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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *	*25-CV-639-MSM
UNITED STATES OF AMERICA,	*
Plaintiff,	*
vs.	*MARCH 26, 2026
GREGG M. AMORE, in his official	*
capacity as Secretary of State	*
for the State of Rhode Island,	*
Defendant.	*Courtroom 2
* * * * *	*PROVIDENCE, RI
	*

BEFORE THE HONORABLE MARY S. McELROY
DISTRICT JUDGE

(Motion to Compel)
(Motions to Dismiss)

APPEARANCES:

FOR THE PLAINTIFF:	ERIC NEFF DOJ-Crt Civil Rights Division 150 M St. NE, Ste 8-1807 Washington, DC 20002
FOR THE DEFENDANT:	JAMES J. ARGUIN RI Department of Attorney General 150 South Main Street Providence, RI 02903
Gregg Amore	

1 FOR INTERVENOR DEFENDANTS:

2 Common Cause ARI J. SAVITZKY
3 Catherine Saunders American Civil Liberties Union
4 Stuart Waldman Foundation
5 Julia Sanches 125 Broad Street
New York, NY 10004

5 FOR INTERVENOR DEFENDANTS:

6 SEIU District 1199NE ROBERT GOLAN-VILELLA, ESQ.
7 Rhode Island Alliance for Elias Law Group LLP
8 Retired Americans 250 Massachusetts Ave NW
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10 Court Reporter: Denise P. Veitch, RPR
11 One Exchange Terrace
12 Providence, RI 02903

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1 26 MARCH 2026 -- 10:00 A.M.

2 THE COURT: We are on the record in Civil Action
3 25-639, and it is entitled United States of
4 America v. Gregg Amore; it's a civil action. Can
5 counsel who are going to argue identify themselves for
6 the record and identify who else is at counsel table,
7 please.

8 MR. ARGUIN: Good morning, your Honor.
9 Special Assistant Agent Attorney on behalf of the
10 Secretary of State for the State of Rhode Island
11 Gregg M. Amore, and with me at counsel table is Special
12 Assistant Attorney General Kyla Duffy.

13 THE COURT: Okay. You didn't give us your name.

14 MR. ARGUIN: James Arguin.

15 THE COURT: Thank you.

16 MR. ARGUIN: Sorry, your Honor.

17 THE COURT: That's okay. All right.

18 MR. SAVITZKY: Good morning, your Honor.
19 Ari Savitzky on behalf of Intervenor Defendants
20 Common Cause, Catherine Saunders, Stuart Waldman, and
21 Julia Sanches; and with me at counsel table is my
22 colleague, Will Hughes.

23 THE COURT: Okay. Thank you.

24 MR. GOLAN-VILELLA: Robert Golan-Vilella on
25 behalf of the SEIU Intervenors. With me at counsel

1 table is David Fox, and in the gallery is Miriam
2 Weizenbaum.

3 THE COURT: Thank you.

4 For the Government.

5 MR. NEFF: Good morning, your Honor. My name is
6 Eric Neff. I'm here on behalf of the United States,
7 with my co-counsel, Christopher Gardner.

8 THE COURT: All right. I apologize if I get
9 anybody's name wrong in this.

10 Let's just set some ground rules so we can make
11 this a little easier for everyone. Our stenographer is
12 valiantly trying to keep up with us so we have to make
13 an effort not to speak quickly. I don't know if
14 anybody here is naturally a quick talker; try to slow
15 it down. Because it's a dialogue I will have to break
16 in and ask questions that results in some necessary
17 overtalk, but if we can just stop and try not to speak
18 over each other more than necessary, I would appreciate
19 that.

20 I had a request from my Clerk for an order of
21 argument. I believe the Motions to Dismiss, that the
22 Defendants wish to proceed first. Am I wrong about
23 that?

24 MR. ARGUIN: Your Honor, we're happy with
25 whatever order is convenient to the Court, but

1 certainly that would make the most sense to us, given
2 the overlapping nature of the arguments.

3 THE COURT: Right. My original intent was to
4 have the government argue its Motion to Compel, have
5 you respond; then have you argue your Motion to Dismiss
6 and have them respond. But rather than do a back and
7 forth -- is that all right with you, Mr. Neff?

8 MR. NEFF: Yes, your Honor, and that's
9 consistent with how most other courts have been
10 proceeding, so I think that makes sense.

11 THE COURT: Okay. We don't like to do things
12 the way -- no, I'm just kidding. That is fine.

13 So on behalf of the State of Rhode Island,
14 Gregg Amore, I'll hear from you on your Motion to
15 Dismiss, and can you also address the government's
16 Motion to Compel which is at ECF 2 in this case.

17 MR. ARGUIN: Thank you, your Honor.

18 The Department of Justice seeks to use civil
19 rights legislation that was enacted for an entirely
20 different purpose to compel the production of Rhode
21 Island's complete Voter Registration List without
22 redaction of confidential data on nearly 750,000 active
23 registered voters in the State. This effort goes far
24 beyond what Congress intended when it passed the Civil
25 Rights Act of 1960. It also is fundamentally at odds

1 with the very statutes DOJ claims it seeks to enforce,
2 which are, specifically, the National Voter Rights Act,
3 which I'll refer to as NVRA, and the Help America Vote
4 Act, or HAVA. The object and purpose of those statutes
5 is to make it easier, not harder, for eligible voters
6 to register and exercise their right to vote. And you
7 can find that in the statement of Findings and Purpose
8 in Section 20501 of the NVRA. Those statutes also have
9 their own enforcement provisions that can be found in
10 52 U.S.C. Section 21111 of the HAVA and Section
11 20510(a) of the NVRA. They also, pursuant to court
12 interpretations including from the First Circuit, allow
13 for the redaction of confidential information relating
14 to voters, including individual voter's Social Security
15 numbers and driver's license numbers.

16 Now, DOJ tries to bypass these records by
17 plucking a records demand provision from the Civil
18 Rights Act, a law enacted more than 30 years before the
19 NVRA and HAVA, to obtain the very confidential
20 information the First Circuit and other courts have
21 held should be redacted.

22 It further contends, and this is at its reply
23 brief, ECF 33, pages eight to nine, that its authority
24 affording to demand records under the Civil Rights Act
25 is nonreviewable.

1 THE COURT: Well, let's address that, because
2 they're saying they're entitled to a special process
3 here. Address the issue of the special process, if
4 any, that they're entitled to and how the Court is
5 supposed to look at the fact that they filed a civil
6 complaint in determining whether there's a special
7 process or I should follow the basic Rules of Civil
8 Procedure with respect to their Complaint.

9 MR. ARGUIN: Certainly. Let me start with the
10 very fundamentals. This action was filed as a civil
11 action. The Federal Rules of Civil Procedure, (1) make
12 expressly clear that the Federal Rules of Civil
13 Procedure apply to all civil actions except as
14 specified in Rule 81; and Rule 81, of course, makes no
15 mention of an action for a records demand under the
16 Civil Rights Act. It also, according to the Complaint,
17 seeks relief under the Declaratory Judgment Act,
18 Section 28 U.S.C. Section 2201, which Rule 57 of the
19 Civil Rules makes expressly clear it's subject to the
20 Rules of Federal Civil Procedure. And it served the
21 summons in this action on Secretary Amore under Rule 4
22 of the Federal Rules of Civil Procedure; and the form
23 under Rule 4 specifically advised the Secretary that he
24 could answer or file a Motion to Dismiss pursuant to
25 Rule 12 of the Rules of Civil Procedure.

1 All of that indicates that the -- this case is
2 no different than any other civil action. And that's
3 also confirmed when one looks at the language of the
4 Civil Rights Act of 1960. The provision of the
5 statute, it makes clear that this court is not a rubber
6 stamp to simply follow a ministerial process to approve
7 any records demand DOJ may submit under the Civil
8 Rights Act. In fact, Section 20703 of the Civil Rights
9 Act imposes specific obligations on DOJ to provide a
10 written statement of the basis and purpose for any
11 records demand.

12 THE COURT: And so doesn't that get into what do
13 you mean by basis and purpose. Are we talking factual
14 or legal basis and factual or legal purpose; correct?

15 MR. ARGUIN: Both. The basis is the factual
16 basis why, what is the reasonable suspicion, what is
17 the factual allegation that gives rise to what they
18 claim is a civil rights violation; and I'll come back
19 to that in greater detail later. But the purpose is
20 also what are you looking to achieve? And that's also
21 a problem here, which I'll explain shortly.

22 But getting back to the court's jurisdiction in
23 the summary process, Section 20705 specifically says
24 an action for enforcement of a demand that is served
25 under the Civil Rights Act must be -- is within this

1 court's jurisdiction and must be exercised pursuant to
2 appropriate process.

3 So in terms of the summary proceedings that
4 they're talking about, the appropriate process is
5 what's the determinant factor. And your Honor has
6 guidance from the United States Supreme Court in its
7 *Powell* decision on exactly what that phrase means.
8 And, in fact, the Supreme Court in *Powell* interpreted
9 an IRS statute that had substantively similar language
10 to the CRA record demand provision, including the use
11 of the phrase "by appropriate process". And like the
12 Civil Rights Act, it also did not say anything about it
13 was limited to a subpoena or anything else. It was an
14 action by the federal agency to enforce a records
15 demand or demand for inspection to get access to
16 records that the person who was served with those
17 records opposed.

18 And the Supreme Court of the United States
19 interpreted the phrase "appropriate process" to refer
20 to the Rules of Federal Civil Procedure. And that, of
21 course, is consistent with the Rules I was just
22 reviewing. But, more importantly, it also said that
23 that appropriate process is used to ensure that the
24 court's process is not being invoked or abused by the
25 person seeking to compel, by the agency seeking to

1 compel the production of records. And it also made
2 clear that part of that appropriate process inquiry is
3 to inquire into the underlying reasons of the demand.

4 And that brings us full circle back to the
5 statutory language of the CRA which highlights, you
6 know, which raises several different points of why that
7 framework simply does not apply in this context. And
8 let me quickly point out some reasons by that.

9 What DOJ is trying to do is pluck one provision
10 from the Civil Rights Act enacted 30 years ago and read
11 it to the exclusion of all other statutes that are
12 applicable to the very issues in this case, including,
13 specifically, the NVRA and the HAVA, which are the very
14 statutes it claims it wants to enforce.

15 The NVRA and HAVA have specific protections for
16 confidential information. And I already mentioned the
17 Supreme Court's decision in *BeUows* that, that are
18 applicable to any demand for records or any requests
19 for production of the states' registered voter list.
20 And what's more, in the years since the Civil Rights
21 Act of 1960 was enacted, Congress has also recognized
22 the need for additional protections for the privacy of
23 data revealing personally identifiable information of
24 citizens and Americans; and that's both in the
25 E-Government Act and the Privacy Act.

1 THE COURT: So how do I read -- the government
2 is going to argue that the Fifth Circuit case from
3 1960, *Lynd*, is controlling. Obviously it's not
4 precedent, binding precedent on this circuit or this
5 district; but how do I read *Lynd* and *Powell* together?
6 Are you saying *Powell*, for the purposes of the inquiry
7 that the Court can make, kind of overrules or tacitly
8 overrules *Lynd*?

9 MR. ARGUIN: To the extent that *Lynd* stands for
10 the proposition that there is no testing of the basis
11 or the purpose of a demand under the Civil Rights Act,
12 *Lynd* is overruled. But *Lynd* also recognizes, and its
13 discussion is consistent with all of the Fifth Circuit
14 1960-era cases the DOJ relies upon invoking the Civil
15 Rights Act. All of those cases dealt with a situation
16 that was within the scope of the Civil Rights Act. It
17 was specifically dealing with instances where there
18 were efforts to intimidate or interfere with the right
19 to vote, most commonly through racial profiling or
20 exclusionary practices to preclude people from voting
21 because of their race.

22 THE COURT: So my background is in criminal law,
23 so I look at this as if we look at it like a search
24 warrant, so to speak, which it's not and I understand
25 it's completely not a good analogy. But the government

1 can't say we want to search every house on this block
2 because drugs are coming from this block. They have to
3 have some reasonable basis for suspecting that the
4 individual establishment or house they're going to
5 search has a nexus to drug distribution. Is that sort
6 of -- a very wonky analogy, but is that sort of what
7 you're saying, like they can't just come in here and
8 say we're going to look at the voting records of every
9 state to see if the states are doing what they're
10 statutorily required to do, without some evidence the
11 states are not doing what they're required to do?

12 MR. ARGUIN: I think your Honor is right on the
13 right track. The purpose of the statute, the CRA has
14 its own statutory provisions for how you obtain these
15 records, right, and those provisions specifically say
16 you must state the basis and the purpose, and then they
17 also add it also must be pursuant to appropriate
18 process; and neither of those conditions are met here.

19 THE COURT: The government is going to say our
20 basis is HAVA and the National NAVA (verbatim) and our
21 purpose is to make sure that the State of Rhode Island
22 is complying with HAVA and NAVA.

23 MR. ARGUIN: But all of the cases on which they
24 rely, again going back to *Lynd* and the other
25 Fifth Circuit cases as examples of this, they all

1 included a statement of the basis and the purpose that
2 was far beyond the boilerplate statement that's been
3 presented to the Secretary of State here. They
4 actually stated that they had suspicions of racial
5 practices in the registration process or in voting, and
6 they narrowed that in most of those cases to
7 circumstances that were in a particular county; not a
8 statewide request for an entire voter registration
9 list. They were looking at practices that interfered
10 with the right to vote, and they specified those
11 reasons in their decisions. There's simply nothing
12 comparable here.

13 And the other, turning to the purpose that,
14 yeah, all -- what they cite is we want to assess
15 whether the State is complying with the list
16 maintenance requirements imposed by the NVRA and HAVA,
17 two entirely different statutes that have their own
18 enforcement provisions. NVRA and HAVA give the
19 Attorney General the right to bring a civil action --
20 again, not a summary process -- for if there is any
21 suspected violation of a state of its compliance with
22 NVRA and, with the NVRA and HAVA. And those provisions
23 are in 52 U.S.C. 2111 and 52 U.S.C. 20510(a). The
24 first one is HAVA; the second one is the NVRA.

25 There's no explanation here for why DOJ did not

1 invoke those provisions, except for the fact that even
2 in the statement of purpose and the basis that they've
3 provided in their September 8th demand letter to the
4 Secretary of State, that they don't have one. They
5 just want to see what is there. They don't have and
6 they are not alleging any violation of the State's or
7 the Secretary of State's list maintenance
8 responsibilities; and so they're searching for one.
9 That kind of fishing expedition is not allowed under
10 the ordinary Rules of Civil Procedure, and certainly it
11 should not be allowed with respect to highly-sensitive
12 confidential information on 750,000 active registered
13 voters in Rhode Island. There's simply no basis for
14 it.

15 And one other thing I would point out. The NVRA
16 and HAVA, which are the listed maintenance statutes
17 that require the Secretary of State to set up a general
18 program for list maintenance and undertake reasonable
19 efforts to ensure that the names of deceased voters or
20 voters who are moved are timely removed from the active
21 list. Those statutes expressly place that
22 responsibility squarely on the State, and they make
23 clear in the statutory language that that enforcement
24 of those provisions, the reasonable efforts, the
25 general programs are specifically within the discretion

1 of the State. And that, I think, is another key point
2 here, and that's because what DOJ is attempting to do
3 is interfere with the State's responsibility to carry
4 out tasks that Congress has assigned to it; and the
5 fact that Congress assigned it to the State, not the
6 federal government, is also consistent with
7 Article I -- Article I, Section 4 of the Constitution
8 which recognizes the primary role of the States in
9 election and registration processes.

10 THE COURT: How do you respond to what I think
11 the government is saying, which is how can we -- that
12 we accept the Elections Clause does what the Elections
13 Clause does, but it also allows Congress to sort of set
14 some rules into place and how are we, the DOJ, supposed
15 to enforce the Rules if we're just supposed to take it
16 on faith that the States are doing what they're
17 supposed to do.

18 MR. ARGUIN: Two things. Again, the primary
19 responsibility, the balance that Congress struck, the
20 balance that the Framers of the Constitution struck was
21 to preserve local control over elections unless
22 Congress specified otherwise. That's the preemption
23 issue.

24 But here, as I've already said, the NVRA and the
25 HAVA, which are the two statutes that deal specifically

1 with list maintenance responsibilities, specifically
2 give that discretion, raw discretion to the States.
3 There's no mention of the Department of Justice or the
4 federal government unless and until those penalty
5 provisions that we were just speaking of came in, where
6 they can bring a civil action if there is a violation.
7 But there's no violation here.

8 THE COURT: So looking at sort of the original
9 intent of the Framers and the intent of Congress and
10 the sort of the text of the statutes, it would seem
11 that adhering closely to what's there, that the
12 Department of Justice wouldn't have the role that it's
13 seeking to have here. Is that correct?

14 MR. ARGUIN: I think that that's absolutely
15 correct. The Department of Justice's role has to be
16 conferred by Congress. And this gets back to one of
17 the points I made earlier. What they're doing is
18 cherry-picking a records demand provision from now
19 65 years ago and using that, to the exclusion of the
20 very statutes they're seeking to enforce that deal
21 specifically with the issue of voter list maintenance,
22 and that also completely ignore the privacy protections
23 that Congress enacted in the Privacy Act and in the
24 E-Government Act to specifically protect the right of
25 individual citizens to not have their personally

1 identifiable information swept up in some omnibus
2 request, which your Honor well knows is not just here
3 in Rhode Island; it's across the country.

4 And we still -- and going back to the statutory
5 purpose, there is absolutely no way the Court could
6 read, as they say, look at just the language on the
7 page. Well, that's not true. I mean a basic rule of
8 statutory construction is you have to understand the
9 context in which a statute is enacted. The Civil
10 Rights Act of 1960 was enacted for a different purpose,
11 as we talked about, dealing with the interference with
12 the right to vote, preventing people from voting.

13 The HAVA and the NVRA have a fundamentally
14 different purpose. It's to encourage the right to
15 vote. That's in the findings that Congress itself
16 made. They tried to make it easier to vote, and they
17 afford multiple protections that require the Secretary
18 of State to proceed with caution and follow specific
19 procedures before any person is removed from the active
20 list. And as I've already said, they also provide
21 protections consistent with the Privacy Act, the
22 E-Government Act, and state law on what information can
23 and cannot be shared with the public or in response to
24 a request. They protect confidentiality.

25 THE COURT: There is anything in the Civil

1 Rights Act or Title III that precludes the State from
2 redacting personally-identifying information or
3 sensitive information?

4 MR. ARGUIN: There is absolutely no language in
5 the Civil Rights Act of 1960 that would preclude it.

6 And the other point to keep in mind when we talk
7 about context, and I think they cite this in support of
8 their plain language argument, that it's only the words
9 on the page that matter. But that case, I think it's
10 *Buckman*, the Supreme Court decision in *Buckman* is very
11 clear what they're talking about there is you have to
12 interpret words according to the usage at the time.
13 You look at the words used through the lens of what
14 Congress intended when it enacted the law.

15 Now in 1960 when the Civil Rights Act was
16 enacted, they were dealing with a very different issue.
17 This was Jim Crow South where they were excluding
18 people based on race. That was the purpose. And the
19 Civil Rights Act of 1960 was intended to fill a gap in
20 the predecessor statute of the Civil Rights Act of 1957
21 where records relating to these discriminatory
22 practices and other records relevant to intimidation
23 connected with the right to vote were being destroyed.

24 This 1960 Act was passed specifically to make
25 sure those records were preserved so they would be

1 available in the event there were suspicions of any
2 kind of discriminatory or other prohibited practices
3 that interfered with the right to vote.

4 THE COURT: Let's say we were in an environment
5 that was similar to the 1960s and the Department of
6 Justice had a belief that, you know, women were being
7 precluded from voting in Rhode Island and they had some
8 basis for that. Could they then utilize the Civil
9 Rights Act to come here and ask for those documents in
10 order to enforce the amendment allowing women to vote,
11 for example?

12 MR. ARGUIN: If they had a proper purpose and
13 stated a proper basis and that was presented, then I
14 think that would comply with the Civil Rights Act.
15 That, of course, is not the situation here.

16 And one other thing to note. When we look at
17 the statutes through the eyes of the Congress that
18 enacted it, which is the 1960s Congress, you know, the
19 statute, the CRA specifically says, okay, if you state
20 a proper -- the basis and the purpose, and you follow
21 the appropriate process, those records can be produced.
22 But they also said what they allowed for in the statute
23 in 2073 -- 21073 was that be allows onsite inspection
24 and reproduction. And why is that? Because they
25 didn't have electronic data being amassed by states or

1 private parties or the federal government. It didn't
2 exist. That's exactly why it's wrong to just
3 cherry-pick one statute and say it trumps from the
4 1960s, say it trumps all these later enactments.
5 That's not the rule how statutes are interpreted.
6 Statutes have to be interpreted as a whole in the
7 context, and the court has to balance the congressional
8 expressions in various statutes that deal with the same
9 subject matter.

10 And here, we're talking about voting records,
11 specifically registered lists, voter registration
12 lists, but also the privacy interests that are
13 implicated by that kind of collection of data. And
14 it's an entirely different thing to say you can come
15 and inspect the registered voter lists and make a copy
16 of it than saying here is, what they want is an
17 unredacted database with all the fields unredacted,
18 with all of that information put out there for a
19 purpose that is not yet clear. And let me get to the
20 purpose issue.

21 THE COURT: Can I ask one more question before
22 you do.

23 MR. ARGUIN: Sure.

24 THE COURT: Do we know in 1960 what data was
25 contained within voting rolls?

1 MR. ARGUIN: Well, what we know is the
2 obligations imposed by the HAVA and NVRA didn't exist.
3 They didn't come until many years later.

4 So the records that we're talking about here
5 could not have been in the minds of Congress when it
6 enacted the Civil Rights Act of 1960; and, in fact,
7 that's exactly how two other district courts in the
8 Central District of California and the District of
9 Oregon have interpreted this.

10 But getting back to the purpose, your Honor
11 asked, well, don't they need some of this information
12 to do whatever, whatever kind of assessment they want
13 to do with respect to the State's list maintenance
14 responsibility. The answer has to be categorically no.
15 The Secretary has already offered to provide them with
16 the publicly-available list, which includes a host of
17 information about relative, you know, about voter,
18 registered voters in Rhode Island, including their
19 names, their full names, their full dates of birth,
20 residential addresses, mailing addresses, party
21 affiliation if they elect to provide it and, I'm sorry,
22 there's others if I find my list. But all of that
23 information is available. The only information --

24 THE COURT: When they vote; right?

25 MR. ARGUIN: And where they vote, how they

1 registered. And it also includes, as required by HAVA,
2 a unique identifier, voter identifier number for every
3 active voter in Rhode Island. Unlike some states, it's
4 not only assigned if you don't have a Social Security
5 number or a driver's license; Rhode Island assigns a
6 unique HAVA identifier to all registered voters. All
7 of that information is in the public record, I mean is
8 publicly available pursuant to Rhode Island law and
9 also, is also made available under the NVRA through its
10 public inspection provisions.

11 The only information that the Secretary of State
12 has withheld are the last four digits of the Social
13 Security number and individual state driver's licenses,
14 and he did that because of the requirements of State
15 law that say that information cannot be disclosed; and
16 also is consistent with First Circuit's decision in
17 *Bellows*, which other circuits, including the Fourth
18 Circuit and other district courts have also endorsed
19 that view, that redaction of that personally
20 identifiable information on individual voters is
21 absolutely appropriate.

22 So the other point I'll make on this is if they
23 were to say, I think the only answer to that is they
24 say, well, we don't know if it's the same person. But
25 you have all this information available to you through

1 the publicly-available list to do a very comprehensive
2 comparison, if that's needed; and assuming, again, it's
3 even proper for DOJ to engage in that sort of list
4 maintenance responsibility, when Congress has assigned
5 that task to the discretion of the States.

6 The last point I make is what we are talking
7 about here are general programs and reasonable efforts
8 to maintain a list. They're seeking line-by-line
9 assessment or analysis of the registered voter lists at
10 one point in time. That does not have anything to do
11 with reasonable efforts or general programs.

12 THE COURT: So if they had come here and asked
13 for an explanation or information about the procedure
14 that the Secretary of State has used, and I think it's
15 four times a year -- is that quarterly that they cull,
16 or is it monthly?

17 MR. ARGUIN: It's daily, your Honor.

18 THE COURT: Daily.

19 MR. ARGUIN: Anytime -- it's hourly, actually.
20 Any time a person walks into an office, the DMV to
21 register to vote, the voter maintenance, the voter
22 registration list is updated.

23 THE COURT: Okay. I apologize. So if they'd
24 come in and said we want to know what procedures, are
25 you using the ERIC system, are you using voter,

1 Motor Voter, I think we used to call it, system, and
2 they had gotten about information how that system, if
3 they had sought information about that system was
4 implemented would they be closer to their directive
5 under the National Voting Rights Act and the...

6 MR. ARGUIN: If was reason to suppose there was
7 a violation of federal law, then perhaps. But as we
8 put in our Motion to Dismiss, your Honor, we catalog a
9 whole host of the reasonable efforts that the Secretary
10 of State's Office and the Department of State are
11 pursuing to comply with NVRA. And I think that it's
12 very telling that in all that publicly-available
13 information and statutory provisions, there's no
14 response from DOJ suggesting that we're not doing what
15 we're supposed to be doing.

16 THE COURT: Right.

17 MR. ARGUIN: And so we get back to the fishing
18 expedition. What is the point of this and how is it
19 consistent with the way Congress has delegated
20 responsibility for list maintenance, and how is it
21 possible to read a statute from now 65 years ago to the
22 exclusion of all the protections that are afforded in
23 these very specific laws that are far more current and
24 far more specific to the issues of this case.

25 THE COURT: And a moment-in-time snapshot of the

1 voting lists sort of is necessarily misleading; is that
2 not correct? If I were to die tomorrow or move to
3 another state, preferably -- you know, to die, not to
4 living here but to dying -- then the records of today
5 would be inaccurate, correct, if I registered to vote,
6 you know, in Hawaii tomorrow?

7 MR. ARGUIN: Absolutely, your Honor. This is
8 the critical point. This is why the list maintenance
9 responsibilities under HAVA and NVRA are far different
10 from the Civil Rights Act of 1960.

11 These statutes are intended to promote the right
12 to vote, and they have very specific safeguards. The
13 Secretary of State, the Department of State cannot
14 remove an active voter without following a notice and
15 process to confirm that, in fact, the person is dead
16 and that, in fact, the person has moved. That doesn't
17 happen in a day because there's a mailing process and
18 there's response mailings and deadlines set for how
19 much time you have to allow for a person to say hey,
20 I'm still here. That can't happen with a snapshot. So
21 all you're going to get is one picture in time that,
22 following your example, you may have already moved but
23 maybe you're coming back and -- or maybe you have moved
24 and you haven't yet registered.

25 But we need to make sure that, in fact, the

1 Secretary of State has to make sure that, in fact, the
2 move actually happened before you're removed from the
3 voter registration, from the active list of voter
4 registration. What often happens is that there's
5 notice of suspicion that someone has died or moved
6 before the confirmation process, the confirmation
7 process puts a hold, they're moved to an inactive list.
8 But then there's a confirmation process, and if it's
9 confirmed that they moved, then they're removed. But
10 if it's not confirmed and they're still here, then they
11 go back on the active list. All of that is to make
12 sure there is no infringement to the right of vote.
13 And without some allegation that the Secretary is
14 applying some sort of practice or procedure that
15 infringes the right to vote or that discriminates
16 against voters because of race or another category,
17 then there's absolutely no basis for relying on the CRA
18 and certainly no basis to read it in isolation from all
19 the other statutes that we've been discussing.

20 THE COURT: And don't I have to read it in
21 conjunction with *Powell*, --

22 MR. ARGUIN: Absolutely.

23 THE COURT: -- which says that information can
24 be redacted; correct?

25 MR. ARGUIN: Well, the First Circuit said --

1 THE COURT: I'm sorry.

2 MR. ARGUIN: -- in *Bellows* says it can be
3 redacted. And certainly all the other courts that have
4 been confronted with this, which to date is the Central
5 District of California, the District of Oregon, and the
6 District of Michigan, have all dismissed DOJ's
7 complaints for many of the same reasons we've been
8 discussing; that they are not within the CRA, that the
9 statement of purpose and demand is not here, and that
10 redaction is perfectly appropriate.

11 And so for all those same reasons, consistent
12 with the other courts' decisions, the Secretary of
13 State would urge this Court to dismiss DOJ's complaint
14 and deny the parallel Motion to Compel.

15 THE COURT: Okay. Thank you.

16 Hang on. Are we going to hear from the
17 Intervenors first, I believe?

18 MR. NEFF: That makes sense, your Honor.

19 THE COURT: That way you don't have to argue
20 more than once, unless you want to.

21 But don't -- let's not tread over ground that's
22 already been covered. You have not been objected to as
23 Intervenors but, you know, so your separate issues are
24 the question here.

25 MR. SAVITZKY: Understood, your Honor, and may

1 it please the Court, Ari Savitzky from ACLU for the
2 Common Cause Intervenors. I'll address the two issues
3 before the Court, the two motions before the Court.
4 Before I do I want to acknowledge Ms. Saunders, Cathy
5 Saunders, one of the Intervenors in the courtroom
6 today; Stuart Waldman, one of the Intervenors in the
7 courtroom today; John Marion, the Rhode Island Director
8 of Common Cause, the organizational Intervenors in the
9 courtroom today.

10 And the reason these voters have intervened and
11 the reason they're here today is because they're
12 intensely concerned that the federal government is
13 making an improper and unprecedented grab for their
14 sensitive personal information. And they're right to
15 be concerned because they have eyes to see and they can
16 see when the Attorney General sends a letter to the
17 Governor of Minnesota demanding the state's voter rolls
18 as a condition for pulling back immigration
19 enforcement. They can see when the Department of
20 Justice admits that DOGE has mishandled voters'
21 sensitive personal information with respect to the
22 Social Security Administration and entered into
23 agreements with outside election-related groups. They
24 can see when former attorneys from the Civil Rights
25 Division tell the New York Times that they were tasked

1 by the front office, the Department of Justice, with
2 obtaining state voter rolls so that DOGE can look at
3 them. And they can see the Memorandum of Understanding
4 that has been sent to states in conjunction with these
5 data requests that purports to allow the federal
6 government to take charge over who gets to stay on the
7 states' voter laws; contrary to federal law, contrary
8 to the Constitutional order. And so the outcome here
9 is incredibly important to the voter Intervenors and to
10 their fellow Rhode Islanders and to our democracy.

11 The Court has our papers. You heard from one of
12 the Defendants already. The most important thing I
13 could do I think is to answer and address the questions
14 the Court's raised. I think there are two basic
15 questions for the Court to answer at this point: (1)
16 What are the rules that apply here, what type of
17 proceeding is it. That goes to the Motion to Compel.
18 (2) Is the Complaint that was filed by the United
19 States legally deficient such that this action should
20 be dismissed. I'm going to address this point briefly
21 without being repetitive of what we've going over
22 already and while addressing the Court that the point,
23 the points that the Court has brought up. Excuse me.

24 Question (1), what are the rules that apply
25 here. The United States initiated this proceeding by

1 filing a civil action or this Federal Rules of Civil
2 Procedure. Rules 1 and 81 state the Rules apply. The
3 *United States v. Powell*, binding Supreme Court
4 precedent, says that the Rules apply. And the CRA by
5 using the term "appropriate process" says that the
6 Rules apply.

7 What *Powell* says, and this is Footnote 18 of
8 *Powell*, extremely clear, When a statute grants the
9 court jurisdiction to enforce some government demand
10 for information by appropriate process, but "contains
11 no provision specifying the procedure to be followed in
12 invoking the court's jurisdiction, the Federal Rules of
13 Civil Procedure apply." That's the end of it.

14 Now, how fast an action moves, how much
15 discovery might be needed, where -- whether the case
16 can be resolved on summary judgment; those are all
17 questions that are addressed under the Rules. There's
18 flexibility under the Rules. That's what this Court
19 does. But the bottom line is we apply the Rules and we
20 apply Rule 12. That's the first step. We look at the
21 Complaint, is it legally sufficient.

22 *Lynd*, if I can address the question the Court
23 asked for, was not to the contrary. *Lynd* is a case
24 where there's two years of litigation, endless motions
25 and attempts by the state defendants to not address the

1 government's demand. That's not what is happening
2 here.

3 The Motion to Compel says give us these
4 documents, give us the State's voter rolls with all the
5 confidential personal information of Rhode Island
6 voters, without even consideration of whether or not
7 the demand is legally valid or whether there's an
8 improper purpose. And just one other point on the
9 Motion to Compel piece. Even -- and your Honor raised
10 the analogy to the criminal context. How about the
11 analogy to the administrative subpoena context; right?

12 This is a full-on civil action. They filed a
13 Complaint. But sometimes there'll be an administrative
14 subpoena in another context and someone will run to
15 federal court, the person who received the subpoena,
16 and they'll move to quash; right? That's also a
17 scenario that happens. And even in those circumstances
18 courts apply the teaching of *Powell*. The First Circuit
19 does this. One of the cases cited in the briefing is
20 an administrative subpoena case about gender-affirming
21 care I think at Mass General Hospital in Massachusetts,
22 from the District of Mass last year.

23 Even when you go to court on a motion to quash,
24 not a full-blown federal action filed under by
25 Complaint, the court considers is there an improper

1 purpose, is there a proper legal basis for the demand;
2 right? And in that administrative subpoena case I
3 referred to, 800 F.Supp. 3d, it's at page 237, the
4 relevant discussion, (Reading) When there's not an iota
5 of suspicion of --

6 THE COURT: Can you slow down just a smidge; I'm
7 sorry.

8 MR. SAVITZKY: When there's not an iota of
9 suspicion of any specific or particularized wrongdoing,
10 the court quashes. Now, again, that's in the
11 administrative subpoena context.

12 And again, here we have a Complaint filed under
13 the Rules. So there's no possible way and there's no
14 precedent and there's no analogy when you grant a
15 Motion to Compel without considering these questions,
16 considering whether there's a legal basis to grant the
17 demand. And then also considering is there improper
18 purpose; there's plenty of evidence of that here as
19 well.

20 So just to address the other question here,
21 right, so now we're at Rule 12. We have a Complaint.
22 Is it legally deficient? It is. We have to dismiss.
23 Statute requires a written demand for the information
24 that states the basis and the purpose for the request.

25 And it's in the briefing already so I will

1 address only very briefly the numerous different ways
2 in which this demand, encapsulated by the September 8th
3 letter sent to the Secretary, is legally deficient.
4 First of all, did the Attorney General state the basis
5 for the request? No. It's an easy one, there's just
6 zero statement of the basis; and that's the ground in
7 which the California and Oregon courts dismissed. It's
8 not in writing, which is what's required. You state
9 the basis in writing.

10 And by the way, look at that *Lynd* case; right?
11 What did the Department of Justice under RFK think you
12 were supposed to do when this statute was actually in
13 use? Footnote 6, page 229 of *Lynd* --

14 (Court Reporter requests clarification)

15 MR. SAVITZKY: -- it quotes what the written
16 demand said. (Reading) This demand is based upon
17 information in the possession of the Attorney General
18 tending to show the distinctions on the basis of race
19 or color have been made with respect to registration
20 and voting within your jurisdiction.

21 That's the basis. That's the factual basis.
22 That was the original understanding of the basis that
23 was required.

24 There's nothing like that here. Pure fishing
25 expedition. That is all you need to hold to say that

1 the demand is legally deficient under the CRA.

2 Another independent ground, do they state the
3 purpose. There's a conclusory sort of general
4 statement, Oh, the purpose is to ascertain compliance
5 with HAVA and the NVRA. There's no discussion, no
6 pleadings, no meat on the bones.

7 What do HAVA and the NVRA actually require?
8 HAVA requires states to collect a person's voter --
9 driver's license number, Social Security number. Rhode
10 Island is doing that. They didn't ask, well, what do
11 you do? Do you collect that? Did you look at the
12 voter registration form? I brought copies. They asked
13 for it. So if the United States simply wanted --

14 (Court Reporter requests clarification)

15 MR. SAVITZKY: If the United States wanted to
16 simply ascertain whether that information is being
17 collected, it doesn't need Rhode Islanders'
18 confidential personal information to do that.

19 And same with the NVRA. The NVRA, and I won't
20 repeat it because Mr. Arguin has mentioned, it tasked
21 the states with voter list maintenance. It doesn't
22 task the federal government with doing that. And it
23 certainly doesn't say that the federal government
24 should replicate the thing that the State does, let
25 alone do it with a snapshot. So there's no purpose

1 that's stated as plausible and there are no pleadings
2 to sort of flesh out what would be the plausible
3 purpose.

4 And then you get to pretext. Because even if a
5 purpose, a sort of general conclusory purpose is
6 stated, is it the purpose. We know from the Supreme
7 Court's decision *in Niz-Chavez* against *Garland*, which
8 we cite in the papers, the use of the definite article
9 matters. You need to state the purpose; not any
10 purpose, not a purpose, not some purpose.

11 And here, there's plenty of evidence, massive
12 evidence that the purpose has not been stated. I mean
13 just look at the MOU that DOJ has offered to the states
14 that aggrandizes for the federal government for first
15 time ever, in violation of federal law, the role a
16 voter list maintenance to the federal government to say
17 the federal government can look at individual voters
18 and demand that they be removed from the voter rolls
19 within 45 days, which is a violation of the NVRA. And
20 we have an extensive roundup of all this in our brief;
21 I won't repeat it here. And I think what the Court may
22 hear today in response are answers like we've heard in
23 some of the other proceedings in some of the other
24 states; and what we haven't heard in those proceedings
25 is an unequivocal disavowal of this ulterior purpose.

1 In Minnesota an attorney at the Department of
2 Justice said, I don't know the answer, to whether the
3 Attorney General could use state voter files to look at
4 every person who voted in the country. In Connecticut
5 last week an attorney said, I simply can't state what
6 the Attorney General's purpose may be at some other
7 time.

8 So I would just say if you ask about that, your
9 Honor, I would suggest listening very carefully to
10 whether there's a true and unequivocal disavowal of
11 that purpose, contrary to all the evidence that we see,
12 that voters can see. And I don't think you'll hear
13 that. I don't think you can hear that, given the
14 representations that have been made and given the
15 evidence that's out there. And that is also an
16 independent ground to dismiss the Complaint, because if
17 you don't state the purpose, you haven't complied with
18 the statute.

19 On the last ground, which is the privacy, I
20 won't address again the issues around the Privacy Act.
21 They're in the briefing. I'll only say there are also
22 constitutional privacy issues at stake that have to do
23 with the chilling effects of releasing voters'
24 confidential personal information without adequate
25 safeguards and making that the price of the franchise:

1 If you want to be on the voter rolls, then you have to
2 be okay with your personal identifying information
3 going to DOJ and to whatever other federal agencies
4 they share it with for whatever purposes.

5 That is exactly what the voter Intervenors here
6 and what so many Rhode Islanders who care about a
7 vibrant democracy are concerned about.

8 And your Honor, if the Court has no further
9 questions, I'm happy to address any further issues.
10 But I think there are multiple grounds to dismiss, and
11 I think that's the right course here.

12 THE COURT: Thank you.

13 (Pause)

14 MR. GOLAN-VILELLE: Good morning, your Honor.

15 THE COURT: Good morning.

16 MR GOLAN-VILELLE: My name is Robert
17 Golan-Vilelle on behalf of Intervenors SEIU
18 District 1199NE, the Rhode Island Alliance for Retired
19 Americans, Carolyn Betensky, and Zack Mezera. These
20 Intervenors are membership organizations and Rhode
21 Island registered voters who are deeply concerned with
22 DOJ's unprecedented efforts to obtain their and their
23 members sensitive personal information in this lawsuit.

24 We, of course, agree with the State and the
25 Common Cause Intervenors that this action must be

1 dismissed. I won't repeat all the points that they've
2 made, but I'd like to add points on three specific
3 issues that reinforce why they are correct that
4 dismissal is required here. Those are the issue of
5 basis, the issue of purpose, and the fact that Rhode
6 Island is entitled to redact the sensitive information
7 at issue here, which is the entirety of the case, given
8 that it has already offered to disclose the public
9 list.

10 First, on the issue of basis, this is the
11 simplest and most straightforward ground on which this
12 case can be resolved. I won't repeat everything the
13 State has said, but the statute has two requirements:
14 basis and purpose. They each must have independent
15 meaning. DOJ has understood it to -- each of them to
16 have separate meanings in all of the 1960s cases that
17 they rely on; and all three courts to have addressed
18 this issue today have understood "basis" to mean
19 factual basis. And that makes sense because it is the
20 only meaning that makes sense in the statutory scheme.

21 So DOJ's actual position in its briefing that is
22 put forward here is that the Civil Rights Act itself is
23 the basis for its Civil Rights Act demand. That simply
24 cannot be right as a matter of law because it would
25 automatically be satisfied in every single case and,

1 you know, that would render the provision meaningless;
2 well understood that Congress does not enact
3 meaningless statutes and that we don't read statutory
4 language to be superfluous.

5 And as the State and the other Intervenors have
6 said, the DOJ's September 8th letter simply provided no
7 basis at all. It doesn't use the word "basis." It
8 doesn't provide anything that could be understood as a
9 factual basis, and this straightforwardly requires
10 dismissal here. And the most important thing is that
11 it requires dismissal under any level of review. You
12 know, no matter -- even leaving aside the issue of what
13 type of proceeding is this, are we under *Lynd* or
14 *Powell*, even, even under the most hands off, you know,
15 even under the most hands-off level of review, at a
16 bedrock minimum this Court needs to assess whether a
17 basis was provided at all; and it plainly was not here,
18 and that is enough to dismiss this case on its own.

19 On the issue of purpose, I won't rehash all the
20 ground that the State went over. We agree with them
21 that a proper purpose under the Civil Rights Act has to
22 deal with an individual's ability to register to vote
23 and cast a vote freely. That is, again, what all of
24 the 1960 cases actually involved. That is what the
25 entire subject matter of the statute deals with. And

1 I'd just like to add -- I'd just like to point the
2 Court to one additional authority that reinforces not
3 just why this interpretation of the statute is correct;
4 but specifically why the purpose that DOJ has put
5 forward here is not an appropriate one, and that case
6 is *Kennedy v. Bruce*. The cite for that is 298 F.2d
7 860. This is one of the Fifth Circuit 1960s cases
8 that DOJ relies on. And there's an extended discussion
9 in this case about a particular county in Alabama where
10 there are two particularly notable facts.

11 First, in this county, of the roughly 6,000
12 Black citizens of voting age, not a single one was
13 registered to vote. And then there was also for the
14 white citizens, there was a number that was greater
15 than 100 percent of the white citizens who were
16 registered to vote. And the court actually goes on to
17 say, I'm quoting, "Obviously such a figure indicates
18 that there have been failures to purge voters who have
19 moved away or had died, a matter which does not bear
20 any particular importance to the present inquiry."

21 And this is particularly striking because it
22 means at that point in time, even when a court had its,
23 had in front of its face facts that would suggest what
24 today we would call list maintenance issues, it simply
25 did not think that this bore any relevance to

1 Title III. The court was not concerned with the more
2 than 100 percent of white citizens who were registered
3 to vote. It was extremely concerned with the zero
4 Black citizens who were registered to vote and the
5 overwhelming societal problem in (indecipherable).

6 THE COURT: But isn't the Department of Justice
7 saying, well, since then HAVA and the National Voting
8 Rights Act, NVRA, have sort of modified the landscape.
9 Isn't that what they're saying?

10 MR. GOLAN-VILELLA: That is what they are
11 saying. We don't think it's correct and because it's
12 basically assuming their premise. It's assuming that
13 the Civil Rights Act was meant to be a sort of
14 all-encompassing such that any time, you know, Congress
15 enacted a subsequent law that had anything to do with
16 the voting, that would sort of automatically be a
17 proper purpose under the law. But there's nothing in
18 the Civil Rights Act that suggests that.

19 We agree that with, you know, what the State has
20 said in terms of, you know, the better reading is that
21 it should have some tether to the purposes for which
22 the Civil Rights Act was enacted. And, you know, the
23 *Bruce* opinion we think matters because, you know, it's
24 the best indication of when you have the actual facts
25 at issue that, you know, today we would call list

1 maintenance issues. You know, the court went out of
2 its way to say that this has no particular relevance.

3 So we think all of this collectively, you know,
4 the text and context of the law, the actual case law
5 and past practice of how it's been used, ordinary
6 principles of statutory interpretation, we think all of
7 that points in favor of the State's position and in
8 favor of the proposition that this simply was not a
9 proper purpose here.

10 And then, finally, I'll move on to the issue of
11 whether Rhode Island can redact the sensitive
12 information at issue here. So as your Honor asked in a
13 previous question, there is nothing in the Civil Rights
14 Act at all that prevents redactions. Rhode Island law
15 prohibits the disclosure of the sensitive information
16 at issue here. I don't believe DOJ has contested that;
17 and DOJ has the burden of showing that that law has
18 been preempted and simply has not met that burden.

19 There is simply no reason to conclude that the
20 Civil Rights Act preempts these privacy protections,
21 for a few reasons. There's no express preemption
22 provision. As the State I believe noted, this
23 information was not even required to be on applications
24 at the time; and there's an overwhelming consensus of
25 courts that you can redact under the NVRA, including

1 here in the Fifth Circuit under the *Bellows* decision.

2 DOJ's only argument here that the Civil Rights
3 Act contemplates the production of sensitive material
4 is to point to 52 U.S.C. 20704, which puts limits on
5 the further disclosure of information received under a
6 Title III demand.

7 But there's simple no reason to conclude that
8 that means Congress at that time must have contemplated
9 that that includes sensitive information. And the best
10 way to look at this is to look at the Privacy Act. The
11 Privacy Act prohibits disclosures under various
12 circumstances even when the information is public and
13 not particularly sensitive. It just has to be
14 contained in a system of records and be identifiably
15 about specific people. And that's linked to the
16 purposes of Privacy Act, which is that we think there
17 ought to be, you know, some limits on controls on when
18 the government and when specific arms of the government
19 have possession of specific information.

20 So there is simply no reason to conclude that
21 the Civil Rights Act preempts the Rhode Island law
22 here, as the Oregon court also concluded as an
23 alternative reason for dismissal in that case. And
24 that is why, you know, even if DOJ were entitled to the
25 list, you know, at all, Rhode Island would be able to

1 redact the sensitive information which, again, is the
2 entirety of the dispute here.

3 So for all of these reasons and all the others
4 in our briefing, we'd ask that you dismiss this case.

5 THE COURT: Thank you.

6 We're going to take a 15-minute break so that we
7 can get through the government's argument without
8 interruption, and we'll about back in 15 minutes to
9 hear from you, Mr. Neff.

10 (Recess)

11 THE COURT: Whenever you're ready.

12 MR. NEFF: Good morning, your Honor. May it
13 please the Court, Eric Neff, on behalf of the United
14 States.

15 This case ask about transparency, transparency
16 in our elections enforced with the CRA. The CRA is a
17 sweeping bill because it is about transparency.

18 THE COURT: But is it? Is that what it's for?
19 I mean isn't there transparency when the State offers
20 you their publicly-available information? Why does the
21 government need driver's license numbers and Social
22 Security cards and the Social Security numbers, and
23 what is the purpose that the federal government sees
24 that it has? Is it in maintaining the voter list?
25 Because that's certainly not what HAVA and the National

1 Voting Rights Act say, is it?

2 MR. NEFF: Thank you, your Honor. I would
3 direct your Honor's attention to the Ford-Carter
4 Report, the bipartisan report that was done in the wake
5 of the 2000 election and is the Blue Ribbon Report that
6 led to the passage of HAVA. The Ford-Carter Report
7 said, and I quote from Section 3, "An added identifier,
8 an added numerical identifier is desirable, given
9 various spellings and clerical errors that frustrate
10 reliance only on a given name and address." Further
11 down, "We suggest that States obtain the last four
12 digits of this number as an added identifier." The
13 Federal Election Commission has made the same
14 recommendation.

15 The Help America Vote Act went further, knowing
16 that the Social Security number implicated concerns
17 that people might have. It wrote directly in the
18 statute that the SSN-4 is not a Social Security number
19 for purposes of the Privacy Act.

20 THE COURT: When you say the SSN-4, what do you
21 mean?

22 MR. NEFF: Thank you, your Honor. The last four
23 digits of a Social Security number.

24 THE COURT: So, but back up a little bit, okay,
25 because this report, the Carter, the Ford-Carter Report

1 isn't before the Court. It's the government asking
2 through the use of Title III to get records under HAVA
3 and the National Voting Rights Act. So tell me how --
4 forget about purpose, forget about transparency. For a
5 minute just tell me what your basis is for getting this
6 information from each individual state, and do you have
7 a factual basis?

8 MR. NEFF: Our basis is the CRA. The United
9 States' position --

10 THE COURT: You can't say the CRA requires me to
11 give a basis and so our basis is the CRA. That's
12 circular logic; right?

13 MR. NEFF: I would posit the United States would
14 say no, that we're only required to state a legal
15 basis. However, if your Honor was inclined to require
16 a more specific basis, it would be what the United
17 States reviewed before it pursued the voter rolls here,
18 and that would be the EAVS data published by the EAC,
19 which is reviewed extensively by the Voting Section,
20 and the EAVS report was cited in our Complaint.

21 For example, in the case of Rhode Island,
22 Rhode Island self-reports to the Election Assistance
23 Commission that they do not do eligibility audits.
24 That's a concern of the Voting Section. We want to
25 make --

1 THE COURT: Explain what you mean by that,
2 because my understanding of Rhode Island's procedure as
3 they've outlined it in their Motion to Dismiss is that
4 they take information from the prison I think daily and
5 cull the rolls for people who are incarcerated; that
6 they provide the information to that ERIC system that
7 25 states put together that has masked identifiers for
8 individual voters; that they received daily reports of
9 voting. And the ERIC system compares the data with
10 other states to make sure that somebody is not
11 registered to vote in two jurisdictions, that they --
12 what's the word I'm looking for -- that they also get
13 information from each individual Board of Canvassers in
14 the 39 cities and towns here.

15 So what do you mean that they don't, they don't
16 cull ineligible voters? What are you trying to say
17 here? Because if they're collecting a Social Security
18 number and a driver's, or a Rhode Island ID number, and
19 then they're required, then those things are -- if
20 they're required for registration then by definition
21 the registration is an open eligible voter, isn't it?

22 MR. NEFF: Your Honor, the United States is not
23 saying that Rhode Island does not cull ineligible
24 voters.

25 THE COURT: What are you saying?

1 MR. NEFF: What we are saying is that we don't
2 need to allege that. We -- as the *Lynd* court said, the
3 Attorney General's, quote, right to records does not
4 require that the A.G. show that the A.G. could win
5 without them. We do not need to allege a violation of
6 a specific statute.

7 I was only raising the lack of a particular
8 audit and, again, this was self-reported by Rhode
9 Island as a concern that the Voting Section had.

10 There are also certain numbers that raise
11 concerns with the Voting Section, as Rhode Island
12 self-reported having 60,000 inactive registrations.
13 They reported having 60,000 duplicate registrations.
14 This is out of about 800,000 registered voters. That's
15 also a 90 percent registration rate of the adult age
16 voting population.

17 THE COURT: I believe it's 700-and something
18 thousand voters; but your point is taken.

19 But I guess what's the DOJ's, what horse do you
20 have in this race? Is it that you're trying to
21 double-check the work of all of the states, or is it
22 that you're trying to assert an outsized role for the
23 federal government in the running of elections?

24 MR. NEFF: Certainly not outsized role, your
25 Honor.

1 THE COURT: It seems that way from your filings
2 in all of these states. So what's your purpose?

3 MR. NEFF: The United States is in a trust but
4 verify mode as it relates to voter list maintenance
5 countrywide. It is --

6 THE COURT: So let me ask a question then
7 because I think 11 -- well, originally three
8 jurisdictions just provided the list to DOJ: Texas; I
9 don't know, North or South Carolina; somebody else.
10 What did you do with those lists?

11 MR. NEFF: So we kept all the lists that we
12 received -- at this point it's been 17 states have been
13 kept in separate compartmentalized files that only very
14 limited people have any access to.

15 THE COURT: And what did you do to verify those
16 lists?

17 MR. NEFF: We've not done anything yet because
18 we've not --

19 THE COURT: Why not? If you need to verify
20 those lists, if you have an oversight role why haven't
21 you taken -- some states have said here, here's all our
22 data. And you've gotten it, and by my understanding
23 you got some of it back in the summer of last year.
24 Why haven't you done anything with those states' data?

25 MR. NEFF: Well, we're talking as to the

1 non-public lists; correct?

2 THE COURT: Right.

3 MR. NEFF: Okay. The United States is taking
4 extra concern to make sure that we're complying with
5 the Privacy Act in every conceivable way, and there are
6 still a couple steps we have to go through before the
7 United States is comfortable proceeding and comfortable
8 representing to this Court that we're in full
9 compliance with the Privacy Act.

10 THE COURT: What steps have you taken and what
11 steps need to be taken with those states that have
12 complied? Because to me, the states that have complied
13 are traditionally more conservative states. Texas just
14 gave you their list, let's say. Why not go through
15 Texas's list to make sure that only eligible voters are
16 on their list?

17 MR. NEFF: I can only go into the United States
18 delivery of process so much, you Honor, but what I can
19 say is that the United States is evaluating, for one,
20 an opinion out of the D.C. Circuit that analyzed DHS's
21 SORN, and also the United States is -- we are certainly
22 going to be proceeding with running this, our intention
23 is to run this against DHS's SAVE database.

24 THE COURT: Which database?

25 MR. NEFF: The SAVE database that runs, that

1 essentially is a, it's called like a fetching system
2 that seeks information from other databases to
3 cross-check whether the data set on a roll is either a
4 deceased person or a noncitizen.

5 THE COURT: And what's the accuracy rate of data
6 that you've run against that system?

7 MR. NEFF: The accuracy rate we've been told --

8 THE COURT: By whom?

9 MR. NEFF: -- by DHS, and it's particularly the
10 SAVE personnel that run the system is that it is in
11 effect 100 percent accurate.

12 THE COURT: That's not the reporting; right? I
13 mean isn't the reporting that people have been run
14 through that SAVE Act and not for voting but for other
15 things have been kicked out as noncitizens when they
16 were, in fact, citizens?

17 MR. NEFF: There's an important note that the
18 SAVE database has been around, the SAVE Act,
19 essentially states have been able to submit their
20 information to SAVE for about 30 years. But SAVE has
21 also changed drastically in the last few months. It's
22 been I would call upgraded and the process they go
23 through, we can go into that if your Honor wants to,
24 but essentially when any flagged voter comes back, it's
25 then run through a very comprehensive confirmation

1 process to make sure that the, quote, like problematic
2 registration is, in fact, not just --

3 THE COURT: What's the process?

4 MR. NEFF: DHS has about 200-odd employees who
5 are trained for a minimum of six months each and know
6 various databases that are accessible to the federal
7 government through use and shared agreements to be able
8 to essentially access important naturalization files
9 and other data that can establish whether the person is
10 a citizen, because there are holes in the process.

11 THE COURT: What are the holes?

12 MR. NEFF: The holes, the most common hole would
13 be when someone is -- someone who came to the United
14 States is a parent and has children who are U.S.
15 citizens and then naturalized; like the most common
16 hole of that is that it's actually rather expensive to
17 go through the full, quote, documentation process. A
18 common, cheaper shortcut that people will just do is
19 just go get a passport.

20 THE COURT: By "people," do you mean the
21 children or the parent?

22 MR. NEFF: The parents, your Honor.

23 THE COURT: Because the children are derivative
24 citizens under that scenario, so even if the children
25 are born outside of the United States; correct?

1 MR. NEFF: Correct. And I'm talking about the
2 parent in this scenario as the most common problematic
3 scenario; that the child is not a problem. That would
4 not come up as any issue. It's the parent that
5 potentially would and --

6 THE COURT: If they're naturalized they can't
7 vote?

8 MR. NEFF: Explaining to your Honor when an
9 immigrant is naturalized, sometimes that's not
10 immediately available in naturalization documentation
11 databases. So what these 200 people are doing is
12 they're going to other ways to verify that that person
13 a citizen. One common way is going to the Department
14 of State and confirming that they have a passport.

15 THE COURT: Gotcha. So what you're saying, what
16 you're asserting here is the federal government's role
17 in that process. That's not what the Framers
18 envisioned, is it? The Framers gave in the Elections
19 Clause the responsibility for maintaining elections to
20 the individual states, with some congressional
21 oversight or some congressional barriers or, what do
22 you call them, check points.

23 But it's not a federal government role to
24 maintain -- to run elections. It never has been. I
25 mean we're supposed to look at what the original intent

1 of our Founders was when they wrote these documents,
2 and they were pretty clear that states have the
3 responsibility of running elections. And actually the
4 HAVA and National Voting Rights Act sort of reiterates
5 that; right.

6 MR. NEFF: In their own sphere, yes. But when
7 Congress intervenes it has preemption and, in fact,
8 they have a stronger right to preemption than they
9 would in any other sphere. The Electors Clause
10 broadens Congress's power in elections.

11 THE COURT: Understood. I understand the
12 preemption difference with the Elections Clause. But
13 tell me where you get from that to this request for all
14 this personally-identifying information that goes
15 beyond what's publicly available for the voting lists
16 in 50 states, when you have some of them for eight or
17 nine months and you've done nothing with them.

18 MR. NEFF: It would be right in the Help America
19 Vote Act that says that this is the data that the
20 states need to maintain for each registrant, --

21 THE COURT: Right.

22 MR. NEFF: -- and that the Attorney General is
23 charged with enforcing that the statute.

24 THE COURT: What have you done to find out
25 whether the State of Rhode Island is maintaining or not

1 maintaining that, besides asking for a list of all of
2 the voters?

3 MR. NEFF: That's how we are going to ensure
4 that they have the proper identification as to each and
5 every voter.

6 THE COURT: So every state is under suspicion of
7 not doing it unless and until you verify that they've
8 done it.

9 MR. NEFF: That's the Attorney General's
10 designated role under the Help America Vote Act.

11 THE COURT: It's not really though. Their role
12 is to enforce the Help America Vote Act, but the states
13 have a role in that Act. The outside role belongs to
14 the states; right?

15 MR. NEFF: The role for executing the Rules
16 belongs to the states, yes. The job of oversight falls
17 on the Attorney General.

18 THE COURT: And what is it about -- I'm going to
19 let you make your argument, go ahead, without asking
20 you more questions about that.

21 But I want to go back to what the basis and the
22 purpose is because I don't know that, in fact, I don't
23 think that you've provided anything that says there's a
24 basis individually for Rhode Island that we need these
25 for this reason. And frankly saying, you know, we're

1 going to get it from every state and hold onto it and
2 we're going to decide whether you're in compliance or
3 not based on putting data that is personally
4 identifying information through yet another database
5 that we don't know anything about, that apparently is
6 only a couple months old, to me it says that you are
7 asserting the role that HAVA gave to the states.

8 MR. NEFF: The United States respectfully
9 disagrees, your Honor.

10 THE COURT: Well, tell me how I'm wrong.

11 MR. NEFF: The statute of HAVA itself gives the
12 United States, the United States and the
13 Attorney General specifically the authority to enforce
14 the statute.

15 THE COURT: And how is the publicly-available
16 information not enough for you to ascertain whether
17 states are complying with the statute?

18 MR. NEFF: Going further into the problem that
19 was identified in the Ford-Carter Report, the HAVA
20 identifier actually protects voters because what they
21 found was happening was that with someone with a common
22 name was very often falling off of the rolls because he
23 was being wrongly identified as someone that -- maybe
24 someone reported, a John Smith reports himself to have
25 moved out of specifically Florida where this became an

1 issue, --

2 THE COURT: Uh'huh.

3 MR. NEFF: -- and Florida then dropped a
4 John Smith off the rolls that was not the John Smith.
5 And so that's why Ford-Carter Commission recommended
6 have a HAVA, what I'm calling a HAVA number; but last
7 four of SSN or driver's license in the first order.

8 THE COURT: But the HAVA number, well, now I'm
9 thinking of the ERIC number, which is a different
10 number that's assigned to each individual voting
11 record; right?

12 MR. NEFF: We are not involved in ERIC. I don't
13 know specifically what numbers they generate or don't.
14 That's a private organization that the states are
15 choosing to give the states' private voter registration
16 info too.

17 THE COURT: Actually it's a nonprofit that the
18 states together have put together, right, so it's a
19 closed loop with the other states.

20 MR. NEFF: Well, it is a nongovernmental
21 organization --

22 THE COURT: Correct.

23 MR. NEFF: -- that does also I believe
24 self-admittedly distribute it to third parties so, I
25 mean --.

1 THE COURT: So, well, so you're saying trust the
2 government, but go ahead, and not the private industry,
3 but all right.

4 MR. NEFF: Well, I would say that ERIC is not
5 mentioned in HAVA. ERIC is not mentioned in the CRA.
6 The Attorney General is.

7 THE COURT: But the CRA doesn't mention HAVA
8 because it didn't exist, and it doesn't mention
9 databases because they didn't exist. It says go copy
10 them at the Secretary of State's Office. Why can't you
11 do that?

12 MR. NEFF: It's important to read our election
13 statutes as in harmony, not at war with each other.
14 That's not what was intended by them. It's right there
15 in the National Voter Registration Act,
16 52 U.S.C. 20510(d)(1) says that this law is meant to be
17 read in addition to all other rights. The NVRA expands
18 rights; so does HAVA. HAVA merely imposes certain
19 minimum requirements on states such that their rolls
20 are clean. That's all the United States is interested
21 in here. That's why we stated that as our basis and
22 purpose. We're interested in clean rolls. We're
23 interested in HAVA-compliant voter rolls.

24 THE COURT: Right. But it seems like you've
25 jumped a bunch of interim steps, but go ahead.

1 MR. NEFF: What the *Lynd* court said at
2 pincite 226, that all that's required is a simple
3 statement from the Attorney General to the court
4 satisfying the elements above; and it's just have we
5 stated a written demand, have we stated a basis and
6 purpose, was that to an officer of election, and did
7 the state refuse.

8 THE COURT: So what's the basis?

9 MR. NEFF: The basis is the Civil Rights Act.

10 THE COURT: So that circular thing again.
11 What's the purpose?

12 MR. NEFF: The purpose is to ensure that Rhode
13 Island is complying with all provisions of the NVRA and
14 the HAVA.

15 THE COURT: So you're saying that the Department
16 of Justice doesn't need any more indication than that.
17 So if another president comes in and says, you know
18 what, I lost this state and this state in the last
19 election; I'm going to look at their voting rolls. You
20 would have no objection to that.

21 MR. NEFF: No, your Honor; it is true that the
22 CRA is a sweeping authority. It's a very short
23 statute. It provides broad authority within a limited
24 scope. And it's important for your Honor to make sure
25 that the requests are within that scope and that they

1 are appropriate under the statute, however, as the *Lynd*
2 court explained.

3 THE COURT: I know, but you're talking about a
4 Fifth Circuit case from before I was born, and I think
5 I might be one of the oldest people in this courtroom
6 so let's just remember that.

7 MR. NEFF: I'm not trying to push upon your
8 Honor that it is anything more than persuasive here.

9 THE COURT: But I have to look at it with
10 respect to what has happened since 1960; right?

11 MR. NEFF: Yes. And I appreciated your Honor's
12 discussion that got right into *Powell* which followed,
13 --

14 THE COURT: Right.

15 MR. NEFF: -- and *Powell* happened since and
16 where the -- your Honor correctly characterized the
17 Defense's argument that *Powell* tacitly overrules *Lynd*.
18 That couldn't be further from the case.

19 THE COURT: Okay.

20 MR. NEFF: The only question in *Powell* was what
21 type of review does a particular statute call for.

22 THE COURT: Right. And it uses that statute in
23 question in that case, and I understand that it's a
24 separate statute, but it uses the exact same language.
25 And *Powell* says you have to have some basis that's not

1 just the law says I can do it so therefore I'm doing
2 it; right? Isn't that essentially *Powell*?

3 MR. NEFF: No, your Honor, it doesn't use the
4 same language. And that's the sleight of hand the
5 Defense does as well as they're committing the same
6 error that the Oregon court did by just calling the
7 statutes the IRS statute and the CRA substantially
8 similar. It's not true. 26 U.S.C. Section 7605(b)
9 prohibits the U.S. from subjecting a taxpayer to
10 "unnecessary examination and investigations." Those
11 are the words that are being examined. Those are the
12 words that are not -- that are in that fashion are not
13 in the CRA.

14 THE COURT: But doesn't it say that you have to
15 have a purpose, a basis and purpose for seeking the
16 information?

17 MR. NEFF: Yes, and that is appropriate for your
18 Honor to review.

19 THE COURT: And you're saying basis and purpose
20 not appropriate in this case?

21 MR. NEFF: No, we are saying we stated -- it
22 appears we have a difference with your Honor that we've
23 stated a sufficient basis and purpose, but we would say
24 that and we've specifically alleged in both our letter
25 and the Complaint that we have stated a basis and

1 purpose.

2 THE COURT: Okay. And why have you -- why did
3 you choose to file a Complaint in federal court? Why
4 not an administrative subpoena?

5 MR. NEFF: Thank you, your Honor. That was as
6 part of the U.S.'s efforts towards transparency in this
7 case. We understand the many concerns that many
8 parties may have and we -- what I would humbly submit
9 is that the Defense can't have it both ways. They
10 can't both say you shouldn't have filed a Complaint,
11 you surrender your right to an expedited proceeding;
12 but then also say you can't exclude the Federal Rules
13 of Civil Procedure in cases where it's inappropriate in
14 this action because you're denying us procedural
15 protections. The *Lynd* court made clear that the
16 Federal Rules of Civil Procedure do not apply to CRA
17 proceedings. That doesn't mean your Honor can't
18 reference the Federal Rules of Civil Procedure when
19 appropriate.

20 THE COURT: I think though that if the courts
21 had no role in reviewing anything and we're just to
22 rubber stamp anything the Department of Justice does
23 for any reason that they state, for any basis, for any
24 purpose, that would render, that would read out the
25 language of the court's, you know, reviewing or

1 enforcing those requests.

2 So what I'm wondering is where was your basis
3 stated? Is it in the Complaint or was it in the
4 letter, and what specific language did you use?

5 MR. NEFF: It was stated in the letter, your
6 Honor. I could reference, well, I can quote the letter
7 to which we said this is pursuant to the CRA, the
8 purpose of this request is to -- and this would be the
9 purpose -- ascertain Rhode Island's compliance with the
10 list maintenance requirements of the NVRA and the HAVA.
11 That is in the record, our Motion to Compel,
12 declaration doc 2-2 at page 41. It's also cited in the
13 Complaint doc 1 at page 5.

14 THE COURT: So your argument is you don't need a
15 factual basis; you can just go on what the Defense is
16 calling a fishing expedition and get everybody's list
17 to check their work, so to speak.

18 MR. NEFF: Consistent with the various Fifth
19 Circuit case law. While we understand your Honor's --

20 THE COURT: This isn't the Fifth Circuit. So
21 let's talk First Circuit, because doesn't *Bellows* in
22 the First Circuit allow for redaction?

23 MR. NEFF: *Bellows* was a case that involved a
24 private party bringing an action under the NVRA.

25 This is a much different procedural scenario.

1 We have the Attorney General bringing a CRA action. It
2 was appropriate under the NVRA for there to be
3 redactions giving a list to a private party. That is
4 not applicable to the analysis here.

5 THE COURT: So Department of Justice can give
6 this list to anybody else, or no?

7 MR. NEFF: No.

8 THE COURT: No other department of the federal
9 government? So you can't give it to HHS, Homeland
10 Security, whatever they call themselves.

11 MR. NEFF: Your Honor, I meant -- to be clear, I
12 meant to deny that it is true that we can just give the
13 list to anybody. That's certainly not the case.

14 THE COURT: What can you do?

15 MR. NEFF: We can give it for, as pursuant to
16 uses that we've published in our systems records
17 notices, which generally folds into law enforcement and
18 governmental purposes. There are routine uses that are
19 statutory purposes given to us by Congress.

20 THE COURT: But not under Title III and not
21 under HAVA or the National Voting Rights Act; right?

22 MR. NEFF: Incorrect, your Honor, because
23 specifically the HAVA, NVRA, and CRA are mentioned in
24 the systems of records notices as routine uses for the
25 Voting Section to use these lists for.

1 THE COURT: What I'm saying is can you take this
2 list and send it to Homeland Security and say, hey,
3 check this out to see if any of these people are not
4 citizens.

5 MR. NEFF: In compliance with all federal laws,
6 yes, and we intend to do so.

7 THE COURT: How?

8 MR. NEFF: We intend to first off enter a use
9 agreement with them, which we've already done, an
10 appropriate use agreement. Second, we intend to make
11 sure that our SORNs are fully applicable to --

12 THE COURT: How? How are you going to control
13 what they do?

14 MR. NEFF: Thank you, your Honor, that's a good
15 question. In the Department of Justice we have a
16 little-known agency, the Office of Civil Liberties and
17 Privacy. We've had -- we've been working with them
18 every step of the way. In fact, the head of that
19 office, Mr. Winn, is a longtime AUSA and practiced in
20 this field, has extended an open invitation to all the
21 courts to even come and testify or be at counsel table
22 if needed to explain all of Privacy Act actions that
23 the United States is taking in preparation for properly
24 sharing this data with DHS or SAVE, making sure that
25 it's only being used in the proper manner and that

1 everyone's privacy protections are protected.

2 THE COURT: So what can it be used for?

3 MR. NEFF: For list maintenance; for our routine
4 uses that are described in the SORNs, which is
5 essentially the statutes that Civil Rights Division
6 enforces, which are listed in the CFRs, specifically
7 Section 0.50 and 0.51.

8 THE COURT: So not for ICE going to people's
9 homes and arresting them; right?

10 MR. NEFF: No.

11 THE COURT: Are you sure?

12 MR. NEFF: Good question, your Honor, because
13 the Civil Rights Division cannot promise what any other
14 agency will or will not do. However --

15 THE COURT: Isn't that why Rhode Island doesn't
16 want to give you the driver's license and Social
17 Security numbers, because you can't promise what other
18 people are going to do?

19 MR. NEFF: If that were the case, your Honor
20 could fashion an order that would order that the data
21 be given and be shared only in the manner that we are
22 properly allowed to use it for.

23 THE COURT: What if I said you can't share it at
24 all.

25 MR. NEFF: Can't share it even to run through --

1 THE COURT: Even within any other department of
2 the federal government or any state or local
3 government.

4 MR. NEFF: One thing I can promise for sure --

5 THE COURT: Or any political campaign or
6 political entity --

7 MR. NEFF: One thing I can promise for sure, the
8 Civil Rights Division is going to comply with every
9 order this court gives, no questions asked.

10 THE COURT: I kind of doubt that, but okay.
11 So -- but that's sort of the cart before the horse.

12 Let's go back to the basis. So even if I were
13 to follow *Lynd* in the Fifth Circuit case, wouldn't the
14 Defendants be able to redact the information that's
15 personally identifying individual people before it
16 gives you the list? Doesn't *Bellows* allow that and
17 doesn't it require it on some level? Rhode Island law
18 requires it.

19 MR. NEFF: No, on both counts, your Honor.
20 First off, again, it's necessary to read the election
21 statutes in harmony with each other, not as at war with
22 each other. The HAVA specifically mentions that this
23 is data we need to properly do our job, and furthermore
24 that's true just as a practical matter.

25 As to Rhode Island law, my friends on the other

1 side gloss over in the law that they cite, Rhode Island
2 statute 20-00-19.5(i), that under voter registration
3 form and confidentiality to the extent permitted by
4 law, this says the SSN-4 is confidential. It falls
5 right back into the supremacy argument.

6 To the extent that federal law has specified
7 that we get this, which it has, the Rhode Island law
8 allows for us. And, in fact, further later down in the
9 law in a law not -- again, not cited by Defendant,
10 Rhode Island law 20-00-19 which states the purpose of
11 these laws, it says that the purpose of these laws is
12 "implementing the voter registration requirements of
13 both federal and state laws".

14 THE COURT: All right. Let's back up. Your
15 basis is the CRA.

16 MR. NEFF: Yes.

17 THE COURT: Is there a factual basis?

18 MR. NEFF: As I've explained with the EAVS data
19 there is, your Honor. However, we're not required to
20 state it and it's not appropriate for this Court to
21 review it, consistent with the same letters that --

22 THE COURT: Don't I have to determine whether
23 you have a basis or not?

24 MR. NEFF: You have to determine whether we have
25 a basis, that's correct.

1 THE COURT: Whether it's a lawful basis. If
2 your basis is I don't want women voting in Rhode
3 Island, then that's okay, I still have to give you the
4 list; they have to give you the list?

5 MR. NEFF: No, your Honor. You do, you are able
6 to review it in a facial sense. Is it facially
7 compliant with the purposes of the CRA. Remember, the
8 CRA is culled Federal Elections Records. The point
9 here is falling right under Federal Elections Records
10 is the Attorney General's duty to conduct oversight, to
11 trust but verify as to whether these states are doing
12 what they need to be doing, to doing things like
13 removing 60,000 inactive registrations, like removing
14 --

15 THE COURT: But Rhode Island removed 105,000
16 registrations or some odd number like that in the last
17 whatever period of time that they cited in their
18 briefing.

19 Why is your oversight role satisfied by a
20 snapshot in time of the voter records?

21 MR. NEFF: So this is an ongoing obligation, and
22 the United States is entering this in good faith,
23 absolutely just wanting clean voter rolls and free and
24 fair elections. I would agree as to the snapshot issue
25 that the most important voter role is the one that is

1 the snapshot right in time that is used for an actual
2 election.

3 THE COURT: But isn't your role more effectively
4 -- and I'm not going to pretend to tell the Department
5 of Justice how to do their job. But why would you not
6 be looking at the processes that states are using, as
7 opposed to the list? The list gives you nothing except
8 a snapshot in time. The process tells you whether or
9 not they're complying with HAVA and the National Voting
10 Rights Act.

11 MR. NEFF: We look at both, your Honor, and --

12 THE COURT: Why does the list help?

13 MR. NEFF: Because the United States has the
14 capability to run these lists against other databases
15 to be able to tell if there are bad registrations on
16 their rolls.

17 THE COURT: So if I -- I'm registered to vote in
18 Rhode Island. If I move to Oregon and register, and
19 you get the list where I'm still in Rhode Island, then
20 that somehow says Rhode Island's list is inaccurate,
21 even if I never voted here after I moved.

22 MR. NEFF: No, your Honor. It just leads to a
23 scenario where we can check with Rhode Island, do our
24 constitutional and statutory duty to verify with Rhode
25 Island they have removed you from the rolls.

1 THE COURT: But how do you know that I need to
2 be removed from the rolls? What is your role in this?

3 MR. NEFF: Our role is oversight and so if we
4 knew -- in your hypothetical, if we knew that you had
5 moved to Oregon and we also knew that Rhode Island had
6 not removed you from the rolls --

7 THE COURT: But you wouldn't know that based on
8 this list because you're getting a snapshot. You're
9 getting the day before I moved.

10 MR. NEFF: I understand, your Honor, and there
11 may be, like there can be holes in list maintenance,
12 but that's why there's oversight.

13 THE COURT: But that's why we have ongoing list
14 maintenance; right? So if you don't check it every
15 day, all 50 states, all Boards of Canvassers, every
16 single -- and the District of Columbia every single
17 day, then, you know, if your oversight is inaccurate;
18 right?

19 MR. NEFF: No, I wouldn't concede that. It's
20 the Attorney General's prerogative as to how she's
21 going to go about her oversight role and how often and
22 in what manner.

23 THE COURT: But then doesn't -- okay. Go ahead.

24 MR. NEFF: Going into the, essentially the
25 details of Rhode Island's election process, and what

1 they've done is exactly what the Fifth Circuit has
2 warned against saying that Title III properly is purely
3 investigative. That's *Alabama ex relatione Gallion v.*
4 *Rogers*, 187 F.Supp. 848 at 854; *Coleman v. Kennedy*,
5 313.F.2d 867 at 868. The purpose of Title III is only
6 looking into possible violations of a federal statute,
7 and that that language is clear and unambiguous.

8 THE COURT: So what are the possible violations
9 that you're alleging here?

10 MR. NEFF: The possible violations would be in
11 noncompliance with the NVRA and HAVA, and we're back to
12 what the letter --

13 (Indecipherable crosstalk)

14 THE COURT: -- logic then; right? We're asking
15 because we don't have any information but we want the
16 information so that we can figure out whether there is
17 evidence; right?

18 MR. NEFF: Which is exactly what the court
19 warned against. The Attorney General's right to
20 records does not require that she know that she could
21 win without them. That's why this is an investigatory
22 tool. The whole point is for us to be able to check,
23 and if something is wrong we need not prove that
24 something is wrong; we need not even allege that
25 something is wrong.

1 THE COURT: But I think you do. That's where
2 you have a basis, a factual basis. We come into court
3 all the time and you're required to have a factual
4 basis under the Federal Rules of Civil Procedure so
5 that you're not going on a fishing expedition. And you
6 chose the forum here; you chose to file a civil
7 complaint as opposed to a request for an administrative
8 subpoena.

9 MR. NEFF: I'd refer your Honor, if you want
10 more current analysis, it would be the *Benson* court's
11 analysis in the Michigan case where --

12 THE COURT: You're talking about the Sixth
13 Circuit.

14 MR. NEFF: Correct, where that court's analysis
15 was that such a basis and purpose was sufficient for
16 the purposes of the statute.

17 THE COURT: Also not mandatory authority; right?

18 MR. NEFF: Correct.

19 THE COURT: Okay. Go ahead.

20 MR. NEFF: And less persuasive than the
21 Fifth Circuit, we would posit to you, because it is a
22 district court, not a court of appeal.

23 THE COURT: Correct. But more recent.

24 MR. NEFF: That's true.

25 THE COURT: As is Oregon and the Central

1 District of California; correct?

2 MR. NEFF: Correct. And the Central District of
3 California and Oregon rely heavily on that misreading
4 of *Powell*, where even in *Powell* reaffirms what we're
5 talking about here where it said that even with the
6 language of the Internal Revenue Code that had the
7 statute that has the, that gives the U.S. the ability
8 to send these subpoenas or these requests for
9 investigation; the U.S. does not depend on a case or
10 controversy for this. It can send them even just
11 because it wants assurances that it is not true, that a
12 crime did not happen, that a violation did not happen.

13 In other words *Powell* doesn't overrule *Lynd*,
14 doesn't even cast out on it; it reaffirms it.

15 *Powell* further explained that the judicial
16 inquiry was appropriate where asked to enforce an
17 administrative summons under the IRC to determine, "If
18 the summons had been issued for an improper purpose,
19 such as to harass the taxpayer or to put pressure on
20 him to settle a collateral dispute, or for any other
21 purpose reflecting on the good faith of the particular
22 investigation," which relates directly back to the
23 language that is present in Section 7605(b) and not in
24 the CRA, and that is preventing subjecting a taxpayer
25 to "unnecessary examination or investigations."

1 Clearly if that language was in the CRA we would be in
2 a completely different scenario.

3 THE COURT: But *Benson* construed the demand as
4 an administrative subpoena and dismissed it anyway.

5 MR. NEFF: That's correct.

6 THE COURT: And so if we follow *Benson*, why is
7 this case different?

8 MR. NEFF: Because the reason for the *Benson*
9 court's dismissal was, as the court stated itself,
10 overly pedantic and it just doesn't, it doesn't pass
11 muster as far as the textual interpretation of the
12 statute. The *Benson* --

13 THE COURT: So now we get back to textualism and
14 the Elections Clause; right?

15 MR. NEFF: I would more say it's just a simple
16 issue of statutory interpretation: What do the words
17 mean? What does "comes into possession" mean? It's a
18 pretty -- it's actually just a basic concept. There's
19 nothing in the text that suggests that it matters
20 whether the document was generated externally or
21 internally.

22 THE COURT: I guess what I'm lost on here is
23 what the government's argument seems to be is that
24 Title III of the Civil Rights Act, as well as the HAVA
25 Act and the National Voting Rights Act sort of empower

1 the federal government through the Department of
2 Justice to take a second crack at maintaining voter
3 lists for individual states; and it's sort of like why
4 wouldn't Congress have said that in those Acts, and I
5 think it was Justice Scalia who said Congress doesn't
6 hide elephants in mouse holes.

7 Aren't you arguing that they sort of have this
8 elephant hidden in the mouse hole and you actually have
9 the ability to double-check not just the process, that
10 they're complying with the process, but check their
11 work?

12 MR. NEFF: No. The NVRA and HAVA are quite
13 explicit that the Attorney General is charged with
14 enforcing what the, the limited purpose it was
15 attempting to accomplish.

16 THE COURT: Which is?

17 MR. NEFF: In the NVRA's case there are
18 multiple purposes of the NVRA, but if we're going to
19 sum it up in a few words it would be ensuring access to
20 voter registration.

21 THE COURT: Okay. And how does this ensure
22 access to voter registration?

23 MR. NEFF: As stated previously, when you don't
24 have a HAVA identifier it actually poses a great risk
25 that people will be inaccurately removed from the

1 rolls.

2 THE COURT: But so you're saying you think Rhode
3 Island is removing too many people from the rolls.

4 MR. NEFF: Again your Honor is going into
5 breaking down whether it's actually true or not. We
6 can't know until we have the list to be able to do our
7 check --

8 THE COURT: And the elephant is in the mouse
9 hole again. Okay. Go ahead.

10 MR. NEFF: And so if I were then going to give a
11 five-word explanation of the HAVA, it would be imposing
12 certain list maintenance requirements on the states
13 and, again, the Attorney General is posed with
14 enforcing that. That's -- to what extent it's been
15 done in the past is not of concern to this court. What
16 matters is what the law says and what it says our duty
17 is, and is what we're doing consistent with that. And
18 providing the HAVA number is just very clearly right
19 there in the statute.

20 THE COURT: It says the Department of Justice is
21 entitled to the HAVA number?

22 MR. NEFF: No. It says the State is required to
23 maintain it and that the Attorney General is charged
24 with enforcing the statute.

25 THE COURT: The State is in charge of the

1 numbers and the rolls, and the government is in charge
2 of making sure that the states are doing their job.

3 MR. NEFF: Yes.

4 THE COURT: Not checking their work.

5 MR. NEFF: Well, I think that might be a
6 distinction without a difference. We are making sure
7 that they're doing the work that they're required to be
8 doing.

9 THE COURT: No, you're not, because the voting
10 rolls that you're asking for are a snapshot in time.
11 If you were making sure that they were doing what
12 they're supposed to do under HAVA, you'd be looking at
13 the systems and the processes and you'd be auditing
14 whether or not they're applying those systems and
15 processes consistently across time.

16 MR. NEFF: Judge --

17 THE COURT: You're looking for the voting
18 records. You want a list of all -- is the purpose to
19 get a national voting database?

20 MR. NEFF: No.

21 THE COURT: Really? You're destroying these
22 after you've giving them a look-over?

23 MR. NEFF: Again, we have a number of laws we
24 have to comply with. One of them is the Federal
25 Retention Records Act, so we have certain mandatory

1 requirements. We can't just destroy them immediately.
2 But we are going to be complying with all applicable
3 federal laws, including privacy laws, and your Honor
4 will be well within her authority to issue an order
5 consistent with both the CRA and its concerns as to the
6 protection of the data.

7 THE COURT: Okay.

8 MR. NEFF: I want to just make one note as far
9 as the, my friends' briefing that says that a racially
10 discriminatory purpose is required under the CRA;
11 when -- first off, not only is that not in the text,
12 but it's abundantly clear from text around it that it
13 was purposely excluded.

14 First off, the title of the law is Federal
15 Election Records. Most importantly, one needs only
16 look in other titles of the Civil Rights Act to see
17 that when Congress intended to put in racial
18 discrimination as an element, it knew how to, it knew
19 how to use those words. It's right there in Section
20 601, which is codified as amended Section
21 52 U.S.C. Section 10101 where it used "on account of
22 race or color".

23 Furthermore, in multiple acts passed in the
24 similar time, Title VII of the Civil Rights Act of
25 1964; Section 2 of the Voting Rights Act; the Fair

1 Housing Act, which was then part of the Civil Rights
2 Act of 1968, all language including race and color were
3 used as qualifiers.

4 It is not in Title III. That's because of what
5 Title III is.

6 THE COURT: But Title III talks about poll
7 taxes, so we have to read Title III in the time
8 context, don't we?

9 MR. NEFF: Yes. But what -- it is using terms
10 that is all acts requisite to voting, which a voter
11 roll and maintenance of a voter roll is clearly an act
12 requisite to voting.

13 THE COURT: Can't we construe the HAVA and the
14 National Voting Rights Act as modifying to some
15 degree --

16 MR. NEFF: Well...

17 THE COURT: -- the Title III?

18 MR. NEFF: Yes, but the question is in which
19 direction. And the National Voting Registration Act
20 specifically tells you again, Section 20510(d)(1), this
21 is in addition to other rights. The National Voter
22 Registration Act and the Help America Vote Act are
23 working in congruence with each other to have a
24 coherent scheme where the states will have clean voter
25 rolls and have fair and accurate elections. To read

1 them as in conflict with each other and preventing
2 anyone from looking at what the states do is just not
3 consistent with the text or fair reading of the
4 statutory scheme.

5 I want to emphasize again that *Lynd* specifically
6 talked about the pleadings issue in which it said that
7 pleadings are -- that when they're not filed the whole
8 procedure does not have to satisfy usual notions under
9 the Federal Rules of Civil Procedure, and that that was
10 then was upheld by *Powell*, which even followup with
11 Supreme Court jurisprudence to *Powell* made clear that
12 *Powell* was not meant to impair summary enforcement
13 proceedings because summary enforcement proceedings are
14 different than actual action. They're -- this is
15 purely an investigative tool that needs, and it needs
16 to be done in short order; it's just, it follows from
17 elections. Elections have some of the shortest time
18 frames.

19 We need to get started as soon as we can to make
20 sure that the voter rolls are accurate and maintained
21 properly in advance of each coming election.

22 THE COURT: But does this get you there?

23 MR. NEFF: It's one step towards it, and
24 essentially to say, well, we could be -- you could also
25 be doing this, you could also be doing that, is to

1 outside what's in this case.

2 THE COURT: Yeah, but I'm not -- but you have to
3 have a purpose that is met by your demand.

4 MR. NEFF: That's true.

5 THE COURT: Okay. So you're saying your purpose
6 is to make sure that the voting rolls are accurate for
7 the next election.

8 MR. NEFF: Largely, yes. And that's consistent
9 with the list -- I want to stick to the text that we
10 put on the letter, but your Honor is accurately
11 describing what that entails.

12 THE COURT: Okay. How is that served by asking
13 for a voter list for more than a year before the next
14 election?

15 MR. NEFF: Fair question. If we can flag some
16 now, flag some registrations now that are very
17 distinctly problematic, we can get started now with the
18 State to get those removed in time.

19 As we get closer to the election there are other
20 limitations that come into play. You've got, first
21 off, the election offices get more busy; second, we
22 have Purcell issues. So there's all kinds of reasons
23 why we have to start earlier.

24 THE COURT: But -- okay. All right. I
25 understand what you're saying; I just don't think that

1 your request gets you there.

2 So what is the limit to the purpose that can
3 support the records demand? Does it have to be related
4 to voting records?

5 MR. NEFF: Yes, it would have to be related to
6 federal election records. That's the most
7 significant limitation that there -- the second most
8 limitation would be the 22 months provision.

9 THE COURT: So fair for the State to say I'm
10 culling everybody who's never voted in a federal
11 election before I give you my list.

12 MR. NEFF: I'm sorry, I didn't hear.

13 THE COURT: They're pulling off everybody from
14 the list to somebody -- people who've only voted in
15 state elections or who have never actually voted, they
16 don't have to give you that information.

17 MR. NEFF: Not if they're registered to vote in
18 this coming election because the record is the voter
19 registration list; it is not who, when they registered.
20 There is a list that exists right now that Rhode Island
21 will be using as an act requisite to vote.

22 THE COURT: Hasn't Rhode Island offered to give
23 you, but for the last four of the Social Security
24 number or the driver's license number, and you refused
25 that; correct?.

1 MR. NEFF: No, we don't refuse that. They're
2 free to upload it if they like, but we would still be
3 here because we can't do our job without that.

4 THE COURT: Now, if I don't follow *Lynd*, okay,
5 and I evaluate the basis and purpose advanced in the
6 A.G.'s demand, and if the Court determines that the
7 stated purpose is pretextual, shouldn't the Court
8 dismiss the case?

9 MR. NEFF: No.

10 THE COURT: So you can have a pretext.

11 MR. NEFF: It would be inappropriate for your
12 Honor to analyze whether it was a pretextual motive or
13 not.

14 THE COURT: But I have to determine whether
15 there's a basis and a purpose, and you're saying if you
16 come here and you give me a clearly phony basis or
17 purpose, I still have no ability to deny your request.

18 MR. NEFF: While that's true, I'd also say
19 that's not -- that doesn't need to be a concern of your
20 Honor because that's not the case here. There's not
21 basis for it. The closest thing to a basis is the
22 *Weber* court bringing in anonymously-sourced media
23 articles into a judicial opinion.

24 There is no record here to support that the
25 Civil Rights Division would be doing anything other

1 than what it states it will be doing.

2 THE COURT: Hasn't the Department of Justice and
3 the President issued all kinds of statements about a
4 national vote, you know, one of them was the Republican
5 Party should take over the voting; but putting that
6 aside, that the federal government should take over
7 voting management, that all of these things that are
8 clearly unconstitutional, and am I supposed to just
9 ignore those and say trust me?

10 MR. NEFF: There have been a number of
11 statements that have been made --

12 THE COURT: Correct.

13 MR. NEFF: -- extraneously. What I would
14 impress on the Court is that once you look first and
15 foremost at what the Civil Rights Division said --

16 THE COURT: And what are you saying? We're
17 going to take these, we're going to look at them, and
18 we're going to flag people we don't think should be
19 voters in Rhode Island.

20 MR. NEFF: And we will then approach the states
21 with that data.

22 THE COURT: Okay. And then the State is going
23 to say to say to you I know, but that was a moment in
24 time and we've culled our data 30 times since then.
25 And then you're going to say?

1 MR. NEFF: And we've all done our jobs.

2 THE COURT: Have you?

3 MR. NEFF: Yes.

4 THE COURT: Because they could still have false
5 information on there. You haven't done your job.

6 MR. NEFF: It's definitely trust but verify.
7 But if they're able to show us the list that doesn't
8 have that inaccurate registration on it, then it's
9 good.

10 THE COURT: Why don't they show you the process?

11 MR. NEFF: Because we have to confirm that
12 they're actually following their own processes.

13 Also, I want to be clear here, based on their
14 self-reported information to EAVS, we don't believe
15 they have been following best practices. As we -- the
16 EAC lists five categories of audits that Rhode Island
17 could be doing, and Rhode Island self-reports they only
18 do two of them. I commend them for doing logic and
19 accuracy testing and risk-limiting audits, but there
20 are several more that can be done.

21 THE COURT: Such as?

22 MR. NEFF: Such as specifically eligibility
23 audits, legal audits, and post-election tabulation
24 audits.

25 THE COURT: Tell me what you mean by those.

1 MR. NEFF: For example, I mean it varies state
2 by state, but the most -- eligibility might be, for
3 example, submitting the data to SAVE. There's nothing
4 stopping these states from doing it themselves, in
5 fact, they're invited to; and SAVE will run it for
6 them, will give it back to them and will give them the
7 data --

8 THE COURT: And this is the new and improved
9 SAVE database, not the one that was wildly
10 inaccurate --

11 MR. NEFF: Correct.

12 THE COURT: -- six months ago.

13 And we're supposed to just take Department of
14 Justice or Department of Homeland Security's word that
15 now we're accurate?

16 MR. NEFF: No, your Honor. Everyone has their
17 own role in this. And the federal -- the Civil Rights
18 Division's role is to ensure that the lists are clean
19 and that the states are doing what processes they
20 should be doing to make sure that they are clean.

21 THE COURT: So if you find states that are
22 making it difficult for certain classes of people to
23 register to vote, then you're going to go right down to
24 that state and say you have to enable people, give
25 people the opportunity to vote.

1 MR. NEFF: That would be a appropriate concern
2 for the Civil Rights Division Voting Section, yes.

3 THE COURT: How would you find that in this
4 mechanism?

5 MR. NEFF: We have an open, a decade-long
6 process for complaint sifting. Every complaint that's
7 sent to us goes through a various -- goes through a
8 review process that is then elevated. This is what we
9 do, your Honor.

10 THE COURT: Okay. All right. Is there anything
11 further?

12 (Pause)

13 MR. NEFF: No, your Honor, absent further
14 questions, we submit.

15 THE COURT: Okay.

16 Any rebuttal?

17 MR. ARGUIN: If I could briefly, your Honor.

18 THE COURT: Sure.

19 MR. ARGUIN: Thank you. Special Assistant
20 Attorney General James Arguin on behalf of the Rhode
21 Island Secretary of State.

22 Just a few points in response to what we heard
23 this morning. First of all, for the first time we've
24 heard reference to alleged discrepancies in what's
25 called the EAVS report submitted by the State. The

1 last one was done in 2024 following the last election.

2 THE COURT: And just -- I don't want to
3 interrupt you, but that wasn't cited in their demand --

4 MR. ARGUIN: Absolutely, and that was my point.
5 Absolutely not. The September 8th, 2025 demand letter
6 at ECF 2-2 made absolutely no mention of this.

7 Now, as my brother mentioned, the Complaint does
8 make a reference to it. It says they looked at it, and
9 that's in some of the earlier paragraphs of their
10 Complaint they've said they had reviewed the EAVS
11 reports. But they provided no conclusions that they
12 drew from the EAVS report that could ever come close to
13 stating a proper basis or purpose, as required by the
14 CRA. They just made reference to the report.

15 THE COURT: So the first time that you're
16 finding out what they think you should have done under
17 the EAVS report is today.

18 MR. ARGUIN: Is this morning. And I think also
19 the other point I would make about the EAVS report is
20 what matters is not a passing reference in the
21 Complaint. Under the CRA what matters is the statement
22 of the basis and purpose in the written letter; and
23 there is absolutely nothing in the demand letter to the
24 Secretary of State, no references at all.

25 And furthermore, even if that passing reference

1 in the Complaint were somehow sufficient, it doesn't
2 state what they said today. And as we're
3 (indecipherable), what we're looking at when you look
4 at voter registration lists, which as we established
5 during our first conversation, those are updated by the
6 minute and there are safeguards in place specifically
7 to make sure no one is falsely removed. So there are
8 sometimes things captured in those reports that are
9 subject to corrective action or are in process of being
10 corrected pursuant to the State's obligations under the
11 NVRA.

12 THE COURT: So that gets to the purpose, I
13 think, which is the moment-in-time issue. It's a
14 moment in time. It doesn't, my -- if the purpose is to
15 make sure the State is complying with HAVA and the
16 National Voting Rights Act, then I'm not sure how we
17 get there with a moment-in-time snapshot, unless
18 they're calling it like a minute audit; but they would
19 have to do it every day, every minute, every hour in
20 order to really determine, and for all 50 states.

21 MR. ARGUIN: Exactly. Or set up their own
22 shadow (indecipherable).

23 THE COURT: Which is not permitted, which is not
24 what the federal Elections Clause or the Elections
25 Clause of the Constitution says. It says states -- not

1 the Department of Justice -- shall maintain and
2 process.

3 MR. ARGUIN: That's precisely right. And I
4 think even the Fifth Circuit cases that they referenced
5 as support under the CRA -- and my colleague mentioned
6 one of them. The *Bruce* case is instructive because in
7 *Bruce* that was exactly what the court was examining,
8 whether there was a violation of the CRA, whether, you
9 know, that was actionable or that required the records
10 to be (indecipherable). And it specifically
11 distinguished the alleged violation of the CRA from the
12 state's alleged failure to purge voters who had --

13 (Court Reporter requests clarification)

14 MR. ARGUIN: Specifically distinguished it from
15 the list maintenance activities of purging voters who
16 had moved away or died. It said it wasn't relevant to
17 the CRA.

18 The other point that's also I think --

19 THE COURT: And that's a contemporaneous
20 Fifth Circuit case, correct, the *Kennedy v. Bruce*?

21 MR. ARGUIN: Yeah, that was contemporaneous, you
22 know, a year or two after the Civil Rights Act was --

23 THE COURT: And *Lynd*, contemporaneous --

24 (Indecipherable crosstalk)

25 MR. ARGUIN: -- the *Lynd* line of cases, and it's

1 cited in our materials.

2 The reason why I think the argument as just
3 presented highlights the need for an accurate statement
4 of the basis and the purpose is the assertion today --
5 which, again, comes as a surprise -- that DOJ does
6 plan, in fact, to share this data with the Department
7 of Health -- Department of Homeland Security to run it
8 through the SAVE database for immigration checks.
9 Again, while we heard that this is all about
10 transparency, that was never disclosed. And what's
11 more, it certainly is not provided in the notice
12 provided to the Secretary of State.

13 And it also conflicts with their representation
14 to this Court in their reply at EC-33, that they said
15 there was an affirmative duty on them not to disclose
16 this information beyond the purposes they were
17 requesting. Now, the statute on which they're relying
18 allows them to share with other agencies; but,
19 nevertheless, this is sort of a moving target. So what
20 are we -- why do we need these lists, and how is this
21 purpose of putting them through the SAVE database
22 relevant to whether or not Rhode Island is complying
23 with its list maintenance responsibilities? And
24 clearly it is not, it is a different purpose, and it's
25 another purpose that is not within the Civil Rights

1 Act, which is another reason why it should be denied.

2 One other point that was made is this repeatedly
3 emphasis that all we need to do is state the legal
4 basis and not the factual basis. But again, the very
5 cases on which they rely under the Fifth Circuit line
6 of cases specifically rejected that. Take, for
7 instance, *In Re: Gordon*, 218 F.Supp. 826, a 1963 case
8 from the Southern District of Mississippi. It
9 specifically said that the CRA is not an unlimited
10 discovery device which may be employed and used without
11 restraint. Then also another case from that era,
12 *In Re: Coleman*, similarly said that requests under CRA
13 are not made based on speculation or idle curiosity.

14 And let's get back to *Lynd*, the principal case
15 on which they rely. It specifically noted that the
16 records it was talking about were public records, and
17 it said nothing here is confidential -- which is why
18 they proceeded to make that express distinction that
19 they were not talking about confidential or private
20 information. So clearly they did not anticipate the
21 release of Social Security numbers or state driver's
22 license numbers.

23 The other point that was made is that the
24 Ford-Carter Commission that led to the HAVA required
25 states to provide these unique HAVA identifiers. Well,

1 as we have already discussed, that is in the
2 publicly-available information that Rhode Island has
3 offered to provide. Those HAVA identifiers are part of
4 the public access provision provided by state law, and
5 they're available.

6 THE COURT: I want to clarify this because I
7 think that it got a little conflated in the Department
8 of Justice's argument.

9 I understood them to be arguing the last four of
10 the Social Security number and the HAVA number were the
11 same thing. Perhaps I misunderstood. But what the
12 HAVA number is, is that sort of computer-generated
13 unique identifier.

14 MR. ARGUIN: It's a unique identifier generated
15 as part of the registration process. It is not the
16 Social Security number. It is not a driver's license.
17 It's a unique identifier that HAVA requires the states
18 to do. Many states do it only if the other numbers
19 aren't available; if there's no Social Security number
20 or if there's no driver's license.

21 But Rhode Island assigns a HAVA, a unique HAVA
22 identifier to every voter. But, you know, that doesn't
23 raise the same confidentiality and privacy issues as a
24 Social Security number, I would point out, given all
25 the financial and other records that are associated

1 with Social Security numbers and driver's license
2 numbers. HAVA is unique to voting.

3 THE COURT: And I think that since HAVA is
4 unique to voting, it more closely aligns with the
5 purpose that the Department of Justice is seeking.
6 Does the court --. So those numbers are different
7 numbers. They're not -- the HAVA number might be
8 generated as a result of the Social Security number,
9 the driver's license number, the address, the date of
10 birth, all of those things, which are publicly
11 available -- well, not the Social Security number and
12 driver's license. But all of those records create or
13 cause the creation of the HAVA number. Is that
14 accurate?

15 MR. ARGUIN: Well, as I understand it, your
16 Honor, as part of the -- once the registration is
17 submitted and the application is submitted, a unique
18 identifier is assigned to that voter.

19 THE COURT: Okay. And then Rhode Island goes
20 through a process too where it verifies voting
21 information periodically.

22 MR. ARGUIN: Absolutely. Yes.

23 THE COURT: Tell me about that because --

24 MR. ARGUIN: Not only at the time -- it's
25 detailed in our Motion to Dismiss, but it's certainly

1 at the time one registers proof of citizenship, you
2 know, they have to swear an attestation of citizenship,
3 they present their residence application, proof of
4 identification, all the material is submitted.

5 Periodically there are other updates done
6 through mailings. In fact, just in 2025 the Department
7 of State sent out a mass mailing to the active voter
8 registration list to confirm addresses. And of course
9 daily, you know, they're reviewing and comparing the
10 Social Security death index, whether or not persons
11 have died. And there's reporting also from the State
12 Office, the Medical Board or the corner, whoever is in
13 charge of statistics or vital statistics, the Office of
14 Vital Statistics to confirm, to compare death records
15 with the database, and all that information is subject
16 to verification and processing.

17 And as you mentioned, the State also
18 participates in a multi-state effort, ERIC, which is
19 shared information with other states to reconcile
20 discrepancies with voters who have moved to another
21 state. So all of that information is compiled to
22 maintain the most accurate listing.

23 THE COURT: But let me just ask a question.
24 When the Secretary of State is verifying, say, vital
25 statistics, people who have died, they don't give the

1 voting list to Vital Statistics; is that correct? They
2 get the death records from Vital Statistics --

3 MR. ARGUIN: Exactly.

4 THE COURT: -- so that the integrity of the
5 voting list is maintained by the Secretary of State.

6 MR. ARGUIN: Absolutely correct. They're
7 receiving information to enter into the database. So
8 someone who died, someone who becomes incarcerated,
9 that information is shared by other state agencies,
10 compared to other available information, for instance
11 the Social Security Death Index, and the system is
12 updated with that information on a regular basis.

13 The other point that's somewhat concerning is
14 also even though we say that the Department of Justice
15 said that they're going to run this through the SAVE
16 Act and use it for immigration purposes; but even more
17 problematic was the concession that the Civil Rights
18 Division can not really promise what it's going to do
19 with the information. Now, that is really troublesome
20 when talking about 750,000 eligible voters in Rhode
21 Island who all have their own concerns about privacy
22 and informational data security. And that's --

23 THE COURT: I'm sorry. And Rhode Island law as
24 well as federal law requires certain protections of
25 that data because of the increase in online kind of

1 scams and financial fraud and all of those things.

2 MR. ARGUIN: The court's own electronic filing
3 rules are clear, don't put that in a publicly filed
4 document; and it's exactly the same reason. These
5 kinds of concerns about data security didn't exist in
6 1960s; it wasn't that prevalent. But now data security
7 is a fact of life, and someone gets your Social
8 Security number or your driver's license number that's
9 used for multiple programs and services and
10 identification needs, it's problematic, and that's why
11 both state and federal law protect it.

12 There was a passing reference that DOJ says
13 they've complied with the Privacy Act because they've
14 issued a bunch of SORNs. There is a couple SORNs out
15 there; they've cited three or four in their Complaint.
16 None of them serves the fundamental purpose of giving
17 any citizen adequate notice that the data that they've
18 supplied to vote and to exercise their First Amendment
19 rights is somehow going to now be shared with the
20 Department of Homeland Security to run immigration
21 checks; and perhaps who knows what else because we
22 won't specify what it is. That's really concerning.
23 And I think that's exactly why there was some
24 discussion of, well, just put a protective order in
25 place and we'll abide by that. That in no way

1 addresses the State's concerns. The Attorney General
2 of Rhode Island and the Secretary of State of Rhode
3 Island have a duty to uphold public interest, which is
4 to protect the rights of the citizens to their
5 confidential -- to make sure their confidential and
6 private information that is shared with the government
7 to register to vote is not distributed without a valid
8 and clear legal purpose.

9 And what's more, that right -- although it's the
10 Secretary of State and the Attorney General who enforce
11 it -- belongs to the citizens of Rhode Island, the
12 750,000 people who are going to have their personal,
13 private information shared for what unknown or
14 unlimited list of reasons.

15 And it's not speculation to say that this type
16 of immigration check that they've only confirmed today
17 is exactly what they're planning to do, or for some
18 other purposes. The Executive Order that President
19 Trump issued, 14248 just last year, specifically says
20 we want to obtain the voter registration list from all
21 of the states so we can run it through the Department
22 of Homeland Security to run immigration checks.

23 It's exactly consistent with what we heard
24 today. And what's more, that order, which has been
25 enjoined by the District of Massachusetts, is still a

1 public statement from the head of the Executive Branch
2 disclosing that they intend to use the data not for any
3 purpose related to the CRA and even not for any purpose
4 related to the HAVA or the NVRA.

5 THE COURT: So you're saying that
6 notwithstanding the assurances that Mr. Neff gives the
7 Court that the Civil Rights Division of the Department
8 of Justice is planning to use it for the limited
9 purpose contained within the statutes; you're saying he
10 has no control over that and the evidence is to the
11 contrary from above his pay grade.

12 MR. ARGUIN: Well, with all deference to
13 Mr. Neff, I take him at his word, but his word was
14 equivocal: I don't know; I don't know what's planned;
15 I don't know what will happen. And this was the point
16 one of my colleagues made.

17 So I think all of that reinforces the Secretary
18 of State's concerns relating to DOJ's failure to
19 provide a clear and accurate statement of the basis and
20 the purpose for its demand for an unredacted version of
21 the State's voter registration list.

22 And just one more point. If your Honor reviews
23 all of the Fifth Circuit cases, and I'm talking about
24 *Lynd*, *Bruce*, *Coleman* that's been cited, they all had
25 the statement of the basis and purpose. I'm not saying

1 it was used in detail, but it at least related to the
2 statutory purpose, and it wasn't something like.

3 THE COURT: And it didn't say my basis is the
4 law. It gave a factual basis.

5 MR. ARGUIN: Absolutely correct. Absolutely
6 correct.

7 And so with that, your Honor, for all those
8 additional reasons, we request the Complaint be
9 dismissed and the Motion to Compel be denied.

10 THE COURT: Is there anything further?

11 MR. SAVITZKY: Your Honor, if I could be heard
12 extremely briefly, although very slowly and
13 articulating.

14 THE COURT: Yes.

15 (Laughter in courtroom)

16 MR. SAVITZKY: Just again, not very much to add
17 at all, but just on a couple of points that were
18 raised. First of all with respect to *Powell*, there was
19 an argument made that I don't think was in the briefing
20 that actually *Powell* is about Section 7605 of the IRS
21 statute and therefore it's distinguishable. That's not
22 right. And the section of *Powell* that really controls
23 is III, it's on page 255 of 379, United States Reports,
24 and that's really the section that talks about what do
25 we do where the United States District Court is given

1 jurisdiction by any appropriate process. And the court
2 answers the question and says, well, when there's --
3 when the procedures isn't specified, you use the
4 federal rules. And above the line that's in Footnote
5 18, (indecipherable) the line that says there will be a
6 hearing and you can challenge the demand on any
7 appropriate ground, any appropriate ground.

8 The idea that you could ever demand -- use
9 government power to demand this sensitive information
10 and there would be no substantive consideration of
11 whether it is lawful and whether the purpose is
12 improper is foreign to the law and inconsistent with
13 the cases not just from the IRS. I mean the case we
14 talked about, about the hospital in Boston last year,
15 that's HHS. So we know that's not true.

16 On the merits, I want to point the Court to
17 52 U.S.C. 21085. This is from HAVA, it's part of HAVA.
18 And there was a lot of discussion with counsel from the
19 Department of Justice about the federal government's
20 role, the designated role.

21 What that section of the provision says as part
22 of HAVA is the specific choices on the methods of
23 complying with HAVA are left to the discretion of the
24 states. Congress -- end quote.

25 Congress could not have been clearer about the

1 discretion given to the states and the limited role of
2 the federal government vis-a-vis the states and their
3 process.

4 One other point, and I won't get into the basis
5 and the purpose that's been discussed at length on the
6 SAVE database specifically, and just to this point of
7 there's been basically no disavowal this data could be
8 shared, no attempt to cabin what other federal agencies
9 might do.

10 But as I read the specific SORN, or System of
11 Records Notice, that governs the SAVE Act and data
12 that's put into that -- not the SAVE Act, excuse me --
13 the SAVE database, which is different. As I read it,
14 it's 90 Federal Register page 48954 into 55; I believe
15 that's the cite. But as I read that, it's contemplated
16 when you put information into that SAVE database it is
17 then retained for up to 10 years. So the idea that
18 there are any real limits on what other federal
19 agencies are going to do with this data once the Civil
20 Rights Division gets it, I think is belied by what
21 you've heard today.

22 The Department of Justice may think it's a good
23 policy or good idea to run the data in this way, even
24 though it could jeopardized naturalized citizens' right
25 to vote like Ms. Sanches, who is an Intervenor here.

1 Texas may think it's a good idea. But nothing in
2 federal law requires that; nothing about ascertaining
3 compliance with federal law means that must happen, and
4 therefore there's no basis or purpose for this request.
5 The Complaint should be dismissed.

6 THE COURT: Anything else?

7 MR. GOLAN-VILELLA: Nothing further from us,
8 your Honor.

9 THE COURT: Mr. Neff.

10 MR. NEFF: Briefly, your Honor.

11 THE COURT: Very briefly.

12 MR. NEFF: Keeping my comments to what was
13 mentioned in rebuttal, I specifically heard my friend
14 say that there was no exclusion that this could be used
15 for immigration purposes or check. I want to correct
16 the record. To the extent that I gave that impression,
17 I did not mean to. This is not being used for
18 immigration purposes.

19 THE COURT: By you.

20 MR. NEFF: Correct. And I think this is
21 something that is getting lost here in this rebuttal
22 discussion. The question that is being posed by my
23 friends -- and it's not a fair question -- is why can't
24 you give us 100 percent assurances as to what other
25 federal agencies will do in the future regardless of

1 what steps you take now. That's never a fair question.
2 It's not an appropriate question for this Court. The
3 question is --

4 THE COURT: But isn't it when you're asking for
5 such extraordinary information and they're offering you
6 most information redacted down just slightly. Why
7 isn't that sufficient? It seems that in -- Rhode
8 Island gives everyone a HAVA number. Why doesn't that
9 satisfy your...

10 MR. NEFF: I would dispute your
11 characterization, your Honor. The redaction of the
12 last four of the Social Security is what we need to do
13 effective list maintenance. And furthermore, no one
14 has taken a step back here --

15 THE COURT: You don't need to do list
16 maintenance. You need to verify that they're doing
17 list maintenance.

18 MR. NEFF: Correct.

19 THE COURT: So you don't need to do list
20 maintenance, and that's not the Department of Justice's
21 role. In fact, Congress specifically gave that,
22 assigned that role to the individual states. So that's
23 not your role.

24 MR. NEFF: Noted correction, your Honor. That's
25 right. We need the SNN in order to conduct our list

1 maintenance oversight.

2 THE COURT: Why can't you use the HAVA number?

3 MR. NEFF: That's a good question. I think the
4 terms are getting conflated and unhelpful here.

5 It's important to note that HAVA is, does not
6 put those -- when it lists the numbers that the State
7 is required to keep, it doesn't list it in the
8 disjunctive; it lists them actually in an order. First
9 the State is required to identify the voter with the
10 driver's license number. Only if a driver's license
11 number does not exist or is somehow not available is
12 the State then allowed to move to the SSN-4, and, in an
13 emergency case, issuing a HAVA-specific identification.

14 THE COURT: But Rhode Island specifically gives
15 everybody a HAVA-specific ID, so why isn't that enough?

16 MR. NEFF: It would not be enough under the HAVA
17 statute.

18 THE COURT: Why?

19 MR. NEFF: It would be a facial violation of the
20 statute actually because they would not be -- if
21 they're not attaching the driver's license to every
22 voter.

23 THE COURT: They're attaching the driver's
24 license number, but they're saying what's publicly
25 available, what's available to you, Department of

1 Justice, which should serve your purpose is the HAVA
2 number.

3 And unlike other states, we don't just collect
4 the last four of the Social Security number or the
5 driver's license number; we give everybody a HAVA
6 number, and you can have that. Why isn't that enough?

7 MR. NEFF: In that case the federal government
8 would be charged with ensuring that they are keeping
9 the driver's license number, and so therefore it would
10 be appropriate for the United States to ask to see the
11 list with the driver's license number.

12 THE COURT: Do you have any evidence that the
13 State of Rhode Island is not doing what it says it's
14 doing?

15 MR. NEFF: We can't know what they are or aren't
16 until we've seen the list.

17 THE COURT: So the answer is no.

18 MR. NEFF: That's correct.

19 THE COURT: Okay.

20 MR. NEFF: And I would, going back to what my
21 question -- what I think the question needs to be, it's
22 have we taken all necessary and prudent steps and are
23 those steps consistent with federal law. Here, there
24 is an MO -- let's not lose sight of the fact there is
25 an MOU in place. I signed it myself on January 20th

1 with DHS that limits the use of the data to
2 votes-specific purposes --

3 (Indecipherable crosstalk)

4 MR. NEFF: -- maintenance.

5 THE COURT: Okay. Let's say fast-forward five
6 years, you're not in your job anymore. Are they bound
7 by that MOU?

8 MR. NEFF: Yes, pursuant to this data, yes. And
9 furthermore your Honor can bolster that.

10 THE COURT: But that's not my role here. My
11 role is to say are you entitled to what you're seeking,
12 which is sort of a broad swath of personally
13 identifying information that frankly is a lot different
14 now than it was in 1960. I don't know how many spam
15 calls you get a day, but I can tell you that I get lots
16 of them and they're, you know, all kinds of fraudulent
17 types of calls even to my government cell phone, which
18 I find funny.

19 And so, you know, it's a different landscape.
20 You have to acknowledge that. Not acknowledging that
21 is burying your head in the sand, so your purpose needs
22 to include some understanding of that.

23 When you're just saying the HAVA number is not
24 enough, I need the driver's license and Social Security
25 number, then they're saying why, and your answer is I

1 don't have to tell you why, essentially.

2 MR. NEFF: Far from acknowledging the new era
3 we're in, we're embracing it. This is just a first
4 step to sifting down to where there are problematic
5 registrations. I think it would fair for someone to
6 state that in today's day and age it's extremely hard
7 to comply with all the provisions at the HAVA at the
8 scale the Secretaries of the State are being asked to
9 do right now. We can work as a partner with them.
10 This is only a first step to seeing where some of the
11 problems may be; and so because of such a large number
12 as Rhode Island themselves has said, we need to be able
13 to do our initial check so that we can start whittling
14 down where maybe some of the problems are. We're not
15 saying there are problems. That's not what we're
16 talking about at this phase. We're just talking about
17 doing the initial screening that is necessary, given
18 the scale of a voter registration list.

19 THE COURT: But the Department of Justice kind
20 of came in hot and asked for all the information. They
21 didn't say, hey, let's partner, how can we help you,
22 what are you doing? They came in and said give us all
23 your information because we need to verify that you're
24 doing what you're supposed to be doing, so offering a
25 partnership now seems a little hollow.

1 MR. NEFF: If they're willing to come forward --
2 and I would strongly suspect they're not, that's why
3 with here -- with exactly what they've offered plus
4 just, and I say "just" the last four digits of the
5 Social Security number which are not --

6 THE COURT: But that's the issue.

7 MR. NEFF: -- not the Social Security number --

8 THE COURT: They are --

9 MR. NEFF: -- giving it to the federal
10 government, then there wouldn't be an issue.

11 THE COURT: Ane if you were to come forward and
12 say those records will be destroyed the day after we
13 get them and run them through, they probably would have
14 less of a problem with it. So we can't live -- you
15 know, my mother-in-law used to say, If "if" were a
16 skiff, we'd all go for a boat ride. So it's kind of a
17 silly analogy, like to say if they were to give us
18 this, then we wouldn't have a problem. You're asking
19 for what they don't want to give you and that they are
20 arguing they're not required to give you.

21 MR. NEFF: That goes to exactly what we're
22 asking for your Honor to do, is to issue the order, the
23 Motion to Compel, and then you can appropriately set a
24 next hearing in order to fashion how that order is
25 going to look.

1 THE COURT: Why do you need the last four of the
2 Social Security number? Why is it four?

3 MR. NEFF: Because it's all that's -- thankfully
4 it's all that's needed in order for database management
5 analysts to be able to get accurate information.

6 THE COURT: And can they get that information --
7 can somebody hack in your computer system, get that
8 information and use it for some nefarious purpose?
9 They don't need any more than the last four; right?

10 MR. NEFF: If you're talking about the Civil
11 Rights Division, I can say Civil Rights Division goes
12 above and beyond to ensure the security of the data
13 that it has. We have yet to have a data breach in our
14 history.

15 THE COURT: In your history of the Civil Rights
16 Division since 1960.

17 MR. NEFF: That we're aware of, that's correct.
18 I did run, I did make best efforts to where I can
19 represent to the Court we're not aware of one and we
20 believe we would be.

21 And our MOUs reflect, deal with people --
22 institutions are dealing with privacy issues all the
23 time, and that includes clauses what to do if something
24 happened. These can all fashioned, again, like
25 consistent with we have an entire office devoted to

1 making sure not just that we're complying with federal
2 law; that's not the Attorney General's only interest.
3 The Attorney General's other interest is to make sure
4 people's privacy are protected.

5 THE COURT: But if somebody has your Social
6 Security, the last four of your Social, don't the first
7 three and the middle two tell you date and place of
8 birth to some degree or at least within a range?

9 MR. NEFF: Well, we don't -- that's why the HAVA
10 statute specifically defined it as not a Social
11 Security number. It's only the last four is the
12 identifier, and that's all we need to get to
13 essentially accuracy that makes it possible for us to
14 do our oversight.

15 THE COURT: Okay. But first we have to accept
16 the premise that you need this list to do your
17 oversight.

18 MR. NEFF: Correct. Yes.

19 THE COURT: Okay. Is there anything else?

20 MR. NEFF: Thank you, your Honor. On that I
21 would submit, unless your Honor has further questions.

22 THE COURT: No, no further questions.

23 We are in recess, and I will issue an order
24 shortly, probably not today or tomorrow but hopefully
25 next week.

(Adjourned)

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C E R T I F I C A T I O N

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6 I, Denise P. Veitch, RPR, do hereby certify
7 that the foregoing pages are a true and accurate
8 transcription of my stenographic notes in the
9 above-entitled case.
10
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12

13 /s/ Denise P. Veitch
14 Denise P. Veitch, RPR
15 Federal Official Court Reporter
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17 March 20, 2026
18 Date
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