

No. 26-98

In the
Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

SCOTT T. NAGO, in his official capacity as Chief
Election Officer for the State of Hawaii,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF *AMICUS CURIAE* FOR THE HONEST
ELECTIONS PROJECT
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Honest Elections Project (“HEP”) is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, HEP defends the fair, reasonable measures that legislatures put in place to protect the integrity of the voting process. HEP supports commonsense voting rules and opposes efforts to reshape elections for partisan gain. HEP has a significant interest in this case because the Ninth Circuit’s interpretation of the National Voter Registration Act’s public disclosure mandate undermines a crucial tool Congress enacted to ensure accuracy, transparency, and accountability with respect to State voter rolls.

SUMMARY OF THE ARGUMENT

The Court should grant the petition to resolve an important and recurring question on which the Circuits have divided: Whether a State’s statewide voter registration list is a record subject to public disclosure under Section 8(i)(1) of the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20507(i)(1)

¹ Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part. No person or entity other than *Amicus* and the counsel below contributed the costs associated with the preparation and submission of this brief.

Pursuant to Supreme Court Rule 37.2, *Amicus* notified all counsel of record of its intention to file this brief at least 10 days prior to its filing deadline.

(the “Public Disclosure Provision” or “Provision”). The Ninth Circuit held that Hawaii’s voter registration list is not subject to public disclosure, App. 39a, conflicting with the First and Tenth Circuits. *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024); *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1082 (10th Cir. 2025). That conflict warrants this Court’s review.

The petition ably explains why the Ninth Circuit’s decision conflicts with the NVRA’s text and purpose. Pet. 4–13. This brief examines why the Ninth Circuit’s decision also conflicts with the NVRA’s structure and why the purported conflict the court found—between the NVRA and the Help America Vote Act (“HAVA”)—does not exist.

The NVRA’s Public Disclosure Provision uses sweeping language: Each State shall maintain and make available for public inspection “*all records concerning* the implementation of programs and activities conducted to ensure the accuracy and currency of official lists of eligible voters,” subject only to two express exceptions. 52 U.S.C. § 20507(i)(1) (emphasis added). Under the well-established *expressio unius* canon, Congress’s inclusion of two narrow exceptions from public disclosure (not applicable here) confirms that it did not intend to exempt any *other* records “concerning” activities designed to “ensur[e] the accuracy and currency” of voter registration lists from disclosure. *Id.*; *see also* *Esteras v. United States*, 606 U.S. 185, 195 (2025).

The Provision’s broad, pro-disclosure objective is confirmed by its express language: It guarantees public access to “all records concerning” State activities conducted “for the purpose of *ensuring the accuracy and currency*” of voter registration lists. 52 U.S.C. § 20507(i)(1) (emphasis added). The Ninth Circuit’s mistake was to construe this language narrowly, treating a statewide list as a finished output that sits *outside* the States’ list-maintenance process. App. 31a–33a.

But Congress did not bifurcate “input” and “output” voter-list maintenance. Instead, it broadly directed public disclosure of “all records concerning” activities conducted “for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]” These State activities—the “inputs” that ensure list accuracy—are implemented *through changes to the statewide list*. Removal, correction, retention, and inactive-status decisions are recorded there. The statewide list, therefore, is not a static product sitting outside the process that creates it. It is the record in which that process occurs and is reflected. The statewide list is thus *the definitive record* “concerning” the State’s activities to ensure accurate rolls, not a detached output outside the Public Disclosure Provision’s reach.

As the First Circuit has recognized, disclosure of the statewide lists enables the public to evaluate whether a State’s list-maintenance programs are lawful and effective. *Bellows*, 92 F.4th at 47–49. Disclosure thus effectuates the NVRA’s stated purposes—protecting and enhancing the right of

“eligible citizens” to vote, protecting the integrity of the electoral process, and ensuring that “accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b) (declaration of NVRA’s purposes). By refusing to allow public disclosure of Hawaii’s statewide voter registration list, therefore, the Ninth Circuit gutted the Public Disclosure Provision’s public oversight function. Certiorari is needed to resolve the lower courts’ disagreement over that statutory design.

ARGUMENT

I. THE NINTH CIRCUIT’S RULE CONFLICTS WITH THE NVRA’S TEXT AND STRUCTURE

The Ninth Circuit pointed to the NVRA’s structure and the Public Disclosure Provision’s surrounding provisions as support for its conclusion. But the NVRA’s structure and traditional principles of statutory construction support Petitioner’s reading.

First, contrary to the Ninth Circuit’s view, the exemptions contained in the Public Disclosure Provision *do* in fact “cast doubt on [that court’s] interpretation.” See App. 33a. “The general rule of statutory construction is that the enumeration of specific exclusions from the operation of a statute is an indication that the statute should apply to all cases not specifically excluded.” *Blausey v. United States Tr.*, 552 F.3d 1124, 1133 (9th Cir. 2009); *see also Esteras v. United States*, 606 U.S. 185, 195 (2025) (discussing the *expressio unius* canon). This is

particularly true where the exclusion is such that “it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (citation omitted).

Congress identified two exceptions—and only two—in the same sentence: information relating to a declination to register and information identifying the voter registration agency through which a particular voter registered. 52 U.S.C. § 20507(i)(1). Beyond those two categories, “all records concerning...official lists of eligible voters” are to be made available to the public. *Id.* Congress’s decision to include these two narrow exceptions to an otherwise broad disclosure provision—all in the same sentence—shows that Congress did not intend to exclude any other categories of information from disclosure. The two exclusions make sense given the oversight and accountability purposes of the Public Disclosure Provision. A declination to register and the identity of the agency through which an individual registers bear little to no relationship to the Provision’s goal of ensuring that the States’ voter registration lists remain accurate and current. *Id.*

Second, the fact that Congress expressly required certain information to be publicly disclosed *broadens—not narrows*—the scope of the Public Disclosure Provision. Specifically, paragraph (2) of the Provision provides that the records to be disclosed “shall include” the names and addresses of registered voters who are sent a removal notice and whether the person has responded to the notice. 52 U.S.C.

§ 20507(i)(2). But the phrase, “shall include,” is generally used as a phrase of “extension or enlargement rather than as one of limitation or enumeration.” *See Am. Sur. Co. v. Marotta*, 287 U.S. 513, 517 (1933). It is in contrast to the phrase, “shall mean,” which “excludes any meaning that is not stated.” *See Burgess v. United States*, 553 U.S. 124, 130 (2008) (quoting *Colautti v. Franklin*, 439 U.S. 379, 392 n.10 (1979)). If Congress meant to confine public disclosure to removal notices and responses, it could have said “shall consist of” rather than the broader “shall include” language in paragraph (2), or it could have otherwise limited paragraph (1). It did not.

Third, the Public Disclosure Provision covers “all records concerning the implementation” of activities conducted “for the *purpose of* ensuring the accuracy and currency of official lists of eligible voters[.]” 52 U.S.C. § 20507(i)(1) (emphasis added). The Ninth Circuit focused on the word “concerning” and held that statewide lists “are not records concerning the implementation of those programs . . . but rather the *objects* of the implemented programs[.]” App. 33a (emphasis in original). Under this view, the statewide list is not a record “concerning” a State’s list-maintenance program; it is a separate record that falls entirely outside that process.

But the Ninth Circuit’s statutory analysis is exactly backward. In ordinary statutory usage, “for the purpose of” denotes Congress’s primary objective, and any relevant act undertaken with that objective falls within the statute. *See, e.g., Alexander v. Ams. United Inc.*, 416 U.S. 752, 760–61 (1974); *Maracich v.*

Spears, 570 U.S. 48, 71–72 (2013). Here, the express statutory goal of the Public Disclosure Provision is “ensuring the accuracy and currency of official lists of eligible voters[.]” 52 U.S.C. § 20507(i)(1). Under a plain-language analysis, therefore, the phrase “for the purpose of” identifies the objective that defines the covered programs and activities subject to public disclosure. Any State program or activity that is a “means of effectuating or facilitating” the accuracy and currency of registration lists is thus a record that must be disclosed. *Mortensen v. United States*, 322 U.S. 369, 374 (1944).

Nothing in the NVRA’s text, structure, or legislative history supports the Ninth Circuit’s input-versus-output distinction. State “programs and activities” undertaken with the goal of ensuring the accuracy and currency of voter registration lists are subject to public disclosure. Such programs and activities are an “input” toward that congressional goal of an accurate and current voter registration list, but so is the statewide list, which is indeed *the most important “record”* indicating whether Congress’s goal has been achieved. The statewide voter registration list is not a static product sitting outside the State programs and activities that create it: It embodies the *results* of registration, maintenance, additions, removals, and corrections, and is therefore *the definitive* “record [] concerning” whether the State’s “programs and activities” have achieved Congress’s “purpose of ensuring the accuracy and currency of official lists of eligible voters[.]”.

Reading the Public Disclosure Provision to cover only inputs, as the Ninth Circuit did, lets State officials shield the resulting list—the object Congress required them to keep accurate—while disclosing only the paperwork used to create it. That would make meaningful public review of the “accuracy and currency” of statewide registration lists impossible. 52 U.S.C. § 20507(i)(1); *see also* 52 U.S.C. § 20501(b)(4) (NVRA purposes). Congress enacted the NVRA against a history of list maintenance programs that could be abused in design or implementation. S. Rep. No. 103-6, at 32 (1993), *as reprinted in* 1993 U.S.C.C.A.N. 14157. As the First, Fourth, and Tenth Circuits have recognized, disclosure of the statewide lists enables the public to evaluate whether a State’s list maintenance programs are lawful and effective. *Bellocs*, 92 F.4th at 47–49; *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 334–35 (4th Cir. 2012); *Torrez*, 160 F.4th at 1082.

By refusing to allow public disclosure of Hawaii’s statewide voter registration list, therefore, the Ninth Circuit gutted the Public Disclosure Provision’s stated purpose. As this Court has held, courts “cannot interpret federal statutes to negate their own stated purposes.” *King v. Burwell*, 576 U.S. 473, 493 (2015) (quoting *N.Y. State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419–20 (1973)). Accordingly, the Court should grant the petition to clarify that the NVRA’s Public Disclosure Provision reaches the official statewide list, subject to the statute’s express exceptions and any independent protections that apply to particular fields.

Fourth, the NVRA’s structure bolsters the conclusion that the best reading of the Public Disclosure Provision requires disclosure of the statewide registration list. Courts do not “construe statutory phrases in isolation” but “read statutes as a whole,” including their design. *United States v. Morton*, 467 U.S. 822, 828 (1984); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). The “‘title of a statute and the heading of a section’ are ‘tools available for the resolution of a doubt’ about the meaning of a statute.” *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (quoting *Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528–29 (1947)).

Here, the NVRA’s title—the “National Voter Registration Act.” Pub. L. No. 103-31, 107 Stat. 77 (emphasis added), and the title of the Public Disclosure Provision—“Public disclosure of voter registration activities”—confirm that Congress’s focus was voter registration. 52 U.S.C. § 20507(i) (emphasis added). Indeed, the Disclosure Provision is part of a larger section titled “Requirements with respect to administration of voter registration.” 52 U.S.C. § 20507 (emphasis added). Collectively, these titles support reading the Public Disclosure Provision to reach *all registration records*, including the most important registration record of all, the statewide voter registration list.

Indeed, when Congress intended specific NVRA provisions to apply only to a specific list-maintenance activity—such as removal—it expressly said so. *See, e.g.*, 52 U.S.C. § 20507(c)(2)(A) (regulating the time

frame for completing “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists”); *id.* § 20507(a)(4) (requiring States to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists” based on death or change in residence). Congress’s decision *not* to limit the Public Disclosure Provision to specified list-maintenance activities, by contrast, reinforces that it applies broadly to all records concerning the States’ voter registration programs and activities, including the statewide voter- registration list itself.

II. THE NINTH CIRCUIT ERRONEOUSLY FOUND A CONFLICT BETWEEN THE NVRA AND HAVA WHERE NONE EXISTS

The Ninth Circuit treated HAVA’s silence on public disclosure as a reason to narrow the NVRA. App. 35a. But the statutes address different questions. The NVRA supplies a public-access rule for records concerning the accuracy and currency of official voter lists. HAVA specifies the architecture States must use to create and manage those lists. One statute governs access; the other governs the system. There is no conflict merely because HAVA does not repeat the NVRA’s disclosure command.

Passed in 1993, the NVRA standardized a number of voter registration processes for States to follow in federal elections. Sarah J. Eckman, Cong. Rsch. Serv., R45030, *Fed. Role in Voter Regis.: The Nat’l Voter Regis. Act of 1993 (NVRA) & Subsequent Devs.* 1 (Feb. 7, 2025). For example, the NVRA required States to

permit eligible citizens to register to vote while applying for a State driver's license, to establish a mail-based voter registration process using a standardized federal registration form, and to provide in-person registration at designated registration sites. *Id.* It also established “procedural requirements for States to follow when performing voter registration list maintenance or when adding, removing, or modifying records for registered voters.” *Id.*

HAVA, on the other hand, was a much more sweeping statute. Enacted in response to election-administration issues encountered during the 2000 election, HAVA set requirements for the administration of federal elections (including, standardizing voting systems and provisional-voting procedures), authorized election grant programs, and created the Election Assistance Commission. Karen L. Shanton, Cong. Rsch. Serv., R46949, *The Help Am. Vote Act of 2002 (HAVA): Overview & Ongoing Role in Election Admin. Pol’y* 2–3 (Mar. 20, 2026). With regard to voter registration, HAVA requires each State to implement “a single, uniform, official, centralized, interactive computerized statewide voter registration list” maintained at the State level and containing the name and registration information of every legally registered voter. 52 U.S.C. § 21083(a)(1)(A). The list must serve as the single system for storing and managing the official list throughout the State; local information must be entered into that system; and the system must support regular maintenance and accurate, regularly updated records. *Id.* at §§ 21083(a)(1)(A)(i), (vi), (a)(2), (a)(4). That architecture makes the statewide list the

natural object of public oversight, not a reason to exclude it.

Indeed, the Ninth Circuit’s rule produces the incongruity that the public may inspect pieces of the process but not the State-level record that HAVA identifies as the single official system. App. 33a–35a. But county fragments cannot reveal whether the State’s records reconcile across county lines, whether duplicate or outdated registrations remain, whether removals were implemented consistently, or whether eligible voters disappeared from the final list. Process records alone show what officials did or intended to do; the statewide snapshot shows what the State’s official system actually contains.

HAVA’s silence on public disclosure therefore cannot repeal the NVRA’s express Public Disclosure Provision. It is “well settled...that repeals by implication are not favored and will not be found unless an intent to repeal is clear and manifest.” *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) (cleaned up); accord *Morton v. Mancari*, 417 U.S. 535, 551 (1974). Courts “must read the statutes to give effect to each if we can do so while preserving their sense and purpose.” *Watt v. Alaska*, 451 U.S. 259, 266–67 (1981). Accordingly, this Court has recognized only two categories of repeals by implication: (1) “where provisions in the two acts are in irreconcilable conflict”; and (2) where “the later act covers the whole subject of the earlier one and is clearly intended as a substitute.” *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976) (quoting *Posadas v. Nat’l City Bank*, 296 U.S. 497, 503 (1936)). Beyond those well-

settled categories, courts must give complementary statutes their plain effect. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024).

HAVA's no-effect provision confirms the point. It states, "Except as specifically provided in § 21083(b)...nothing in [HAVA] may be construed to... supersede, restrict, or limit the application of" the NVRA. 52 U.S.C. § 21145(a)(4). The Ninth Circuit's reading turns that explicit instruction on its head: It uses HAVA's *silence* to limit the NVRA, even though Congress expressly directed that HAVA not do so. At a minimum, that statutory relationship presents a question of exceptional importance warranting this Court's review.

HAVA's targeted security and privacy provisions further show that Congress knew how to protect sensitive information without exempting an entire statewide list. HAVA requires technological security measures against unauthorized access to the computerized list, 52 U.S.C. § 21083(a)(3), and separately restricts access to information about an individual's provisional ballot to that individual, 52 U.S.C. § 21082(a)(5)(B). Those focused protections support a field-specific, record-specific approach rather than a categorical ban on public inspection of voter registration records.

The Ninth Circuit's rule cannot be justified by administrability concerns. The NVRA's Public Disclosure Provision requires States to maintain records for at least two years and make them available for inspection and copying at reasonable cost; it does

not require public access to a live database, unrestricted system credentials, or a bespoke interface. 52 U.S.C. § 20507(i)(1). A State can produce a dated, appropriately redacted copy of the official statewide list as it exists when the request is processed, preserving the record while avoiding direct access to the underlying system.

A snapshot-based production is administrable. The State can identify the relevant fields, export the list as of a specified date, and retain a copy for the statutory retention period. If the State updates the list between requests, each production can be labeled by date, just as other public records are produced as of a particular time. The Court need not prescribe a single file format or audit protocol to resolve whether the list is covered by § 20507(i)(1).

Privacy concerns do not justify categorical withholding. The NVRA's Public Disclosure Provision expressly excludes information about declinations to register and the identity of the registration agency through which a particular voter registered. 52 U.S.C. § 20507(i)(1). The State can honor those limits by omitting or redacting protected fields. It can likewise address any separate, field-specific privacy rule without withholding the nonexempt statewide list. That approach gives effect to both transparency and privacy, rather than converting a concern about particular data fields into an exemption for the entire record.

Statewide access is essential to meaningful oversight. A reviewer with only county fragments

cannot identify cross-county duplicates, test whether removals and new registrations are reconciled statewide, compare treatment across counties, or determine whether the final list contains unexplained gaps. Nor can removal notices alone answer whether a challenged entry was actually removed, whether an eligible voter was restored, *or whether the State's list remains accurate after officials act*. The statewide record is the necessary check on the process records.

The practical consequences are especially serious for public-interest organizations. Congress did not design the NVRA's Public Disclosure Provision as a "take our word for it" provision. It contemplated public scrutiny of list-maintenance programs because abuses can occur in both program design and implementation. S. Rep. No. 103-6, at 32 (1993), *as reprinted in* 1993 U.S.C.C.A.N. 14157. If the official statewide output is unavailable, oversight is reduced to reconstructing the State's system from local fragments—an approach that is slower, less reliable, and unable to reveal statewide patterns.

The Ninth Circuit considered none of these questions and instead manufactured a conflict between the NVRA and HAVA that does not exist. The Court should grant certiorari to correct this error and ensure that the NVRA and HAVA are construed, as Congress intended them to be, as complementary enactments.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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