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September 22, 2025

Harmeet K. Dhillon
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Request for Hawai'i Voter Registration Information

Dear Ms. Dhillon:

This letter responds to your letter of September 8, 2025 addressed to Scott T. Nago, Hawaii's Chief Election Officer. The letter requests an electronic statewide voter registration list containing the full name, date of birth, residential address, and either the state driver's license number or the last four digits of the social security number of each registered voter in Hawai'i.

State law precludes compliance with the request. Haw. Rev. Stat. § 11-97(a) provides that "all . . . personal information . . . provided on [a] voter registration affidavit" other than "[a] voter's full name, district/precinct designation, and voter status" must be kept confidential, except as provided under rules adopted by the Chief Election Officer. And Haw. Admin. R. § 3-177-160(g) sets forth the process by which "[a] request for voter registration information that is not public" may be made.

The letter refers to a number of provisions of federal law which you say authorize the Department of Justice to make this request. However, based on our initial review, it does not appear that any of the cited statutes authorize this request or require Hawai'i to produce an electronic statewide voter registration list containing the information specified in the letter.

The letter first says that the request is pursuant to Section 11 of the National Voter Registration Act (NVRA), 52 U.S.C. § 20510(a). That provision authorizes the Attorney General to "bring a civil action . . . for such declaratory or injunctive relief as is necessary to carry out" the NVRA. *Id.* It does not require a state to produce an electronic statewide voter registration list. Indeed, nothing in the NVRA authorizes a request of the type made in the letter, nor does the NVRA require a state to turn over "uniquely or highly sensitive personal information" about

registered voters. *Pub. Interest Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024). It is also unclear from the letter why such information would be necessary to determine whether Hawai‘i is in compliance with the NVRA.

The letter goes on to say that Section 401 of the Help America Vote Act (HAVA), 52 U.S.C. § 21111, provides authority for the request. That provision similarly authorizes the Attorney General to “bring a civil action against any State or jurisdiction . . . for such declaratory and injunctive relief . . . as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under” other sections of HAVA. *Id.* Like 52 U.S.C. § 20510(a), this section does not require a state to produce information about registered voters. Nor does the letter explain why the information requested is necessary to determine whether Hawai‘i is in compliance with HAVA. And as the letter indicates, *Brunner v. Ohio Republican Party* provides only that Congress likely has not authorized private litigants to enforce HAVA. 555 U.S. 5, 6 (2008). It says nothing about the authority of the Attorney General.

Like the NVRA, HAVA contains no inspection provision. Footnote 1 of the letter says that, by charging the Attorney General with enforcement of certain requirements of the NVRA and HAVA, Congress “plainly intended that DOJ be able to conduct an independent review of each state’s [voter registration] list.” But as the Supreme Court “has repeatedly stated, the text of a law controls over purported legislative intentions unmoored from any statutory text.” *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022); *see also Apache Stronghold v. United States*, 145 S. Ct. 1480, 1487 (2025) (Gorsuch, J., dissenting from the denial of certiorari) (“[U]nexpressed legislative intentions are not the law.”). Congress’ purported intent cannot substitute for actual statutory authority. Nor can it preempt state law, as the footnote additionally suggests.

The letter further states that the request is pursuant to Section 303 of the Civil Rights Act of 1960 (CRA), 52 U.S.C. § 20703. As the letter notes, that provision requires that records preserved under Section 301 of the CRA, 52 U.S.C. § 20701, be made available for inspection, reproduction, and copying upon written demand of the Attorney General. *Id.* However, the request for an electronic statewide voter registration list exceeds both the retention and inspection requirements of the CRA. And the letter omits that any demand must “contain a statement of the basis and the purpose therefor.” *Id.* As noted above, the letter does not explain why the production of personal information about every registered Hawai‘i voter is necessary to achieve the stated purpose of “ascertain[ing] Hawaii’s compliance with the list maintenance requirements of the NVRA and HAVA.”

Finally, although the letter states that all data “will be kept securely and treated consistently with the Privacy Act[.]” 5 U.S.C. § 552a, it is unclear how this request complies with the Privacy Act’s requirements. In particular, 5 U.S.C. § 552a(e)(4) provides that, upon establishment of a system of records, a federal agency must publish a notice of the existence and character of the system of records in the Federal Register. The letter includes no citation to such Federal Register notice, nor does it explain how the requested information will be stored, maintained, and used consistent with the Privacy Act and other federal law.

Meanwhile, it has been reported that the Department of Justice intends to send requests like the one received by Hawai‘i to all fifty states as part of an “effort to essentially establish a

national voting database[.]”¹ This raises additional privacy concerns and appears unrelated to the stated purpose of the request, which is to ensure Hawaii’s compliance with the NVRA and HAVA.

Although none of the legal authorities to which the letter cites appear to impose any deadline, we are sending this response within fourteen days, as you requested. However, the Hawai‘i Office of Elections and Department of the Attorney General are continuing to evaluate the letter and may have additional concerns beyond those articulated in this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Hughes", written in a cursive style.

Thomas J. Hughes
Deputy Solicitor General

¹ Devlin Barrett & Nick Corasaniti, *Trump Administration Quietly Seeks to Build National Voter Roll*, N.Y. Times, Sept. 9, 2025, <https://www.nytimes.com/2025/09/09/us/politics/trump-voter-registration-data.html>.