3 won't be a cost to either party. This has too much  
4 significance across the United States, not only California but  
5 I think nationwide. So I'll create that website for you, we'll  
6 get those transcripts up for you in a period of time and that  
7 way other districts, other courts considering this matter can  
8 see what's occurring here. Fair enough? And guess what? It's  
9 not going to cost you. Okay?

10 **MR. NEFF:** Thank you, Your Honor.

11 **THE COURT:** All right. Yeah. Thank you.

12 All right. Then, counsel, we're back on the record  
13 in the matter of the Weber case and I'm going to turn to the  
14 Department of Justice. And once again, you have as little or  
15 as much time as you want. If you need to stop at any time,  
16 consult with somebody, make a phone call, I don't find that any  
17 affront. Okay.

18 So once again, would you just identify yourself for  
19 the record and you can remain seated if you'd like to if you're  
20 more comfortable like state court or you can go to the lectern.

21 **MR. NEFF:** I do have a state court history, Your  
22 Honor, but for a change I'll go to the lectern.

23 **THE COURT:** It's entirely different than state court  
24 so go to the lectern then and just identify yourself for the  
25 record.

1           And counsel, all of you've hopefully had an early  
2 lunch. And with your permission, after DOJ argues, if we have  
3 the time, one of you have some engagement some place. Let that  
4 person, whether they're a party or an intervenor, argue first  
5 in terms of rebuttal and then if they want to stay but please,  
6 in the future, please don't tell me you've got something in the  
7 afternoon because I'm giving you unlimited time, okay? So  
8 okay.

9           So Counsel, on behalf of the Department of Justice.

10           **MR. NEFF:** Thank you, Your Honor.

11           Your Honor got straight to an issue that is  
12 overhanging this entire hearing today which is the procedural  
13 posture of it. What is truly the procedural posture? And I  
14 want to get to that because it's important here.

15           This is not just some other complaint that was filed.  
16 This was filed under the Civil Rights Act of 1960 which is a  
17 very particular unique law. That law has been interpreted when  
18 it's used as an equivalent of an OSC. There really is an OSC  
19 pending before this court.

20           The counsel opposed to this are really trying to  
21 bootstrap in a merits argument in a motion to dismiss. It's  
22 inappropriate.

23           However -- and I appreciated the Court's discussion,  
24 both of the People's motion to compel as well as questioning  
25 opposing counsel about where they stand as far as their

1 jurisdictional argument because the parties should be serious  
2 about what's going on here. The People, or the United States,  
3 while we believe that the motion to dismiss brought by various  
4 counsel is inappropriately bootstrapping in merits arguments,  
5 we also do believe that this deserves a resolution and that  
6 arguing it on the merits on the papers, regardless of what we  
7 call it, is an important matter for this country but we should  
8 be honest about what we're doing here.

9           The United States is asking for this court to issue,  
10 in accordance with the Civil Rights Act of 1960 and caselaw  
11 interpreting that, a prompt order that California produce  
12 records that we are clearly entitled to. That's what this  
13 motion really -- that's what this litigation really boils down  
14 to and we shouldn't lose sight of that.

15           The various issues brought up by Defense either fall  
16 into trying to avoid the text of that statute of the Civil  
17 Rights Act of 1960 or pure speculation or both. We can take  
18 each one in turn -- I'm happy to address the ones the Court  
19 would particularly like me to address more than we have in the  
20 briefing -- but if -- we want to start with the Civil Rights  
21 Act. The language just couldn't be clearer.

22           The records that the Civil Rights Act refers to under  
23 52 USC 20701 through 6 is that every officer of election shall  
24 retain and preserve all records and papers related to any act  
25 requisite to voting. The scope is quite clear.



1           Then we go down from Section 301 to Section 303. It  
2 becomes very clear. Any 301 record shall, upon attorney  
3 general demand, be made available to us. We provide a  
4 statement of basis and purpose.

5           And Your Honor, it's the United States' position that  
6 that is the only thing that could even conceivably be litigated  
7 in a motion to dismiss if we're really calling it that. The  
8 United States believes that's not really what counsel is trying  
9 to do but let's take it -- let's stay in the motion to dismiss  
10 basket for right now.

11           The would have to challenge the complaint on its  
12 face. A Civil Rights Act (inaudible) complaint challenged on  
13 its face could really, I guess, only be argued that, (a), it  
14 wasn't the attorney general bringing the case; (b), it's not  
15 election records or, (c), that there's no statement of basis or  
16 purpose. And they spent a lot of time talking about basis or  
17 purpose.

18           But basis and purpose under this statute is not  
19 something that is reviewable and the courts have found that and  
20 it's clear from the text of the statute. Your Honor, it's  
21 equivalent of a requirement that the Court enter its meaning on  
22 the minutes. It can then be reviewed as to whether the Court  
23 put in a reason on the minutes but the reason itself is not  
24 reviewable for a -- for whatever action the Court took.

25           We only need to state a purpose. We have done that.

1 We actually went far beyond that. The counsel has to ignore  
2 many, many concerns with California that we cited in our  
3 complaint as to why we want these records. However, we are not  
4 required to do so. There is no burden. There is just simply a  
5 requirement that we state our purpose.

6 Now, our purpose is free and fair elections. Our  
7 purpose is to seek to make sure that voter rolls are clean and  
8 that every vote is represented and our purpose was clearly  
9 stated. And to understand our purpose the Court is going to  
10 need to read the three election statutes at play here in their  
11 entirety and in totality.

12 The three statutes, the Civil Rights Act of 1960, the  
13 NVRA and HAVA all work together. It is a statutory framework  
14 for having free and fair elections in the country.

15 Counsel for the intervenors and for the State of  
16 California would like you to look at each of them individually.  
17 Piecemeal it out and not see them in totality, much the way you  
18 would instruct a jury that they should read all the  
19 instructions in totality and not get overfocused on one. In  
20 fact, they all are clear on their face what they say but in the  
21 big picture what it provides is a framework of how voters are  
22 protected under the NVRA for their registrations and then under  
23 HAVA what minimum requirements the state has as to what they  
24 have to do to maintain those voter rolls to be accurate. And  
25 then the Civil Rights Act provides the mode by which we can get

1 those records to make sure we are doing our duty as the federal  
2 government to make sure that these federal elections remain  
3 free and fair.

4 And counsel simply has to rely on both  
5 misrepresentations of the law and our position, stating our --  
6 for example, that our whole case relies on Lynd. No. This  
7 action relies on the Civil Rights Act of 1960 and its very  
8 clear text, which is the one thing they don't want to talk  
9 about because it's very clear.

10 Privacy concerns are first not a proper concern for  
11 this motion to dismiss but even if they were, they're  
12 unfounded. Privacy -- the United States is going to comply  
13 with all federal laws. That includes the Federal Privacy Act.  
14 The DOJ Civil Rights Division itself has a stated policy  
15 available on a website as to how we will comply with the  
16 Federal Privacy Act and have before.

17 **THE COURT:** Explain that to me.

18 **MR. NEFF:** Yes, sure.

19 So we publish a series of regulations. They're  
20 called the SORNs that show how we tend to the data and make  
21 sure everything is properly protected under, not just Federal  
22 Privacy Act, but other obvious concerns when you're dealing  
23 with large databases.

24 **THE COURT:** Is that part of my record?

25 **MR. NEFF:** Yes.

1           **THE COURT:** And what would I look at that? What  
2 exhibit?

3           **MR. NEFF:** At our -- in our response to our motion to  
4 dismiss and the supporting data for that, the attachments for  
5 that.

6           However, I would state, that to any extent,  
7 especially the state privacy-type acts would contradict the  
8 Civil Rights Act, that the Civil Rights Act would rule.

9           The United States does this on a regular basis. We  
10 have multiple states that don't even see this as a dispute,  
11 that simply just -- in fact, on their own do this on a regular  
12 basis, share the information with the federal government so  
13 that we can run crosschecks to make sure that people are  
14 properly on voter rolls.

15           **THE COURT:** What states are those that have shared  
16 either their DMV registrations or the social security numbers  
17 of voters?

18           **MR. NEFF:** Offhand, right now, off of memory I  
19 believe the states are Kansas, Indiana -- there are four.

20           **THE COURT:** That's okay.

21           **MR. NEFF:** I'll also state the biggest one is -- so  
22 we also have an MOU that we produce at the state request. Some  
23 states request it, some don't. Some say, yes, you're entitled  
24 to this data, here you go. And we have a whole data-sharing  
25 setup ready. It's essentially the Box program, plus some

1 federal proprietary encryption technology to make sure that  
2 this is as secure as it needs to be. And we -- so Texas just  
3 told us today they're going to enter in the MOU and share us  
4 the data in the next few days. We believe many more states are  
5 going to follow just in the next few days but so we have four  
6 states that have already sent us the data. No questions asked.  
7 Probably another dozen or so states in the next week or so that  
8 are just going to sign the MOU and share with us. This really  
9 shouldn't be controversial. It's clearly stated as part of our  
10 duty under HAVA and the Civil Rights Act is clear that this is  
11 the mechanism in which we do it.

12 **THE COURT:** Do you think that those states with  
13 attorney generals complying with your request would be  
14 interested in filing an amicus just as other states who may be  
15 opposed to your request are filing amicus? In other words,  
16 what I want to do is make certain if we have states coming late  
17 to the table but in compliance that we're looking at the  
18 reasoning by all of the atty generals in the respective states.

19 And what I was worried about before, frankly, is if I  
20 had red and blue states lining up when I started to look at the  
21 amicus, I was particularly interested in the states bringing  
22 that to me.

23 Now, I don't know how you define what I call -- well  
24 those states that have voted for different -- in different  
25 elections in different ways. Arizona, New Mexico, Michigan,

1 Minnesota, seem to be what I call those states that  
2 traditionally doesn't go Democrat or Republican.

3 And then I looked down at the state secretaries for  
4 the states and if you notice, there are three states out of  
5 there on the amicus. Connecticut is in for the first time.  
6 They are not part of the amicus for the 16 states that we  
7 initially named but these are the state secretaries for the  
8 states of and Connecticut is an addition, Nebraska is an  
9 addition, Pennsylvania -- which has certainly been a swing  
10 state.

11 So I was a little worried and that's why I sought  
12 your wisdom about whether you all were going to stipulate to me  
13 accepting this because I didn't know the weight if I was just  
14 dealing with a party disagreement. And I'm not saying that  
15 these swing states necessarily carry greater or less weight but  
16 I want to be alert that if this is a partisan effort. And  
17 certainly the country is divided so ...

18 **MR. NEFF:** I would be --

19 **THE COURT:** ... so I've got a stipulation that I'm  
20 accepting all of these amicus briefs. I just want to pay you  
21 the courtesy if other states are coming onboard, like Texas, et  
22 cetera, that we give them a chance for those attorney generals  
23 to get this to us but by the same token, I'm going to be  
24 writing over the next couple weeks.

25 Is two weeks enough time for you?

1           **MR. NEFF:** We can inform the states that --

2           **THE COURT:** Okay.

3           **MR. NEFF:** -- a judge has invited them to file amicus  
4 but --

5           **THE COURT:** Will you do so? In other words, for both  
6 parties. Get it out to all the states that you can and I'll  
7 docket this, et cetera. And there may even be disagreements  
8 between different courts examining this matter and different  
9 circuits.

10          **MR. NEFF:** I think the bigger picture is that the  
11 states that are complying are likely not going to see this as  
12 something that they need to delve issue.

13          **THE COURT:** But I just want to pay you the courtesy  
14 in terms of due process. Okay.

15          **MR. NEFF:** Yes. And I would say that's because this  
16 really shouldn't be a political issue. One side can make it a  
17 political issue if they want to just simply in a single  
18 position declare it that but it doesn't change the fact that  
19 the Civil Rights Act of 1960, the text is quite clear and that  
20 no one is in favor of faulty voter rolls.

21          **THE COURT:** We've also had for both parties we've had  
22 a series of state rights issues in the federal court for years.  
23 And different states have taken a perspective on what the  
24 states' rights issues are. Some are much more state-right  
25 oriented, others aren't. That's why I was interested in the

1 division. But since you've all stipulated, I'm accepting this  
2 amicus at the present time. I just want to make sure you've  
3 got the courtesy on both sides of any other parties coming  
4 onboard so if we need an extra week we can take it, okay?

5 Okay. Won't you continue. I'm sorry.

6 **MR. NEFF:** Thank you, Your Honor.

7 The -- would emphasize that this data is necessary  
8 for the United States to conduct its HAVA operation -- its HAVA  
9 enforcement compliance and that is why that data is  
10 specifically cited in the statute. It simply couldn't be  
11 clearer that it needs to be the last four digits of a social  
12 security number or the driver's license; otherwise, we are not  
13 able to make a verified finding as to the various voter roll  
14 registrations that might have problems. In fact, we sometimes  
15 even have to follow up after that data is run. It's rare but  
16 there's a reason that was put in the statute because it's  
17 something like we can verify it from what I've talked to our  
18 database analysts something like 99.999 percent of the time.  
19 That's enough for us to be able to know if it's an actual  
20 person that lives in that location and is who the voter  
21 registration role says it is.

22 **(Pause)**

23 Again, with the caveat that we do not need to ever --  
24 that we do not need to get to this. This is essentially an OSC  
25 where we only need to state our purpose and then we are



1 entitled to the records. Also under a prompt order, according  
2 to caselaw, a prompt order that this is essentially an OSC  
3 hearing.

4 The facts of California itself are particularly  
5 worrisome. Maybe the most worrisome state in the union.

6 The state is required to provide various data to the  
7 Election Assistance Commission which is a nonpartisan  
8 commission. The state -- the agency created by HAVA in order  
9 to try and keep this as neutral as possible and California  
10 doesn't provide the complete data. Their data doesn't have Los  
11 Angeles County in it. It's one-fourth the state's population.  
12 That on its own should cause concern countrywide that they've  
13 not submitted that data. It would be irresponsible of the  
14 United States to not come in at this point and say we need to  
15 see your data to ensure fair and free elections.

16 All of the harms that opposing counsel have pointed  
17 to are based on speculation, logical leaps and there is no  
18 concrete evidence they can point to.

19 That being said, with the overarching point that this  
20 is before the Court right now as essentially an order for an  
21 order to show cause, dressed up as a complaint, and that you  
22 have a dismissal that is essentially fighting that order to  
23 show cause, dressed up as a motion to dismiss, I believe the  
24 Court should act within what would be its lawful authority to  
25 issue a prompt order that California needs to turn those

1 records over to us that we are entitled to.

2           **THE COURT:** How do you deal with the state provisions  
3 concerning the DMV? In other words, the state is arguing to  
4 the Court that that has a -- for want of a better word -- a  
5 special category that is not subject to the Voting Rights Act  
6 of 1960 or HAVA, and that they have a privacy interest in a  
7 sense as well. What does the Court do with that?

8           **MR. NEFF:** Any state privacy interest would be  
9 trumped by federal law. It would be trumped by both the  
10 Federal Privacy Act, which we're complying with. It would be  
11 trumped by HAVA, which is a -- I repeat -- a federal minimum  
12 standards law for state compliance that specifically mentions  
13 driver's license number or last four digits of social.

14           The state is required to produce and provide this  
15 data under the statute. If they have some issue with the  
16 driver's license; hypothetically, if a state just said we have  
17 some real concerns about our driver's license, they comply with  
18 the statute if they provide the last four of the social  
19 security number.

20           Does the Court have other questions or concerns?

21           **THE COURT:** Just one moment. Let me look at a note  
22 that I made.

23           **(Pause)**

24           The state represents that they have offered -- and I  
25 think both in the Orange County case with the registrar -- and

1 it's represented today in the statewide case -- the names and  
2 addresses. Has that offer in fact been made?

3 **MR. NEFF:** Has that offer --

4 **THE COURT:** Yes. To you.

5 **MR. NEFF:** Oh --

6 **THE COURT:** Not to you but to the government, the  
7 DOJ.

8 **MR. NEFF:** California has taken the unique in the  
9 nation position that they are -- that they -- we are permitted  
10 to come and inspect it in their offices, that data; which, (a),  
11 is not sufficient; (b), we argue is not an appropriate way of  
12 providing it in today's day and age where it's actually more  
13 secure to share this data electronically through our shared  
14 file-sharing --

15 **THE COURT:** Kind of slow-walking you. Kind of slow  
16 walking.

17 **MR. NEFF:** I think --

18 **THE COURT:** For want of a better term.

19 **MR. NEFF:** That is the United States' interpretation  
20 of it but --

21 **THE COURT:** How about the voter participation and the  
22 registration methods? Have those been offered to you? In  
23 other words, that's been argued to me but behind the scenes I  
24 don't have that record right now. Has that been offered to  
25 you?

1           **MR. NEFF:** It is in the back-and-forth is in the  
2 letters attached as exhibits in the filings, Your Honor;  
3 however, the United States' position is that the responses have  
4 been woefully inadequate.

5           **THE COURT:** Okay. So we've never gotten down to  
6 really how that information would be exchanged. It's flowing  
7 back and forth in terms of representations but as a practical  
8 matter there's a big difference between a representation and  
9 conveying the information to you.

10           **MR. NEFF:** Well actually in our letters we did lay  
11 out to opposing counsel our file-sharing program, how it works,  
12 that it is secure and we invite them to -- assuming they have a  
13 change of heart, to use it.

14           **THE COURT:** About the registration status and the  
15 contact information, has that been offered to you?

16           **MR. NEFF:** That, I'm not sure about. I'm not sure  
17 what the scope of their offer is.

18           **THE COURT:** Okay.

19           **MR. NEFF:** I just know that it does not include the -  
20 - for sure, does not include the driver's license number or the  
21 last four of the social as required by the HAVA statute. And  
22 in other states as well, that has always been the crux of the  
23 dispute.

24           **THE COURT:** In their opening arguments they'd argued  
25 that in the Benson case out of the Sixth Circuit, Bellows out

1 of the First and Long case out of the Fourth, that there's an  
2 inconsistent and uniformed position taken by the government.  
3 How do you respond to that?

4 **MR. NEFF:** That the -- there is no inconsistency in  
5 position.

6 **THE COURT:** Explain that to me.

7 **MR. NEFF:** What there is is difference in posture of  
8 those cases. It is a true statement to say that the United  
9 States, as an agency, has yet to go to states to enforce the  
10 minimum standards of the HAVA statute. One can argue whether  
11 that was a wise or unwise decision but here we are 23 years  
12 later and the federal government has yet to do it. It is  
13 still, for certain, good law. The United States believes it is  
14 a law that should be enforced and complied with. Therefore,  
15 because of that history where this hasn't been done before, all  
16 of those cases relate to private parties trying to in some way  
17 get in.

18 The DOJ's position is that private parties do not  
19 have a right of action under HAVA and therefore they should not  
20 be allowed to go to states and say, I would like your driver's  
21 license or social security number. However, there are states  
22 around the country, including ones that are fighting us, that  
23 interestingly, have been willing to turn over that data to a  
24 private organization without the same protections as the United  
25 States. That's been cited in our briefing, the ERIC

1 Organization.

2           So what I would say is all those cases are  
3 inapplicable. It often requires selectively quoting them to  
4 make it sound like in some way the United States government is  
5 not entitled to it. No, the United States government is  
6 uniquely mentioned in both the CRA and HAVA. And therefore  
7 just because this is the first time the United States is coming  
8 in and doing it, doesn't mean that it's not clearly what the  
9 statute states.

10           **THE COURT:** For both parties, you mentioned that  
11 California is one of the main outliers, for want of a better  
12 word, from the DOJ and the executive branch's position. Is it  
13 the position of the executive branch that there need not be any  
14 stated purpose that there's an absolute right to obtain this  
15 information per statute?

16           **MR. NEFF:** Statute requires we state a purpose. A  
17 purpose.

18           **THE COURT:** And what is the purpose here?

19           **MR. NEFF:** The purpose is for, as stated in our  
20 letters to them, for voter roll maintenance enforcement and  
21 compliance.

22           **THE COURT:** And we stated in Orange County with a  
23 limited county case involving Page. There, there were -- and I  
24 keep 13 or 17 but 17, I believe, allegations. The most  
25 notorious became the dog that voted twice.

1           Is that, out of 1.2 million voters, what's the basis,  
2           for instance, of that kind of request because of course we're  
3           always going to have error, including people who legitimately  
4           die. So what's the threshold that this stated purpose has?  
5           How should I interpret that?

6           **MR. NEFF:** Under the CRA there is no threshold.

7           **THE COURT:** Okay. Now, do you need to -- and thank  
8           you. Do you need to make any calls? You're all by yourself,  
9           you're doing -- there's nobody to consult with but do you need  
10          to make any calls? Are you satisfied with your argument?

11          **MR. NEFF:** I appreciate the offer, Your Honor, but  
12          no, we're satisfied.

13          **THE COURT:** Okay. There'll be a second round.

14          **MR. NEFF:** Yes.

15          **THE COURT:** So counsel, however you'd like to proceed  
16          then. One of you has another obligation, I don't care which  
17          order. You can take the intervenors first or the parties.

18          **(Pause)**

19          **MR. BRUDIGAM:** So there was a lot going on there,  
20          Your Honor, and so I'm going to try to be thorough in making  
21          sure I cover all of those points.

22                 So I think the first thing I want to talk about is  
23          this notion that the complaint is just an order to show cause.  
24          And essentially what the federal government wants to do is take  
25          the Court and sideline them in this dispute and say that the

1 Court has no room for any judicial review here. And that's  
2 just not supported by the text of the statute.

3 There's nothing in the Civil Rights Act that creates  
4 a special statutory procedure. The words "order to show cause"  
5 are not in the statute at all and I'll just read you the text  
6 right here.

7 It says that:

8 "The appropriate district court shall have  
9 jurisdiction by appropriate process to compel the  
10 production of such record or paper."

11 That's what it says, "By appropriate process." And  
12 so that's up to the Court to decide what the appropriate  
13 process is here.

14 And I'd also just point Your Honor to the fact that  
15 the Federal Rules of Civil Procedure contemplate what rules  
16 apply when you have a government investigative demand. I mean  
17 Federal Rule of Civil Procedure 81(a)(5) specifically says:

18 "The Federal Rules of Civil Procedure apply to  
19 proceedings governing demands for records by the U.S.  
20 government."

21 And so this idea that some other procedure applies,  
22 it's not supported by the text, it's not supported by the  
23 Federal Rules of Civil Procedure. The only thing that supports  
24 this purported procedure are these early 1960s' cases and like  
25 we've said, the federal government, they pin their hopes on



1 this one Kennedy v. Lynd, Fifth Circuit case from 1962. That's  
2 the one they're referring to which says that the Court  
3 shouldn't have any role here.

4 But that case is obviously nonbinding on Your Honor  
5 and it's really been overruled. I would point you to the  
6 United States v. Powell case.

7 **THE COURT:** I'm sorry, what -- just a moment.

8 **MR. BRUDIGAM:** Sure.

9 **THE COURT:** All right. Please continue. I've got my  
10 note.

11 **MR. BRUDIGAM:** So the Supreme Court in United States  
12 v. Powell found that the Federal Rules of Civil Procedure, they  
13 apply to a proceeding like this. And in that case it involved  
14 an IRS document request statute which used the very same  
15 language that we have here which is that the Court shall, by  
16 appropriate process, compel relief under that statute. So even  
17 if Your Honor found Kennedy v. Lynd persuasive, it's obviously  
18 unbinding, that's been overruled. So just to be clear, the  
19 Federal Rules of Civil Procedure govern this action.

20 **THE COURT:** Well, you've cited on both parties'  
21 parts, different enactments by council, statutory provisions.  
22 I think we can all agree that we want qualified voters to vote  
23 without any chilling effect.

24 **MR. BRUDIGAM:** I agree.

25 **THE COURT:** Is there -- well I think we can all

1 stipulate to that.

2 **MR. BRUDIGAM:** We can.

3 **THE COURT:** And I'll use the word "qualified voters".

4 Is there a chilling effect in the request by the  
5 government and if so, what is that chilling effect? How would  
6 there allegedly be persons who may believe that the government  
7 has no business in the sense of getting more information.

8 **MR. BRUDIGAM:** Sure I mean I think --

9 **THE COURT:** And behind this the concern of this court  
10 eventually, besides the statutory following the law, is going  
11 to be the impact of what we write and do. And this case will  
12 probably be the first case that comes out that other circuits  
13 look at. So with that noble goal in mind of having voter  
14 participation, is there a chilling effect or not?

15 **MR. BRUDIGAM:** I think there's absolutely a chilling  
16 effect here because --

17 **THE COURT:** And I need you to define that for me.

18 **MR. BRUDIGAM:** Sure.

19 **THE COURT:** And it may not be relevant to the opinion  
20 but behind all of this, we need voters who are qualified to be  
21 able to vote.

22 **MR. BRUDIGAM:** Right.

23 **THE COURT:** Now the ease of that could be differences  
24 between different administrations and whether you have  
25 different methodologies. And I know there's a huge controversy

1 about mail-in ballots and voter registration and drive-in, et  
2 cetera, but when we're finally done with this, we want  
3 qualified voters to vote. And if there's a chilling effect, or  
4 this privacy right that we've somewhat skipped over, I want to  
5 hear how you define that.

6 **MR. BRUDIGAM:** Sure. Your Honor, I think this action  
7 should make the stomach of every American turn, knowing that  
8 this executive branch is going in, state by state, collecting  
9 and vacuuming up everybody's voter registration information.  
10 It is on a scale that we have never seen before. Okay.

11 And what this is going to do --

12 **THE COURT:** It is their disparity argument. In other  
13 words, remember when I started this conversation early on, and  
14 I discussed the amicus briefs, I was particularly interested if  
15 I was getting just red and blue states. That's why I was  
16 looking to see if there were these swing states.

17 **MR. BRUDIGAM:** I mean I point Your Honor to --

18 **THE COURT:** Or is this a argument also that a  
19 particular group of states are being examined versus other  
20 states? Because here, the government has represented while  
21 California from their perception might be an outlier, they've  
22 also made inquiries of the let's say more, from their  
23 standpoint, compliant states like Kansas and -- I forget which  
24 one -- just a moment -- Indiana, and that Texas was coming  
25 onboard.

1           **MR. BRUDIGAM:** Yeah. Well, what I would say is I  
2 mean those aren't states that are complying, they're  
3 voluntarily giving that information to the federal government.

4           **THE COURT:** But regardless, the government has made  
5 an inquiry so if there's an argument that the government is  
6 reaching out and being selective, if the state is voluntarily  
7 complying that doesn't seem to me to be singling out  
8 progressive states. And if you think that, then I need to hear  
9 that and hear your reasoning behind that.

10           **MR. BRUDIGAM:** I'm not saying they're singling out  
11 states.

12           **THE COURT:** Okay. Then we can pass that.

13           **MR. BRUDIGAM:** They're going after every state and  
14 California is by no means --

15           **THE COURT:** So I'm not going to have a disparity  
16 argument.

17           **MR. BRUDIGAM:** Right, right. I just mean in terms of  
18 the position the secretary has taken, I mean the reason they  
19 had to sue 14 different states is because nobody wants to turn  
20 this data over. The representations that Counsel just gave  
21 today, that's the first that I've heard of any state turning  
22 over that information. So we are by no means an outlier in  
23 taking this position.

24           **THE COURT:** Wait just a moment. For the government  
25 or DOJ, how do we validate Kansas and Indiana? What validation

1 do I have about that?

2 **MR. NEFF:** I was actually looking that up right now,  
3 Your Honor, because --

4 **THE COURT:** Well go ahead and look it up. You've got  
5 lots of time.

6 **MR. NEFF:** And I --

7 **THE COURT:** By the way, I'm not holding you to it. I  
8 know it's in good faith but I'd like to hear what states that  
9 we have validation for turning this document over. And there  
10 may be numerous states.

11 **MR. NEFF:** It's a good-faith representation here. I  
12 am kind of a point --

13 **THE COURT:** Okay. Well now take away the good faith.  
14 I accept that. Okay, I'm asking for proof now.

15 **MR. NEFF:** Okay. Wyoming, Kansas, Indiana and  
16 Arkansas all complied voluntarily.

17 **THE COURT:** Okay. Just a moment.

18 **MR. NEFF:** Texas --

19 **THE COURT:** Kansas, Indiana, Wyoming and Arkansas ...

20 **MR. NEFF:** ... have already complied ...

21 **THE COURT:** ... voluntarily.

22 **MR. NEFF:** ... voluntarily.

23 **THE COURT:** Okay. Texas?

24 **MR. NEFF:** Texas, Virginia, Utah, Tennessee, South  
25 Dakota --

1           **THE COURT:** Just a moment.

2           **MR. NEFF:** Oh it's gonna go long, yeah. South  
3 Carolina, Nebraska, Montana, Mississippi, Missouri and Alabama,  
4 all fall into the list of they have expressed with us a  
5 willingness to comply based on the represented MOU that we have  
6 sent them. And so we expect full --

7           **THE COURT:** Now apparently Nebraska can't make up its  
8 mind because of the proposed amici briefed to the Court, they  
9 have the former state secretaries of state for Colorado,  
10 Connecticut, Minnesota and guess what? Nebraska.

11           **MR. NEFF:** Well those are former. And furthermore,  
12 just because some states are representing certain things in  
13 court, there are still discussions going on now that this MOU  
14 we have is fully blessed. There are the -- I don't think it's  
15 safe at this point to go beyond those states but --

16           **THE COURT:** Then that's fine.

17           **MR. NEFF:** -- that's a fair representation of the  
18 state of discussions as of today.

19           **THE COURT:** And Counsel, back to you.

20           **MR. BRUDIGAM:** Sure. And yeah, so all I heard there  
21 was we've heard a willingness. It doesn't sound like those  
22 states have actually turned over any data, just to be clear.

23           So I want to talk a little bit about --

24           **THE COURT:** No, I think he said that four states have  
25 actually. Kansas --

1           **MR. BRUDIGAM:** Four states have actually turned over  
2 but the broader list --

3           **THE COURT:** -- Indiana, Wyoming and Arkansas.

4           **MR. BRUDIGAM:** Right.

5           **THE COURT:** The others were a purported willingness.

6           **MR. BRUDIGAM:** Right.

7           So Your Honor, the federal government is really  
8 leaning hard into the text of these statutes and they say that  
9 we don't want to talk about the text but that's just absolutely  
10 not true. And I want to just start with the Civil Rights Act  
11 of 1960.

12           There is a very clear statutory limitation in that  
13 provision and it's in Section 20703. And it says that the  
14 attorney general's demand shall contain a statement of the  
15 basis and the purpose therefore. DOJ has not satisfied this  
16 requirement and so their demand is invalid plainly under the  
17 statutory text.

18           **THE COURT:** So the plain representation by the  
19 government is too broad; and that is, they want to stop voter  
20 fraud.

21           **MR. BRUDIGAM:** Well, so they've mentioned a couple of  
22 things. It keeps changing so I want to unpack this a little  
23 bit.

24           So they said that the purpose is free and fair  
25 elections, clean voter rolls. Then he said up here that it's

1 for enforcing HAVA. So these are multiple different bases.  
2 And also it's different than the -- or than the purpose that  
3 was originally articulated in the letters to the secretary.

4 The original request said that it was -- they were  
5 seeking it for NVRA voter list -- list maintenance compliance.  
6 So the reason and rationale keeps shifting and changing. And  
7 that's a problem, not just because it's suspicious, it's a  
8 problem because, again, the text says, "The demand shall  
9 contain a statement of the basis and the purpose therefore.  
10 The text use of the article." 'The,' twice, in front of the  
11 basis and the purpose indicates that there is only one basis  
12 and one purpose.

13 And the federal government has explicitly rejected  
14 this plain text reading. They said it up here that they just  
15 need to give you any old basis and then the demand is good.

16 **THE COURT:** That's my question also to both of you;  
17 and that is, does the executive branch need to state a purpose?  
18 Your argument is that they do.

19 **MR. BRUDIGAM:** They do.

20 **THE COURT:** Counsel for DOJ puts that in broad terms.

21 **MR. BRUDIGAM:** Right. Well but again, it's not just  
22 a purpose, it's -- or not just the purpose, it's also the  
23 basis.

24 **THE COURT:** Okay.

25 **MR. BRUDIGAM:** And they have not alleged any basis



1 anywhere in their action.

2 Now, I also want to talk about -- and just -- you  
3 know this -- I'm sorry. I want to talk a little bit more about  
4 HAVA, which is the law that apparently now that's the main  
5 method of enforcement we're now learning today, that that's  
6 what they want to enforce and they specifically reference the  
7 requirement under HAVA that states collect social security  
8 numbers and driver's license numbers. Well let's look to the  
9 text of HAVA. What does it say?

10 "The state shall determine whether the information  
11 provided by an individual is sufficient to meet the  
12 requirements of this subparagraph in accordance with  
13 state law."

14 And that is -- when it says "this subparagraph," it's  
15 referring directly to the requirement that states collect that  
16 information when processing voter registration applications.  
17 So there is nothing for the federal government to enforce here.  
18 This is solely the state's domain.

19 And as I said in my original motion, another  
20 provision of HAVA explicitly delegates discretion of  
21 implementation of HAVA to the states. So again, we're not  
22 afraid of the text in this case, we think it strongly supports  
23 our position. And so I also want to talk about what this data  
24 could be used for.

25 So we've heard a lot of different reasons. I just

1 explained why it's not relevant for HAVA. I want to also talk  
2 about why it's not relevant for List Maintenance under the  
3 NVRA.

4           So the legal standard under the NVRA requires states  
5 to conduct a general program that makes a reasonable effort.  
6 So the Sixth Circuit held this year in that Benson case that  
7 this just means a serious attempt, a rational, sensible  
8 approach. It need not be perfect or optimal. And so under  
9 this standard, getting line-by-line voter information of their  
10 social security numbers and driver's license numbers, that's  
11 entirely unrelated to whether a general program exists or  
12 whether the state is making a reasonable effort. And so,  
13 again, at every turn, the supposed reason why they need this  
14 information, it just doesn't add up.

15           And then finally, I want to talk about they claimed,  
16 as they did in their brief, that California has, quote, "the  
17 most worrisome voter registration data in the nation." That's  
18 just absolutely wrong, okay? That's an assertion in a brief  
19 without any support.

20           And they also incorrectly say that in submitting data  
21 to the Election Administration Commission in response to the  
22 EACs survey, this is an election administration survey, they  
23 said the LA County didn't submit any data. That's not true.  
24 That's simply not true. You can go to the survey and look at  
25 the data that LA submitted and you can look at our explanation

1 to DOJ in our letters in advance (inaudible) litigation  
2 explaining the questions they had about that survey. So to the  
3 extent that they want to rely on EACs as some after-the-fact  
4 rationalization for this demand, it just doesn't make sense.  
5 It doesn't add up.

6 So those are the main --

7 **THE COURT:** Were there inconsistent or consistent  
8 offers if you're aware of the Page case, as well as this case.  
9 In other words, when this started in Orange County, originally  
10 counsel was here, there's a representation about the registrar  
11 there making the same or similar representations about what  
12 they were willing to share with DOJ but I've never compared the  
13 two. And I don't know what the state's position is because  
14 DOJ's argument might be, we're getting inconsistent data. In  
15 other words, even when we're sharing, with the different  
16 entities promising that they'll share some amount of this data,  
17 the different counties are supplying this in different ways.

18 **MR. BRUDIGAM:** Sure. So I won't speak too much about  
19 that case but I would say that case is different and there  
20 isn't a problem of inconsistent data sharing because in the  
21 state case, they're saying, give us the whole list. We want  
22 every voter.

23 In Orange County, they said, we want a list of just  
24 the individuals that have been removed from your list because  
25 of non-citizenship, people who renounced or for whatever

1 reason.

2           **THE COURT:** So this is much broader from your  
3 perspective in terms of protection, privacy, HAVA.

4           **MR. BRUDIGAM:** Yeah. It's not an issue of can they  
5 be reconciled.

6           So I do want to just back up again and just zoom out  
7 on the big picture here in this case.

8           You know, as we talked about -- my colleague talked  
9 about, in his motion, that the states really have the primary  
10 role in administering elections and the voter registration  
11 process. The Constitution makes that quite clear in the  
12 elections clause. And it makes sense to prioritize the state  
13 in this process because they're the ones that are closer to the  
14 voters, more accountable to the voters. And so this is an  
15 arrangement that it depends on the principle of subsidiarity  
16 where a decision should be made at the local level. And here,  
17 we don't -- there's no place for the federal government to come  
18 in and start demanding these records under that constitutional  
19 framework.

20           And not only are the states the default entity  
21 running elections but it's only Congress that can make or alter  
22 those rules. Here, we have the executive branch in court  
23 trying to get this information. The Constitution says nothing  
24 about the executive branch having any role in federal  
25 elections.

1           And I would just say that this is not a unique  
2 position by this administration. The president has been  
3 meddling in state election law since he came into office. And  
4 I would point Your Honor to a case in the District of  
5 Massachusetts, California v. Trump, where the executive was  
6 doing something sort of similar where they were going in under  
7 the guise of federal law and trying to change the way states  
8 administer and conduct elections and that was pursuant to an  
9 executive order the president issued. And so here, we're  
10 having another situation where the federal government is coming  
11 in under the guise of inapplicable federal laws and trying to  
12 interfere with the state's role in elections. And so I'd just  
13 say against that backdrop, it's important to keep that in mind;  
14 but even if, you know, considering all that, if you'd just go  
15 back to the text of these statutes, the federal government is  
16 not entitled to this information under those laws.

17           And so at this point I want to turn it over to my  
18 colleague, Will Setrakian, to just provide some rebuttal on the  
19 federal privacy laws issue.

20           **THE COURT:** Thank you. And once again, would you  
21 state your name because we're on CourtSmart.

22           **MR. SETRAKIAN:** Good afternoon, Your Honor. Will  
23 Setrakian for defendants, The State of California and  
24 California Secretary of State Shirley Weber. Just four quick  
25 points on the federal privacy statute.

1 First, I want the Court to recognize between the  
2 briefing and the argument, we have given the Court law on these  
3 three statutes. Statutory law, regulatory law and decisional  
4 law. And my friends on the other side have not.

5 Now, turning to my friend on the other side's  
6 reference to DOJ's Civil Rights Privacy Policy -- this is cited  
7 in their opposition to the motion to dismiss -- ECF 63 on Page  
8 23 and Footnote 11. That privacy policy clearly does not apply  
9 here. The policy concerns some sort of form. It says to the  
10 reader, quote:

11 "The information you provide through this form will  
12 be used in some way or another."

13 And among other things, it says:

14 "All the information you give via this form is  
15 voluntary."

16 Now that, of course, is miles from this case where  
17 individuals are not providing data via some form to the  
18 government and they are not doing so voluntarily.

19 Third, my friend on the other side said the Civil  
20 Rights Act prevails over the Privacy Act. Now they, of course,  
21 offer no citation, no opinion for that proposition. And it's  
22 true that the question has not been litigated as between the  
23 Civil Rights Act and the Privacy Act but in the NVRA context,  
24 which also contains a disclosure provision, every court to read  
25 the two laws together, the NVRA and the Privacy Act. Every one

1 of them.

2 **THE COURT:** Let me stop both of you and just ask a  
3 naïve question.

4 Your argument is that the states not only set up the  
5 process and procedure for voting but they also have the  
6 enforcement applications.

7 (To Clerk): Oh, you want to check CourtSmart and  
8 just make sure it's operating? Still going? Let's make sure,  
9 Counsel, because we sent the staff to lunch, okay?

10 **MR. SETRAKIAN:** Yes.

11 **THE COURT:** And if it's not, guess what? We get to  
12 argue again on this record, okay? (laughs)

13 **MR. SETRAKIAN:** This would be everything since we  
14 began at noon.

15 **THE COURT:** Yeah, well it's like the Rocky horror  
16 picture show.

17 **MR. SETRAKIAN:** That's okay, Your Honor.

18 **THE COURT:** Or Ground Hog day.

19 Is it operating? Counsel --

20 **MR. SETRAKIAN:** Thumbs up.

21 **THE COURT:** -- magic electronics, it's still  
22 operating.

23 **MR. SETRAKIAN:** Excellent.

24 **THE COURT:** So let me come back to the question.

25 It sounds to me like this court's going to eventually

1 be in the position of deciding, at least in the privacy area, a  
2 unique issue of first precedence in the country and that is  
3 trying to decide what those states' rights are in terms of your  
4 unique position in terms of policy and practice. And I'm not  
5 referring to HAVA now or I'm not referring to statute but also  
6 if we get into privacy and also one that's legitimate for the  
7 federal government to intervene as they did in the civil rights  
8 cases in the South. How am I going to balance that so it's not  
9 a personal opinion or predilection by a court? Because I don't  
10 think there's any jurisprudence and I guarantee you you've got  
11 a good chance of whatever happens here going to the Supreme  
12 Court. In fact, I wouldn't be surprised if they took this case  
13 on cert.

14 **MR. SETRAKIAN:** Well, as to the privacy laws, I would  
15 submit this is not essentially a question of first impression,  
16 that several courts have already been working through, trying  
17 to read together --

18 **THE COURT:** Which courts?

19 **MR. SETRAKIAN:** Sure. We have six opinions that we  
20 cite in our briefing. A case called Public Interest Law  
21 Foundation v. Dahlstrom; case called True the Vote v. Hosemann;  
22 Public Interest Law Foundation v. Bellows; Public Interest Law  
23 Foundation v. North Carolina State Board of Elections; Project  
24 Vote v. Long, and a case called Greater Birmingham Ministries.

25 **THE COURT:** Now, you cited them.



1           **MR. SETRAKIAN:** Yes.

2           **THE COURT:** And are they all consistent?

3           **MR. SETRAKIAN:** They are.

4           **THE COURT:** Because I have to go back and do my  
5 homework now after argument?

6           **MR. SETRAKIAN:** Yes. They all are consistent in  
7 concluding that the Privacy Act still compels some redaction of  
8 voter information.

9           And the reasoning tends --

10          **THE COURT:** Do they deal specifically with what those  
11 redactions are? Are they the social security numbers? Yes or  
12 no?

13          **MR. SETRAKIAN:** I believe they all concern redactions  
14 of social security --

15          **THE COURT:** No, no, "I believe". That's the way  
16 police officers talk to me. "I believe".

17          **MR. SETRAKIAN:** No, yes, I believe they all concern  
18 redactions of social security numbers and they all --

19          **THE COURT:** Okay. Do they all involve redactions  
20 concerning state DMV or do they deal with that?

21          **MR. SETRAKIAN:** I don't think they all involve the  
22 DMV. They all involve voter records.

23          **THE COURT:** Do any of them involve DMV?

24          **MR. SETRAKIAN:** I am not sure where the source was of  
25 the data in all of them. I think Project Vote involves DMV

1 sourced data but in any event, this data is coming from state  
2 election offices and they all use similar reasoning. They all  
3 say that one of the purposes of the NVRA was to increase voter  
4 participation.

5 And there would be, as Your Honor recognized earlier,  
6 a chilling effect if individuals knew that by registering to  
7 vote, they were putting their entire packet of information,  
8 including social security numbers and driver's license numbers,  
9 available for exposure. The NVRA's case for members of the  
10 public but also from the federal government if it passed. And  
11 that's the reasoning these courts take and the reasoning I  
12 submit the Court should adopt here which is that we have to  
13 read these statutes together and that is a way that they can  
14 sort of play nicely with one another.

15 And I will just conclude with one comment on the  
16 history of privacy laws.

17 You'll recall the Privacy Act was enacted in the wake  
18 of Watergate and COINTELPRO. Scandals that shook Americans'  
19 faith that their data would be responsibly collected, used and  
20 stored. And this is not just attorney argument. The Ninth  
21 Circuit recognized this in the Garris case that we cite at Page  
22 1295. They talked about a, quote, "Rightful and broad  
23 condemnation of government surveillance programs," close/quote.  
24 Applying the Privacy Act in these related laws here vindicates  
25 those ends.

1 I'm happy to answer any further questions the Court  
2 has.

3 **THE COURT:** I'm just going to joke with both of you  
4 but wait till we get from Watergate to AI.

5 **MR. SETRAKIAN:** Yeah.

6 **THE COURT:** And your refrigerator spying on you.

7 **MR. SETRAKIAN:** I do think there's something to that  
8 insight where these statutes came about as electronic  
9 surveillance was becoming more sophisticated. And so as it  
10 only continues to grow more sophisticated, the importance of  
11 these statutes looms even larger.

12 **THE COURT:** Is there any jurisprudence concerning  
13 data dumps that would be of value to the Court or any  
14 reasoning? There's been quite a controversy concerning  
15 government gathering information through massive data dumps  
16 involving private citizens. Is there any jurisprudence there?

17 **MR. SETRAKIAN:** Data dumps?

18 **THE COURT:** Because you're dealing basically data  
19 dumps.

20 **MR. SETRAKIAN:** Not that I'm aware of.

21 **THE COURT:** Okay.

22 **MR. SETRAKIAN:** But maybe.

23 **THE COURT:** Okay. All right then thank you very  
24 much.

25 And you're satisfied with your argument?

1           **MR. SETRAKIAN:** Yes.

2           **THE COURT:** Now, in three minutes -- it's up to you  
3 but in three minutes I'm going to take the other case because I  
4 only have an hour with the gentleman here from the County. So  
5 if you have three minutes, fine; if you don't, I'll see you  
6 about 2:00 o'clock.

7           **UNIDENTIFIED SPEAKER:** We're going to have rebuttal,  
8 right?

9           **THE COURT:** Oh, there's going to be rebuttal. In  
10 other words, we're not leaving, okay?

11           **UNIDENTIFIED SPEAKER:** I think Your Honor --

12           **THE COURT:** Why don't we just resume. I'm giving you  
13 the courtesy. If you wanted to catch the plane, you could  
14 have. I've let you go out of order but otherwise, why don't I  
15 see you folks at 2:00 o'clock. I'll take a recess -- well  
16 they'll take a recess then before the next witness and we'll  
17 try to finish off your arguments, okay?

18           **UNIDENTIFIED SPEAKER:** Okay.

19           **THE COURT:** Okay. Have a good recess and we'll see  
20 you at 2:00 o'clock.

21           **(Recess taken at 12:58 p.m.; reconvened at 2:00 p.m.)**

22           **THE COURT:** Call the matter of *United States v.*  
23 *Shirley Weber*.

24           You're not -- you don't have a 45-minute time  
25 constraint but come on up for a moment and let's see if we can

1 get you on your way.

2 **(Laughter; Pause)**

3 And then, Counsel, would you just restate your name  
4 for the record so we have -- we have it on CourtSmart, please.

5 Someone with Department of Justice?

6 **MR. NEFF:** Eric Neff for the United States.

7 **THE COURT:** Thank you.

8 **MR. BRUDIGAM:** Malcolm Brudigam for the State.

9 **THE COURT:** Thank you.

10 **MR. SETRAKIAN:** Will Setrakian for the States  
11 Defendants.

12 **THE COURT:** Thank you.

13 **MR. DODGE:** Chris Dodge for Intervenors NAACP and  
14 SIREN.

15 **MS. ZELPHIN:** Grayce Zelphin for Intervenor League of  
16 Women Voters of California.

17 **MS. SHOAI:** Deputy County Counsel Suzanne Shoai for  
18 Orange County Register of Voters Bob Page.

19 **THE COURT:** And I'll come back to you, in case you  
20 have any comments that you'd like to make. I somewhat skipped  
21 over you the first time. I'll come back.

22 **MS. SHOAI:** Thank you, Your Honor.

23 **THE COURT:** So Counsel, once again identify yourself  
24 by name and who you represent.

25 **MR. DODGE:** The gentleman who preceded me is quite

1 tall.

2 Good afternoon, Your Honor. Chris Dodge on behalf of  
3 the NAACP and SIREN Intervenors. I sort of want to address two  
4 things, I think, some nuts and bolts issues and then sort of  
5 the bigger picture, which Your Honor keeps coming back to here.

6 On the nuts and bolts, you know, as I said on the top  
7 half, this issue, this case really boils down to whether or not  
8 Congress has given the Executive Branch the tools necessary to  
9 make the demand that it has placed upon California. My friend  
10 on the other side during his argument said that me and my  
11 colleagues were trying to avoid the statutory text. That is  
12 completely backwards. There is one side here that is avoiding  
13 the relevant statutory. It is the Federal Government; it is  
14 not the Defendants and Intervenors. And I'll give you an  
15 example.

16 So in the top half of my argument I talked about  
17 Title III of the Civil Rights Act and one of the statutory  
18 arguments that the NAACP raised in its briefing. My friend on  
19 the other side got up, and I will assume this was an oversight  
20 on his part, but he purported to quote the statute to Your  
21 Honor, it will be in the transcript, and he left out the very  
22 portion of the statute that I quoted to Your Honor that decides  
23 this issue and he did not address the argument raised in our  
24 briefs. So I will read the actual text of the statute that my  
25 friend on the other side neglected.

1           This is 53 U.S.C. 20701 and in relevant part it says  
2 every officer of election shall retain and preserve all records  
3 and papers which come into his possession relating to any  
4 application, registration, and payment of a poll tax. My  
5 friend on the other side did not quote that part about come  
6 into possession.

7           And the same thing was true in their Complaint. They  
8 conspicuously left that portion of the statutory text out of  
9 their Complaint. And I think the reason why is quite clear.  
10 It's because as a statutory matter it forecloses what they are  
11 seeking in this case.

12           As I explained in the top half, that phrase come into  
13 possession carries a particular meaning. Congress oftentimes  
14 will use the term possession in a statute. As Your Honor  
15 surely knows, there are a litany of federal statutes that say  
16 possession. Come into possession is not the same. Come into  
17 possession means to acquire or receive something. I came into  
18 possession of my grandmother's antique china. I came into  
19 possession of a letter a friend from Fresno sent me. If I  
20 write a letter and place it on my desk I don't come into  
21 possession of that letter. I come into possession of a letter  
22 when it is sent to me and I receive it.

23           So that operative text in the Civil Rights Act means  
24 that the records subject to this inspection requirement they  
25 rely upon are only those that come into the possession of

1 election officials. Period. Full stop. If a California  
2 election official compiles a list in their office in  
3 Sacramento, that didn't come into their possession, they  
4 created it. In contrast, when a voter goes down to their local  
5 registrar and submits an application, that application comes  
6 into the possession of the registrar. That's the difference.

7 My friend on the other side has not addressed this  
8 statutory point in their briefing. They have not addressed it  
9 here in oral argument. And I think it's because there is no  
10 good answer to it. Simply put, if it does not come into their  
11 possession, if it is not a record that comes into the  
12 possession of state election officials it is not subject to  
13 mandatory disclosure under this Act. And, you know, I think my  
14 friend on the other side has to account for the statutory text  
15 at some point and he has not.

16 So that's sort of point number one on the text on the  
17 nuts and bolts, which, you know, again I think highlights who  
18 here is actually evading the statutory text.

19 The next, let's go to HAVA. My friend from the State  
20 I think addressed this very ably. DOJ counsel got up and said,  
21 well, HAVA requires a compilation of Social Security numbers  
22 and driver's license numbers. Well, that's true, but there's a  
23 very important omission that my friend from the State pointed  
24 out. HAVA says the states have to do that, subject to their  
25 own state voter registration laws. It is a -- and if you read



1 the legislative history of HAVA, and I know this is quoted in  
2 our brief, the NAACP brief, in the legislative history of HAVA  
3 Congress specifically says it praises the historical  
4 decentralization of election management in this country and it  
5 says very plainly that the rationale for that that the Founders  
6 had in the elections clause was that it would avoid the over-  
7 centralization of power when it comes to administering  
8 elections.

9 And that is precisely what the Department of Justice  
10 is trying to do here. They are trying to take unprecedented  
11 steps to centralize the management of federal elections, which  
12 the Constitution in the first instance assigns to the states.  
13 And I think, as my friend said, that should give everyone a  
14 great deal of pause. There should be a great deal of pause at  
15 the idea that federal elections are going to be run from  
16 Washington, D.C. rather than state capitals' county registrar  
17 offices.

18 And then with respect to the NVRA, the last of the  
19 three tools they invoke, you know, I think there's been a lot  
20 of discussion about that here today, the one point I would like  
21 to emphasize is that statute does have a inspection provision  
22 but it is one common to all people. It is not a special  
23 provision for the Government. And my friend from DOJ in trying  
24 to explain DOJ's past position in the Long case, the Bellows  
25 case, the Benson case said, oh, well, those cases were

1 different because they involved requests from private parties.  
2 There's absolutely no statutory basis to draw that distinction  
3 whatsoever. There's one public inspection provision in the  
4 NVRA, it applies -- you know, if you construe that provision,  
5 Your Honor, that construction will apply as much to the  
6 Department of Justice as it will to your law clerk, as it will  
7 to the Marshal downstairs who wants to put in a request to the  
8 state to say give me these documents. There's no special  
9 solicitation to the Government under the NVRA when it comes to  
10 what they are allowed to review as far as documents go. And I  
11 think my friend on the other side has played a little fast and  
12 loose with that fact.

13 And I think because there's only that one common  
14 public inspection provision, that's why you have, again,  
15 uniform case law. The Bellows case is, you know, I think a  
16 really good distinction of -- articulation of it. It collects  
17 all the other relevant case law, saying because this is a  
18 public inspection requirement we can't just have Joe Smith  
19 requesting every little bit of data about a voter. Of course  
20 you have to redact certain sensitive information. And the  
21 courts are uniform on that.

22 So that NVRA public inspection provision is not broad  
23 enough in scope to get the Government what they seek here. It  
24 is limited. For that reason, because anyone on the street can  
25 walk in and use it. And certainly it would be very troubling

1 if any person on the street could get the same kind of data the  
2 federal government is requesting here. And that's how they're  
3 asking you to construe the NVRA.

4 So that's sort of the nuts and bolts. Unless Your  
5 Honor has questions on them, I sort of want to, you know,  
6 again, zoom out, like why are we here, what's the big deal.  
7 The big deal is, again, this unprecedented effort on behalf of  
8 the Department of Justice to create a nationwide centralized  
9 voter database.

10 **THE COURT:** And by Department of Justice, that would  
11 be the Executive Branch?

12 **MR. DODGE:** Correct, Your Honor. Correct. And, you  
13 know, there was some discussion about, you know, are they  
14 targeting certain states, are certain states complying. You  
15 know, let's sort of look at the facts that are before the  
16 Court.

17 Four states have willfully complied with their  
18 demands. I suppose that's their prerogative. They might have  
19 unique state laws as far as what information is protected. But  
20 that's certainly not any sort of indication that these tools  
21 they rely on actually grant them that power. That just means  
22 the leaders in these states said you know what, we're okay with  
23 this or we don't have state laws that protect this information.  
24 Which is not the case in California. California has very  
25 robust state laws passed by the legislature that protect this

1 information. And so it doesn't really speak to California what  
2 these four states did.

3 My friend alluded to some dozen or so states that,  
4 you know, maybe kind of in the coming days are going to do  
5 something. I mean I don't know anything about that. I think  
6 we should -- I think it will be curious to see what that  
7 actually looks like in reality. You know, he's talked about  
8 this memorandum of understanding the Department of Justice has  
9 offered them. I don't know what that says. I don't know what  
10 sort of, you know, terms and conditions are in it. I think  
11 that would be, you know, sort of interesting to learn more  
12 about. And I don't think the Court should take on faith that  
13 these 12 states are just up and turning over their entire  
14 voters lists because someone sent them a letter in the mail  
15 from Washington, D.C. asking for it.

16 The facts, as I understand them, is that at this  
17 point in time the Department of Justice has made this demand of  
18 almost every state in the country. Blue, red, swing, purple,  
19 whatever you want to call it. States of all colors have  
20 resisted it. Lots of Republican led states. You know, my  
21 friend has quoted, if you add his numbers up that's 16 states.  
22 There are more than 16 states in this country that have a  
23 Republican government. The states they have sued so far I  
24 think do skew quite blue. Fifteen of them are led by  
25 Democratic governors. One is led by Republican, New Hampshire.

1 Whether that is an indication of something, I don't know. But  
2 I think in aggregate most states are pushing back on this.

3 And so my friend got up and said this shouldn't be a  
4 big deal, you know, this shouldn't be political. You know, in  
5 the abstract, of course, he's right. I think if this were a  
6 run-of-the-mill application of the NVRA it wouldn't necessarily  
7 be very political. But there's no precedent of the Department  
8 of Justice of the Executive Branch going around with this scope  
9 and breadth to the states. And Your Honor asked, you know,  
10 does that have any chilling effect on people. Of course it  
11 does.

12 You know, my friend on the other side has given very  
13 ephemeral reasons to the Court for why they need this  
14 information. Oh, we want to help people vote. We want good  
15 voter lists. Voter fraud. Freedom. You know, whatever. Like  
16 these very high level explanations of what they intend to use  
17 the data for. You know, I don't think those satisfy the text  
18 of the statute but I also think, you know, there's public  
19 reporting out there that is cited in the papers that casts a  
20 fair bit of shadow over what the Department of Justice purports  
21 to want this information for.

22 It is I think basically confirmed by public reporting  
23 that the Department of Justice will share this information with  
24 the Department of Homeland Security, an agency that is  
25 typically tasked with, you know, terrorism issues, national

1 security issues. And I think if you are someone who's  
2 represented by one of my clients, SIREN, which represents  
3 working class immigrants in California, and you hear that the  
4 Department of Justice is coming to your state and says turn  
5 over all this voter information and there's reports out there  
6 that it's going to be turned over to the Department of Homeland  
7 Security, they might start thinking, gosh, you know, I don't  
8 want -- I don't need this kind of trouble, I don't need this --  
9 why should I bother registering to vote if my information is  
10 going to be on the fast lane from my local registrar's office  
11 to Washington, D.C. and the Department of Homeland Security.  
12 That absolutely chills people. And I don't think we have  
13 anywhere near the kind of assurances from the federal  
14 government that would give those groups of people comfort in  
15 knowing that their data was going to be compiled in a national  
16 database.

17 I think Your Honor's alluded sort of like to the  
18 question of they're all Social Security numbers, the federal  
19 government has them, what's the consequence of that? To me the  
20 consequence is voter lists are maintained at the state level by  
21 design. By constitutional design, by statutory design. The  
22 NVRA and HAVA, you know, actual enactments of Congress, assign  
23 these responsibilities to the states. They don't assign it to  
24 the Civil Rights Division of the Department of Justice.

25 And so I think the precedent of having a nationwide

1 voter registration database at the fingertips of the Executive  
2 Branch, it is precisely the centralization of election  
3 management authority that the Constitution is meant to avoid,  
4 the federal statutes are meant to avoid. But I think -- you  
5 know, my friend used the term subsidiarity, which, you know, is  
6 a very impressive term. I mean it really just boils down to  
7 the fact that you go to vote at your local registrar's office.  
8 You know your neighbors when you go to vote at the polls. The  
9 person who checks you in is somebody who lives down the street.  
10 There's a lot of trust that comes from voting at the local  
11 level, from registering at the local level. And elevating that  
12 to some focal point in our nation's capital, that remove from  
13 just going down to your town hall to vote, it's of huge  
14 consequence to people, especially those who, I think with good  
15 justification, are very hesitant to know that their information  
16 is going to the Executive Branch.

17 So I think that's -- I think those are the stakes and  
18 I think that on the nuts and bolts it really boils down to  
19 these three statutes they have invoked. You know, there are  
20 affirmative defenses, of course the Privacy Act, I think, you  
21 know, those things need to be considered as well. But, you  
22 know, in the first instance the most immediate legal question  
23 before the Court is do these three statutory tools they point  
24 to actually grant them the authority to compile these statewide  
25 voter registration lists. And the answer is no.

1           So if Your Honor has additional questions, I'm glad  
2 to address them. Otherwise, I know you have a busy day.

3           **THE COURT:** Counsel, thank you very much.

4           Counsel of behalf of the League of Women Voters?

5           **MS. ZELPHIN:** Thank you, Your Honor. Grace Zelphin  
6 on behalf of the League of Women Voters. I'll keep this brief  
7 because I think a lot of the points that we would like to raise  
8 are similar to our colleagues.

9           Just big picture here, the NVRA, HAVA, and the CRA  
10 were each passed for the purpose to ensure that eligible  
11 Americans can participate in free, fair, and secure elections,  
12 which I think are a cornerstone in America's democracy, the  
13 right of every citizen to vote. Each of these statutes was  
14 passed in the context to open up the ability for folks to  
15 register to vote, making new pathways for folks to get their  
16 registration organized, making sure that their registrations  
17 were not unfairly deleted, and that folks when they step to the  
18 polls to vote they're able to do so.

19           The Department of Justice's attempt to conflate and  
20 import pieces of these statutes now to authorize its line-by-  
21 line evaluations of voter data simply must fail for all the  
22 reasons my colleagues have spoken to earlier today. The  
23 statutes that were passed and thoroughly considered to help  
24 voters access the polls do not permit the federal government to  
25 use them to go line-by-line and try to find folks and any



1 imperfection in a state's data registry to disenfranchise  
2 voters.

3           And the harm is great. Having folks know that their  
4 data that they have entrusted with their local registrar is  
5 going to a massive database in the federal government  
6 discourages folks of all walks of life, of any walk of life  
7 that just does not want that kind of vulnerability in their  
8 personal data. It risks suppressing registration, it risks  
9 suppressing voting in, you know, a franchise that we're already  
10 less than 60 percent of eligible voters vote.

11           We should be doing everything we can to encourage  
12 voting and use these statutes for the purposes for which they  
13 were intended and for that reason, and for the reason that the  
14 statutes clearly do not permit the Department of Justice to use  
15 them in the way they are intending to, the Motion to Dismiss  
16 should be granted.

17           With that, I'll rest on our papers and thank the  
18 Court for their time.

19           **THE COURT:** Thank you very much, Counsel.

20           Let me turn to the County for a moment. In a sense  
21 you don't have to make a comment, you're here on the Page  
22 matter, but if you have anything that you'd like to share I  
23 want to make sure you have that opportunity.

24           **MS. SHOAI:** No, Your Honor. I really do appreciate  
25 the opportunity, but I have nothing to add at this time.

1           **THE COURT:** Let me turn to the Department of Justice.

2           **MR. NEFF:** Thank you, Your Honor.

3           **THE COURT:** I want you to just state your name.

4           **MR. NEFF:** Eric Neff for the Department of Justice --

5           **THE COURT:** Thank you.

6           **MR. NEFF:** -- Your Honor, the United States. The  
7 Civil Rights Act is so clear on its terms that we are ending up  
8 with absurd arguments here and dealing with opposing counsel's  
9 reference to language of come into possession. We have not  
10 been trying to hide from that language. It's simply for  
11 economy of briefing to not include that descriptive phrase,  
12 which is referring to just the any record that is coming into a  
13 state election official's possession, they then need to turn  
14 that over to us if they want. It doesn't provide any qualifier  
15 that applies to this case.

16           Is counsel arguing that if a state was discriminating  
17 against a whole class of voters based off of race that then the  
18 federal government would not be able to request their voter  
19 registration list because it was compiled by the state? It  
20 runs afoul of the very purpose of the statute.

21           It's simply saying that that is just a descriptive  
22 phrase that says any record that comes into the state election  
23 official's possession, if we deem it as something we need for  
24 our purposes we can request it.

25           HAVA. The language of HAVA does support subsidiarity

1 when one understands the purpose under which it was passed and  
2 the legislative context in which it was passed. Up to that  
3 point there had been no law passed that provided any minimum  
4 standards for the state that the federal government could  
5 enforce. Therefore, HAVA is clearly stating, while we are not  
6 undermining subsidiarity, while we still have respect for  
7 subsidiarity, we here are stating in very specific  
8 circumstances these minimum standards for the first time are  
9 ones that the federal government has statutory authority to  
10 enforce.

11 Big picture in this argument, I think you can put  
12 kind of the three arguments that have been made by opposing  
13 counsel kind of into three buckets. First, jurisdiction,  
14 whether it's proper here in Sacramento. We stated in our  
15 papers that we believe in an electronic era any office where  
16 the records are available is a principal office under the  
17 statute. The request for these rolls are made on a regular  
18 basis at Secretary of States and registrars all around the  
19 state.

20 Going in reverse order, I think, of depth of  
21 discussion and importance.

22 The privacy issue seemingly getting lost here is that  
23 we're dealing with the United States, the federal government,  
24 the agency that issues this number, that has more protections  
25 than any other agency to preserve private information, is

1 dealing with national security matters on a day-to-day basis.  
2 And within that context, this can't be clearer. Election  
3 integrity and privacy laws do not conflict. I repeat they do  
4 not conflict. Privacy laws are about protecting the public as  
5 the government goes about its lawful business.

6 With all respect, I would push back on Your Honor  
7 that this is a unique issue posed before the Court. I would  
8 say it's not. It's a non-issue. No one thinks that privacy  
9 laws preempt the government from going about its lawful  
10 business. No one thinks the government is restricted in its  
11 ability to enforce federal laws, either civilly or criminally,  
12 because of privacy laws, much less getting the last four digits  
13 of a Social Security number where there's a specific federal  
14 statute saying that we get it. We are pursuing clean voter  
15 rolls and free and fair elections and we will protect all  
16 citizens' privacy, as it is our obligation to do and as we have  
17 laid out in our papers how we will do it.

18 Furthermore, the request is not something  
19 extraordinary. For example, the SAVE database has been in  
20 operation in the Department of Homeland Security for at least  
21 two decades that I'm aware of. And just in the past six, I  
22 believe it was instituted in May, they began running voter  
23 rolls for voluntary states with this data, with driver's  
24 license and last four of Social. Twenty-one states gave it to  
25 them. Twenty-one at last count. The states are interested in

1 having their own clean voter rolls. The federal government is  
2 interested if states are not maintaining clean voter rolls.

3 Now the final bucket I would say is falling under or  
4 at least getting to the statute here of the Civil Rights Act,  
5 the purpose, the requirement that we state a purpose. Opposing  
6 counsel is trying to make just a mountain out of a molehill on  
7 this. As I've said to Your Honor, I would analogize it to a  
8 requirement that putting a reason on the minutes. Because that  
9 precludes their various claims and defenses here they want to  
10 say things like, and I'm quoting, we need to unpack that, this  
11 is -- they are giving ephemeral reasons, also that we need to  
12 allege some sort of facts. Those are all quotes. And none of  
13 those are in the statute. The Civil Rights Act does not allow  
14 for that. The Civil Rights Act is about getting election  
15 records in short order and whether the purpose is combatting  
16 discrimination, voter roll list maintenance, it does not  
17 matter.

18 The Coleman v. Kennedy (phonetic) case made it clear.  
19 Quote, no prima facie case is required. Quote, we do not need  
20 to identify in a general way the reasons. Quote, it's  
21 comparable to an order to show cause. Your Honor should  
22 just -- given the proper complaint, quote, it entitles AG to a  
23 prompt order requiring compliance. A prompt order is important  
24 here because we do have concerns about this -- all states  
25 are -- it's an interest in the federal government in ensuring

1 free and fair elections and clean voter rolls.

2 In California we have particular concerns. It's the  
3 largest, as we've alleged in our papers, it's the largest state  
4 in the Union. Just on their own publicly available data there  
5 were 2.1 million duplicate registrations. That is 15.6 percent  
6 of the voter rolls were duplicates. That doesn't even -- that  
7 number doesn't even include the largest county in the state  
8 because the data was not provided to them. There are other  
9 counties that weren't provided as well. They provided no data  
10 on duplicate registration removals. Their removal -- their  
11 death removal rate, removing someone from the voter rolls  
12 because they have died, was half, about half the national  
13 average. These are all concerning data points.

14 There could be many more. We're not required to  
15 allege any of them. I myself could get up here under oath. I  
16 used to be the election -- prosecutor of election crimes here  
17 in Los Angeles. I could describe my cases, go down the list.  
18 It's not required. All we have to do is allege a purpose. And  
19 the records need to be turned over to us in short order.

20 This isn't about the Privacy Act or California  
21 privacy laws and their conflict with HAVA going to the Supreme  
22 Court, this is just about the most populous state in the nation  
23 failing in their list obligations and then, frankly,  
24 obstructing federal oversight efforts.

25 Thank you.

1           **THE COURT:** All right. Long, long ago when I was  
2 practicing I knew that when I got to the elevator door if I  
3 just would have told that judge one more thing that I had  
4 forgotten I would have persuaded that judge. So this is a  
5 shotgun one round, anything you have missed, anything that you  
6 want to say but now it's brief. It's that one succinct  
7 statement that says, I really want the judge to hear this.

8           **MR. BRUDIGAM:** Your Honor, at the very beginning of  
9 today you asked whether we wanted a decision based on  
10 jurisdiction or the merits and I just want to be clear that we,  
11 even though we raised that jurisdictional argument, we invite a  
12 decision on all of the merits in this case.

13           **THE COURT:** Okay. I feel more comfortable -- I'll  
14 follow the law, but I think we all need a decision subjectively  
15 on this.

16           **MR. SETRAKIAN:** Nothing further from me, Your Honor.

17           **THE COURT:** Counsel?

18           **MR. DODGE:** One thing I'll briefly add, Your Honor,  
19 on whether motions to dismiss are a proper vehicle, and they  
20 absolutely are. Pure questions of law are resolved on motions  
21 to dismiss all the time. That's what this presents, whether  
22 the statutes actually supply the authority the Government is  
23 claiming. And, you know, it's already been discussed a little  
24 bit but nothing in any of these laws creates a special  
25 proceeding where the Government doesn't have to prove its case

1 under the Federal Rules of Civil Procedure. They filed a civil  
2 action. Literally the first rule of the Rules of Civil  
3 Procedure says all civil actions shall be governed by the  
4 Federal Rules.

5 So, you know, I know they're in a hurry. I don't  
6 think they want to tarry in this court long. They want to take  
7 it up. But they have to follow the Federal Rules and the  
8 Federal Rules, including Rule 12(b)(6) and, if necessary,  
9 Rule 56, are the proper mechanisms for resolving this case.

10 **THE COURT:** Counsel on behalf of the League of Women  
11 Voters?

12 **MS. ZELPHIN:** Thank you, Your Honor. Along similar  
13 lines I just wanted to reiterate that the Civil Rights Act  
14 Title III does not have any special judicial process that  
15 oversets the proper judicial oversight -- appropriate process  
16 that this Court may exercise. And even though the Department  
17 of Justice seems to want to assert that in a CRA proceeding  
18 they're above the law, that's certainly not the case and the  
19 cases that they cite do not support that.

20 **THE COURT:** County?

21 **MS. SHOAI:** No, thank you, Your Honor.

22 **THE COURT:** DOJ?

23 **MR. NEFF:** Submitted, Your Honor.

24 **THE COURT:** All right, I want to thank you for your  
25 courtesy. Obviously, I'll wait for the amicus briefing. But



1 before you leave, I want to know that the wording meets with  
2 your approval concerning the amicus briefs and it meets with  
3 the time that we've tried to reflect upon. Do we have a draft  
4 of that by any chance?

5 **MR. SETRAKIAN:** Yes, Your Honor. In fact, we all  
6 agreed on a draft that matched --

7 **THE COURT:** Could you just read it?

8 **MR. SETRAKIAN:** Well, we just -- sure. One of my  
9 colleagues is having it be submitted to the Court now. Yeah,  
10 sure, let me read it --

11 **THE COURT:** Why don't you just read it. Why don't we  
12 all hear it and see if we can stipulate to it.

13 **MR. SETRAKIAN:** Sounds good. Quote:  
14 "On December 4th, 2025, the parties appeared and  
15 stipulated to the following briefing schedule. All  
16 potential amici have 14 days from entry of this order  
17 to submit proposed amicus briefs. Potential amici  
18 need not seek leave to file proposed amicus briefs."

19 **THE COURT:** Acceptable to all parties?

20 **MR. NEFF:** Acceptable. Eric Neff for the United  
21 States.

22 **THE COURT:** Now, is that 14 working days or is that  
23 excluding weekends or not? In other words, you've got the  
24 holiday season upon you.

25 **MR. SETRAKIAN:** I imagine that --

1           **THE COURT:** You want to make sure you get the  
2 briefing, depending upon where it comes from. Working days  
3 or -- for my days it's seven days a week so it doesn't matter,  
4 but, you know, other people might have a different view. So do  
5 you want that court days or working days or just seven calendar  
6 days?

7           **MR. SETRAKIAN:** I viewed it as 14 calendar days.

8           **THE COURT:** Okay. Counsel?

9           **MR. NEFF:** The United States as well.

10          **THE COURT:** Okay. So it will be calendar. That will  
11 be calendar days. I'll put it out tomorrow, not out today,  
12 just so we have enough time. Okay? Because people are going  
13 to get this on a Friday, you've already gone through three days  
14 by Monday.

15               I want to really thank you. Just excellent briefing  
16 and excellent argument. I want to pay that compliment to you.  
17 It's been very helpful. Obviously, you're not going to get a  
18 decision before two weeks. I want to get that amicus briefing  
19 and look at that also. But obviously I'll be thinking and  
20 reflecting upon it in the meantime. Okay?

21               Thank you very much. Have a good day now.

22               **(Counsel thank the Court)**

23               **(Proceeding adjourned at 2:31:40 p.m. and then resumed at**  
24 **2:31:51 p.m.)**

25           **THE COURT:** ...and those questions to you with a page

1 limit and a time limit. Okay?

2 **MR. BRUDIGAM:** Your Honor, I do think --

3 **THE COURT:** And also I think that there was some  
4 briefing due concerning the position of DOJ and the  
5 juxtaposition of DOJ in a number of cases that you cited to me.  
6 I'll need that as quickly as possible as well.

7 **MR. BRUDIGAM:** Yeah, we can provide a supplemental  
8 notice attached --

9 **THE COURT:** Provide that to the other parties. They  
10 should have a chance to respond.

11 **MR. BRUDIGAM:** Of course. Just attaching those three  
12 DOJ amicus briefs that were referenced in argument --

13 **THE COURT:** Okay.

14 **MR. BRUDIGAM:** -- that's what we're talking about.

15 **MR. NEFF:** Your Honor, I do think there's one more  
16 issue we should deal with.

17 **THE COURT:** Okay.

18 **MR. NEFF:** The United States's Motion to Compel. We  
19 understand Your Honor's concern with that. However, we would  
20 submit that it is still procedurally proper for us to set out a  
21 date in accordance with the Rules of Civil Procedure on that,  
22 which would, being as generous as possible accounting for them,  
23 would be 28 days from today I believe.

24 **THE COURT:** Now, I didn't preclude you, just for due  
25 process grounds it was filed yesterday.

1           **MR. NEFF:** Yes.

2           **THE COURT:** The Rules say 28 days, so you're not -- I  
3 tried to (inaudible) you're not curtailed from filing that.

4           **MR. NEFF:** Okay.

5           **THE COURT:** Okay?

6           **MR. NEFF:** Thank you.

7           **THE COURT:** Have a good day then. Thank you very  
8 much.

9           **(This proceeding was adjourned at 2:33 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

December 8, 2025

Dated

*TONI HUDSON, TRANSCRIBER*