

# **EXHIBIT B**

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

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

**HEARING RE:**

MOTION TO DISMISS [DKT.NO.67];

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

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

**APPEARANCES:** SEE PAGE 2

Court Reporter: Recorded; CourtSmart

Courtroom Deputy: Karlen Dubon

Transcribed by: Exceptional Reporting Services, Inc.  
P.O. Box 8365  
Corpus Christi, TX 78468  
361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

**APPEARANCES:****For Plaintiff:**

ERIC V. NEFF, ESQ.  
U.S. Department of Justice  
150 M St. NE, Suite 8-139  
Washington, DC 20002  
202-532-3628

**For Intervenors:**

GRAYCE S.P. ZELPHIN, ESQ.  
American Civil Liberties  
Union of Northern California  
39 Drumm Street  
San Francisco, CA 94111  
530-515-8978

CHRISTOPHER D. DODGE, ESQ.  
Elias Law Group  
250 Massachusetts Ave. NW  
Suite 400  
Washington, DC 20001  
202-987-4928

**For Robert Page:**

SUZANNE E. SHOAI, ESQ.  
Orange County Counsel  
P.O. Box 1379  
Santa Ana, CA 92702  
714-834-3300

**For Defendants:**

MALCOLM A. BRUDIGAM, ESQ.  
Office of the Attorney General  
1300 I Street  
Suite 125  
Sacramento, CA 95814  
916-210-7873

ROBERT W. SETRAKIAN, ESQ.  
California Department of Justice  
300 S. Spring Street  
Suite 1702  
Los Angeles, CA 90013  
213-269-6668

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

2 | (Call to Order)

3 THE COURT: -- Shirley Weber.

4 (Pause)

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

7 | (Pause)

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

11 | MR. NEFF: Good morning, Your Honor.

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

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

18 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                  **MR. NEFF:** Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Is two weeks enough time for you?

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

2                   **THE COURT:** Okay.

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

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

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

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

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

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

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

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

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

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

22 **(Pause)**

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

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

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

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

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

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

1 records over to us that we are entitled to.

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

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

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

20                  Does the Court have other questions or concerns?

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

23                  **(Pause)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18                  **THE COURT:** Okay.

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

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

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

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

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

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

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

1 Organization.

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

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

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

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

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

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

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

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

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

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

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

14                  **MR. NEFF:** Yes.

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

18                  (**Pause**)

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

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

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

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

7 It says that:

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

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

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

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

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

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

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

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

8 **MR. BRUDIGAM:** Sure.

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

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

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

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

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

1 stipulate to that.

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

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

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

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

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

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

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

18 **MR. BRUDIGAM:** Sure.

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

22 **MR. BRUDIGAM:** Right.

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

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

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

11 And what this is going to do --

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

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

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

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

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

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

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

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

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

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

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

1 do I have about that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4                   **MR. BRUDIGAM:** Right.

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

6                   **MR. BRUDIGAM:** Right.

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

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

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

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

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

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

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

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

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

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

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

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

24 **THE COURT:** Okay.

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

1 anywhere in their action.

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

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

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

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

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

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

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

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

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

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

6 So those are the main --

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

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

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

1 reason.

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

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

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

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

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

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

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

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

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