

IN THE
Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Applicants,

v.

LEAGUE OF WOMEN VOTERS, *et al.*,
Respondents.

**BRIEF OF AMICI CURIAE DSCC AND CURRENT U.S. SENATORS AND
SENATE CANDIDATES IN OPPOSITION TO THE APPLICATION FOR A
STAY OF THE FINAL JUDGMENT BY THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA**

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INTERESTS OF *AMICI CURIAE*

Amici curiae are the Democratic Senatorial Campaign Committee (“DSCC”) and current U.S. Senators and candidates for U.S. Senate. *See* Appendix (identifying *Amici*).¹ DSCC’s mission is to elect Democratic candidates to the U.S. Senate. DSCC’s members include Democratic Senators and candidates for U.S. Senate across the country. Beyond its formal membership, DSCC’s constituency includes voters throughout the nation. Collectively, *Amici* and their constituents include Democratic Senators, candidates for U.S. Senate, and voters in all 50 States.

With voting already underway in the 2026 federal elections, *Amici* are fully engaged in supporting their candidates, running their campaigns, and mobilizing voters. They are executing campaign strategies built around each State’s unique election and voter registration rules, including the rules governing voter qualifications, and they are assisting voters who seek to register and cast ballots. *Amici*’s efforts are premised on a constitutional system of free and fair elections. *See Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026) (holding candidates’ “interest in [political power] cannot be severed from their interest in the electoral process—a process ‘of the most fundamental significance under our constitutional structure’” (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979))); *see also NRSC v. FEC*, 146 S. Ct. 2404, 2418, 2425 (2026) (describing “intertwined relationship of parties and their candidates”).

¹ Pursuant to Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *Amici* or their counsel made a monetary contribution to fund its preparation or submission.

To achieve their missions, *Amici* require clear, stable election rules, especially at this late stage in the election calendar. That includes with respect to the role played by federal agencies in determining who may vote. Over the past 18 months, the Executive Branch has claimed to have discovered a vast trove of previously “unheralded” powers in the realm of election administration, *West Virginia v. EPA*, 597 U.S. 697, 722–23 (2022), a domain in which the Constitution assigns authority to States in the first instance and to Congress in the last, *see Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013), and *no* authority to the Executive Branch, *see DSCC v. Trump*, 2026 WL 2168617, at *5 (D.C. Cir. July 28, 2026). Some *Amici* currently have related issues on appeal before the D.C. Circuit, *see DNC v. Trump*, No. 25-5476 (D.C. Cir.) (consolidated), and are presently litigating the President’s most recent election-related Executive Order—E.O. 14399—in the District of Columbia before Judge Nichols, *see DSCC v. Trump*, No. 1:26-cv-1114 (D.D.C.).

These unprecedented assertions of executive power in the election sphere have included novel uses for personal information of millions of Americans—including *Amici’s* members and voters—in ways never authorized by Congress, as well as efforts to force the production of similar data held by the States. In this case, Applicants say that a decades-old immigration statute silently eviscerated several core federal privacy protections for American citizens, authorizing the Department of Homeland Security to funnel the Social Security Administration’s entire Social Security database into DHS’s Systematic Alien Verification for Entitlements system (“SAVE”) to offer a brand new “voter verification” system covering U.S.-born citizens.

Congress has never authorized the creation of such a national “voter verification” database, and SSA itself has warned its records are outdated and not suitable for such a purpose. The consequences of haphazardly mashing together a longstanding system for determining an immigrant’s legal status (SAVE) and SSA’s database with personal information on millions of Americans (Numident) were predictable: SSA’s dispersion of unreliable citizenship data led election officials to “revoke[] or threaten[] to revoke voter registrations based on . . . unauthorized and inaccurate disclosures,” causing significant harm and disruption to impacted voters. App. 27a. The record below “abounds” with undisputed evidence of such harm, *id.*, which naturally includes voters who plan to support *Amici* in the forthcoming elections.

Amici have therefore increasingly been compelled to seek judicial relief on behalf of their members, constituents, and voters. In this case, if the Application is granted, *Amici* are likely to suffer irreparable harm over the coming weeks and months, as their members and supporters are subject to unreliable SAVE checks.

INTRODUCTION

This Application concerns the latest in a series of “unheralded power[s]” over election administration that the Executive Branch “claims to [have] discover[ed] in a long-extant statute.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). Applicants assert that Congress has authorized the creation of “a centralized federal database that contains the private information of United States citizens, including Social Security numbers.” App. 1a. But Applicants do not point to any recent enactment of Congress authorizing the creation of such a novel and far-ranging database. To the contrary, Congress has steadfastly *refused* to advance such

measures, notwithstanding the President’s consternation. Applicants thus point to a 40-year-old enactment requiring federal agencies to implement a system that permits state officials to verify an immigrant’s legal status for purposes of determining eligibility for certain benefits programs, *see* 42 U.S.C. § 1320b-7(d), and a 30-year-old rule that DHS respond to inquiries about a person’s “citizenship or immigration status.” 8 U.S.C. § 1373(c). Neither of these longstanding enactments “conveniently enable[]” Applicants to erect a national voter verification database that Congress has refused to create “multiple times.” *West Virginia*, 597 U.S. at 731. Instead, DHS’s SAVE overhaul reflects an unlawful effort to implement the President’s command to “nationalize the voting” and “take over the voting” at the federal level.²

Amici submit this brief to foreground two points (among many) that support denying the Application. *First*, this Court’s major questions precedent requires exercising caution before endorsing Applicants’ claim that “vague language” in “long-extant” statutes grants the Executive newfound powers. *West Virginia*, 597 U.S. at 721. That caution is particularly warranted here because: (1) the Constitution assigns the President no power over elections; (2) Congress has steadfastly refused to grant the very power he now claims; (3) the expansion of SAVE is a question of political significance; and (4) that expansion comes in the context of the emerging (and disturbing) trend of executive overreach in the realm of election administration. *Second*, and relatedly, DHS’s effort to construct an unauthorized and shoddy national voter-verification database raises the *precise* fears that led Congress to enact the

² W. Olson, “*We Should Take Over the Voting*,” Cato Inst. (Feb. 3, 2026), <https://www.cato.org/blog/we-should-take-over-voting-nationalize-voting>.

privacy laws at issue, reinforcing the need for strict adherence to their requirements.

The Application also suffers from terminal infirmities on the merits. The SAVE overhaul violates the Social Security Act, which requires SSA to keep Americans' social security numbers "confidential." 42 U.S.C. § 405(c)(2)(C)(viii)(I). It also violates the Privacy Act many times over. Indeed, that Act was enacted to make it "legally impossible for the Federal Government . . . to put together anything resembling a '1984' personal dossier on a citizen." S. Comm. on Gov't Operations & H.R. Comm. on Gov't Operations, 94th Cong., *Legislative History of the Privacy Act of 1974: Source Book on Privacy* 884 (Comm. Print 1976) (hereinafter "Source Book on Privacy").

The equities likewise foreclose relief. Applicants concede that two circuits (plus the motions panel) have held that the NVRA's quiet period forbids using SAVE for systematic voter removals at this point in the election calendar. And the prior version of SAVE, which has been relied on for nearly 40 years without issue, remains operative. Accordingly, Applicants present no need for urgent or extraordinary relief. In contrast, uncontested record evidence reveals the harm that the unlawful, modified version of SAVE will inflict on Respondents, the public, and *Amici*. The equities therefore support denying the Application too.

ARGUMENT

I. The Application asserts "unheralded" executive power over elections that Congress has deliberately declined to grant the President.

To start, *Amici* address two threshold matters. *First*, federalism principles and this Court's major questions doctrine decisions compel denial of the Application, which asks—in an extraordinary posture—for this Court to bless an unprecedented

assertion of executive authority over the country's elections. This power grab does not occur in a vacuum; it is part of the President's broader attempt to, in his own words, "nationalize the voting" and "take over the voting" at the federal level. *Supra* n.2. *Second*, caution toward the Executive Branch's assertion of authority is further necessitated by the laws Congress *did* enact in this field, namely privacy laws animated by the *precise* issue here: the unsanctioned construction of a nationalized database with information on millions of Americans.

A. In our federal system, "the Constitution lodges power over congressional elections in state legislatures 'primarily' and in Congress 'ultimately.'" *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 2165, 2170 (2026) (quoting *The Federalist No. 59*, at 362 (Alexander Hamilton) (C. Rossiter ed., 1961)). Thus, when it comes to election administration, the President has no prescribed constitutional role beyond faithfully carrying out the enactments of Congress. *See* U.S. Const. art. II, § 3.

Since President Trump resumed office, Congress has passed no significant new election laws. Even so, the Trump Administration has announced a host of new intrusions into the nation's election machinery, including attempting to: mandate changes to a federal registration form without required input from state officials; place new requirements on ballots for military and overseas voters; enforce a federal election day ballot receipt deadline this Court found was, in fact, non-existent; use the Postal Service as a sieve for determining who may vote by mail; and require DHS create state-by-state citizenship lists. *See* Exec. Order No. 14248: Preserving and Protecting the Integrity of American Elections, 90 Fed. Reg. 14005 (Mar. 28, 2025);

Exec. Order No. 14399: Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Apr. 3, 2026).

Each of these attempts to alter the nation’s election architecture at the federal level comes “unheralded” by any act of Congress. *West Virginia*, 597 U.S. at 724. When it comes to the present issue—the Executive’s effort to construct a national voter verification database—“Congress ha[s] conspicuously and repeatedly declined to enact” similar measures. *Id.* That is not for want of opportunity: Congress has serially *declined* to enact legislation that would require the “heads of Federal departments and agencies”—like DHS and SSA—to “share information with each other with respect to an individual” subject to a mandatory SAVE check. S. 1383, 119th Cong. § 2 (2026).³ “Given these circumstances, there is every reason to ‘hesitate before concluding that Congress’ meant to confer” on Applicants “the authority [they] claim[]” in the present case—namely, to require the inter-agency data-sharing that failed bills like S. 1383 were meant to authorize. *West Virginia*, 597 U.S. at 725 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

While the Court most often deploys the major-questions doctrine in areas of regulatory overreach, it has recognized that it applies with equal force where an agency claims newfound power of significant “political consequence[].” *Learning Res., Inc. v. Trump*, 607 U.S. 229, 246 (2026) (plurality op.). Justice Gorsuch has explained,

³ See also S. Amdt. 5414 to S. Con. Res. 33, 119th Cong. (2026) (similar); S. 3752, 119th Cong. (2026) (similar); S. 128, 119th Cong. (2025) (similar); H.R. 7300, 119th Cong. (2026) (similar); H.R. 22, 119th Cong. § 2 (2025) (similar); see also H.R. 8281, 118th Cong. (2024) (similar); S. 4292, 118th Cong. § 2(f) (2024) (similar); H.R. 9494, 118th Cong. (2024) (similar).

for example, the principle applies whenever “an agency claims the power to resolve a matter of great ‘political significance,’” to “end an ‘earnest and profound debate across the country,’” as well as “when an agency seeks to ‘intrude into an area that is the particular domain of state law.” *West Virginia*, 597 U.S. at 743–45 (Gorsuch, J., concurring) (citation modified). This case reflects all three of these “triggers.” *Id.*

Caution against crediting novel assertions of power based on old statutory authority is *especially* warranted in the election realm. Not only does “the President enjoy[] no inherent authority” to administer elections, *Learning Res.*, 607 U.S. at 241, but the Founders intentionally diffused “the regulation of elections” between the States and Congress to avoid centralized control, *The Federalist No. 59* (Alexander Hamilton); accord 2 J. Story, *Commentaries on the Constitution of the United States* §§ 814–26 (1833). The Application thus reflects an instance where “one branch of government [is] arrogating to itself power belonging to another.” *Biden v. Nebraska*, 600 U.S. 477, 503 (2023). This Court should thus apply the same rigorous lens it has deployed in recent cases involving self-aggrandizing claims of Executive power.

B. The Application also implicates the very fears Congress sought to address when it began passing federal privacy protection laws in the 1970s. Congress enacted the Privacy Act of 1974 in the wake of the Watergate scandal, in response to nearly a decade of proposals from the Executive Branch seeking Congress’s authorization to consolidate different agencies’ records systems into a single, searchable system. *See* Source Book on Privacy 163–64. Watergate, other records abuses, and the growing power of computers showed Congress the “dangers” of this kind of “centralized” effort

absent authorization by law and adherence to procedure, and it therefore took measures to *prohibit* any sort of centralized data source that could serve as a “1984’ personal dossier on [every] citizen.” *Id.* at 884; *see id.* at 806–84. The Department of Justice’s own handbook on the Act explains that Congress viewed the creation of such a database as an “existential threat to American democracy.”⁴

The Privacy Act passed with overwhelming majorities in Congress and codified “strict” commands that information held or created by the federal government about individual Americans for one purpose cannot be used for another purpose just out of expedience. Source Book on Privacy 858–68, 987–94 (reprinting *Analysis of House and Senate Compromise Amendments to the Federal Privacy Act*, 120 Cong. Rec. 40,405–09, 40,881–83 (1974)); *see* 5 U.S.C. § 552a(b) (barring disclosure to another agency absent consent or specific exception); *id.* § 552a(e) (specifying duties of agencies with respect to systems of records). That is the precise issue here.

The text and history of the Act show that Congress understood Social Security numbers to be a matter of particular concern. *See* Privacy Act of 1974, Pub. L. No. 93-579, § 5(c)(1)(C), 88 Stat. 1896, 1906 (directing study of the use of Social Security numbers “to gain access to, integrate, or centralize information systems and files”). When it later amended the Social Security Act, Congress put into place confidentiality protections that track the Privacy Act and embody its commitment to protecting individual privacy. Indeed, each time Congress has authorized a use of the Social Security number, it has paired the authorization with a confidentiality

⁴ U.S. Department of Justice, *Overview of the Privacy Act of 1974* (2020), <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/introduction>.

requirement—including most directly in the 1990 provision at issue here. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I) (SSNs “shall be confidential”); Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, §§ 1735(b), 2201(c), 104 Stat. 3359, 3792, 3952 (authorizing use of SSNs to administer food-stamp and crop-insurance programs, again providing they “shall be confidential” otherwise); *see also* 42 U.S.C. § 1306(a) (prohibiting certain disclosures of SSNs).

The Court should also evaluate the Application against the lack of clear statutory authorization for DHS’s dramatic expansion of SAVE—indeed, in the face of congressional *refusal* to enact such an expansion. Congress created SAVE to allow state and local officials to verify whether certain immigrants could “apply[] for certain public benefits,” App. 105a; *see also* 42 U.S.C. § 1320b-7(d). The Court should look askance at DHS’s attempt to expand that tool to purportedly “identify unqualified voters” using SSA data that the agency itself *admits* is not fit for such a purpose. *LULAC v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 203–04 (D.D.C. 2025).

II. The merits lopsidedly favor Respondents.

This case offers no shortage of pathways to find that Applicants have failed to show they are likely to prevail on the merits. The district court found that the modified SAVE database violates at least four statutory prohibitions, even while declining to reach additional constitutional grounds. *See* App. 43a–45a, 50a–65a. The D.C. Circuit, in turn, determined Respondents’ Social Security Act claim was alone sufficient to sustain the injunction, *both* because Applicants “forfeited” their key arguments on that claim *and* because their arguments lacked merit. App. 112a–30a.

In view of this host of obstacles, Applicants grasp at 8 U.S.C. § 1373, which

they contend erases *any law* that proves a hindrance to responding to inquiries from state and local officials about the citizenship status of a given individual. But they cite no authority supporting their interpretation or assigning Section 1373 such reach. Applicants are thus left to square their actions with the Social Security Act and Privacy Act—an impossible task given that the modified SAVE database contravenes several explicit statutory prohibitions in those laws.

A. Section 1373 is not a get-out-of-jail-free card for DHS.

Applicants’ lead argument is that 8 U.S.C. § 1373 gives DHS *carte blanche* to violate any other law in the course of its efforts to “verify citizenship status.” Appl. 18. It does not. Section 1373(c) required DHS’s predecessor agency to “respond to an inquiry . . . seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency” by “providing the requested verification or status information.” 8 U.S.C. § 1373(c). Sections 1373(a) and (b), in turn, remove *certain limited* obstacles to complying with this mandate.

Applicants contend these provisions exempt DHS from the Privacy Act and Social Security Act, but the text of § 1373 and the broader statutory context show the opposite. Applicants’ argument faces strong headwinds from the jump: this Court applies a “strong presumption that repeals by implication are disfavored and that Congress will specifically address pre-existing law when it wishes to suspend its normal operations in a later statute.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation modified). Section 1373 says nothing about the Privacy Act or Social Security Act, so it can override those Acts only if it is in “irreconcilable conflict” with them. *Branch v. Smith*, 538 U.S. 254, 273 (2003) (plurality op.) (citation omitted).

Thus begins Applicants’ fruitless search for a conflict between § 1373 and the Acts at issue. They start with Section 1373(c), arguing that, “[o]n the district court’s reading, . . . the Privacy Act and Social Security Act effectively prevent the government from complying with” its obligations under that provision. Appl. 21. That is demonstrably wrong. DHS had been fulfilling Section 1373(c)’s obligation to “respond to an inquiry” with “the requested verification or status information” for decades with the original SAVE—a system left intact by the injunction. That system enables officials to “access the immigration status of individuals” based on “records maintained by DHS” and other immigration agencies without transgressing other enactments of Congress. App. 10a. Nothing in Section 1373(c) obliges DHS to hunt for additional records maintained by other agencies or authorizes “disclosure of information that another statute . . . specifically makes confidential.” App. 121a.

Applicants then turn to Sections 1373(a) and (b), which, they claim, “specify that Section 1373 applies ‘notwithstanding any other provision’” of law. Appl. 22. But they gloss over the actual statutory text, which applies only to restrictions on sharing “information regarding the citizenship or immigration status of an individual.” 8 U.S.C. § 1373(a)–(b). That category of information encompasses only “a person’s legal classification under federal law,” not “broader swaths of information.” *United States v. California*, 921 F.3d 865, 891–92 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 124 (2020); *see also City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 333 (E.D. Pa. 2018) (explaining this text refers to “an individual’s category of presence in the United States”). Indeed, such classification “is the only information to which § 1373 extends.”

City & County of San Francisco v. Barr, 965 F.3d 753, 764 (9th Cir. 2020), *cert. dismissed*, 592 U.S. 1307 (2021); *cf. City of Chicago v. Barr*, 961 F.3d 882, 897 (7th Cir. 2020). Modified SAVE involves (among other things) disclosing Social Security numbers, which are plainly not a “person’s legal classification under federal law,” *id.*, and thus not within the ambit of Sections 1373(a) or (b).

Applicants harp on the purported breadth of the “notwithstanding” language in these provisions, but they fail to point to any “clash” of law that triggers the provisions. *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 301 (2017) (citation omitted). Such clauses typically only have effect where there is “an irreconcilable conflict such that the two statutes dictate opposite results as to a particular matter.” *United States v. Novak*, 476 F.3d 1041, 1052 (9th Cir. 2007) (en banc). There is no such conflict here. Section 1373 prevents certain types of interference with the sharing of information “regarding the citizenship and immigration status” of individuals. But the district court and D.C. Circuit premised their rulings on improper disclosure of information *other* than that “regarding the citizenship and immigration status” of individuals. The “notwithstanding” language does not broaden the scope of Section 1373(c) or magically erase laws—like the Privacy and Social Security Acts—protecting different categories of information from disclosure.

A separate structural aspect of Section 1373 further compels this reading. In the very same statute in which Congress enacted Section 1373, it *also* enacted a provision regarding employment verification. That provision, codified at 8 U.S.C. § 1324a note, “expressly authorized SSA to participate in an employment-verification

system by matching names and SSNs against its records; specified what information SSA could return; and restricted how that information could be used.” App. 121a (citation omitted). Congress knew exactly how to exempt a statutory command from the requirements of the Social Security Act and Privacy Act, and it “expressly did so elsewhere in the same statute.” *Id.* The fact that Section 1373 *nowhere* mentions either Act is strong evidence that Congress did not intend Section 1373 to exempt DHS from those Acts. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012).

* * *

Applicants’ reading of Section 1373 should give pause. They claim, in essence, that Section 1373(c) *compels* them to assemble and disseminate citizenship- and immigration-related data from any source and by any means necessary, *but see Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 368 (2025) (“[N]o statute pursues any single purpose at all costs.” (citation modified)), and to ignore *any* law that could impede their efforts, *but see Epic Sys.*, 584 U.S. at 510 (noting “strong presumption” that “Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute” (citation modified)). Under Applicants’ reading, if a person were the subject of an inquiry under Section 1373(c), DHS could kidnap and interrogate them for information about their citizenship status and—thanks to the “notwithstanding” clauses in Sections 1373(a) and (b)—no federal or state statute could prevent DHS from doing so. More prosaically, Applicants’ reading might authorize hacking the person’s email or unlawfully opening their mail, *but see* 18 U.S.C. §§ 1030, 1702 (forbidding such behavior). That is not the law.

B. Modified SAVE violates the nation’s privacy laws.

Applicants’ SAVE overhaul cannot be squared with the statutory privacy protections Congress has enacted. App. 1a, 43a–66a, 105a–32a. The district court’s detailed and undisputed factual findings further show that Applicants’ rush to push the SAVE overhaul out last year flouted safeguards meant to *slow down* major system-of-records overhauls, violations that are not yet cured. App. 63a–70a.

To obtain a stay, Applicants must make a strong showing that, among other things, the SAVE overhaul and its corresponding systems of records notices (“SORNs”) were *not* in violation of (1) confidentiality protections of the Social Security Act, (2) “disclosure” protections of the Privacy Act, *and* (3) procedural protections of the Privacy Act. They do not clear any of these gates to success on the merits.

1. The SAVE overhaul violated the confidentiality provisions of the Social Security Act.

The Social Security Act provides that Social Security numbers “and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.” 42 U.S.C. § 405(c)(2)(C)(viii)(I). Applicants never contended below that modified SAVE complies with that mandate; they argued only that 8 U.S.C. § 1373 displaces it. App. 110a–32a. For the reasons explained above, both courts below were right to reject that argument. *Supra* § II.A.

Applicants’ remaining theories were raised for the first time after judgment, and that alone should doom their request for extraordinary relief. *See Ohio v. EPA*,

603 U.S. 279, 298–99 (2024); App. 130a–32a. But their tardy theories also fail on their own terms. The first is that SSA’s records fall beyond the Act’s confidentiality requirements because SSA has been issuing numbers since the 1930s, and thus prior to 1990. Yet Applicants identify no pre-1990 “provision of law” under which Social Security numbers and the other purported citizenship records SSA transmitted to DHS here were “obtained or maintained.” 42 U.S.C. § 405(c)(2)(C)(viii)(I). SSA’s *current* operations—including as an independent agency—are governed by the Social Security Act of 1994, which, as the name suggests, was enacted after October 1, 1990. *See Rodriguez v. SSA*, 118 F.4th 1302, 1310 (11th Cir. 2024) (rejecting argument that “the time period that matters” is when SSA first began operating). In other words, the provisions governing collection and use of Social Security numbers *today* are laws post-dating 1990. As the D.C. Circuit recognized, Applicants’ position contradicts their own assertion that § 1373—enacted in 1996—somehow authorized SSA to create new records and funnel them to DHS through modified SAVE, because a statute enacted in 1996 “cannot supply the needed pre-1990 authority” they claim existed. App. 125a–26a. If that were right, nothing in the statute “would prevent SSA from publicly releasing any—or even every—SSN in its database.” App. 124a.

Applicants’ next theory—that modified SAVE does not “disclose” anything the statute protects—fares no better. The record in this case demonstrates how disclosure occurs between SSA and DHS at both ends of the data-verification process—and that DHS itself then stores the information for its own *additional* uses. *See* App. 126a. On the front end, whenever a SAVE user (like a local election official) enters a partial

Social Security number, SSA produces a “match” and then *sends DHS the full nine-digit* number. That is “plainly a disclosure.” *Id.* Modified SAVE then produces *additional* disclosures of “related” records when SSA *confirms* or *denies* the existence of a match in its own system. App. 54a–61a; *see also* App. 127a–28a. Applicants provide no authority to conclude otherwise. *See* Appl. 30–33. In short, Applicants are not likely to show that modified SAVE comports with the Social Security Act.

2. The SAVE overhaul violated substantive and procedural protections of the Privacy Act.

The Court can reject the Application solely based upon Applicants’ failure to overcome the Social Security Act. Regardless, the district court’s explanation of why Respondents are likely to prevail under the Privacy Act is similarly unassailable.

a. Scope of APA review. Applicants begin by advancing the strained argument that Congress silently eliminated judicial authority under the APA to set aside agency violations of the Privacy Act, due to a set of narrow “civil remedies” for violations of *some* of the Act’s provisions. *See* Appl. 23–25 (citing 5 U.S.C. §§ 552a(g), 704). This Court has twice construed the Act to mean the opposite. In *Doe v. Chao*, the Court reasoned that the Privacy Act’s silence about the availability of equitable relief is best “explained by the general provisions for equitable relief within” the APA. 540 U.S. 614, 619 n.1 (2004). The Court reiterated the point in *FAA v. Cooper*, explaining that the Act “deters” violations of its substantive provisions “*by allowing for injunctive relief* under” the APA. 566 U.S. 284, 303 n.12 (2012) (emphasis added).

Applicants also ignore “the strong presumption favoring judicial review” under the APA. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015) (citing *Bowen v. Mich.*

Acad. of Fam. Physicians, 476 U.S. 667, 670 (1986)); *see also Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Nothing in the Privacy Act evinces a desire to set aside that presumption. The narrow remedies it supplies are distinct from those a court would grant under the APA. *See* 5 U.S.C. § 552a(g)(2)–(3) (providing for orders to “amend” inaccurate internal records, to “enjoin the agency from withholding the records” from complainants). Those provisions are *records-specific remedies* that Section 706’s authority to “set aside” unlawful agency action might not usually reach. The sensible implication is that Congress added those remedies to the Privacy Act to ensure enforcement of those specific provisions—*not* to displace relief under the APA for the other specified protections in the Privacy Act. The same is true of the Act’s damages provisions, which ensure that monetary relief is available when officials “willfull[y]” violate the Act in a way that produces *quantifiable* monetary harm. *Id.* § 552a(g)(4).

Applicants nonetheless insist the Privacy Act supplies a “comprehensive remedial scheme” that necessarily displaces review. Appl. 23. But they never square that bare assertion with the “limited relief available” under the Act. *Bowen*, 487 U.S. at 901; *see also* App. 48a n.11 (“Authorizing courts to grant lesser relief for some violations does not mean that the ordinary set-aside remedy is no longer available for others”). Applicants thus fail to show that APA review is unavailable here.

b. Unlawful disclosures. Turning to the merits, the Privacy Act makes it “unlawful for an agency to disclose a record to another agency”—or to anyone else—“without the written consent of the person to whom the record pertains.” *Cooper*, 566 U.S. at 289 n.2 (citing 5 U.S.C. § 552a(b)). This prohibition is broad by design. A

“record” is “any item, collection, or grouping of information about an individual,” expressly including “the identifying number, symbol, or other identifying particular assigned to the individual,” 5 U.S.C. § 552a(a)(4), and the Act reaches disclosure “by any means of communication,” *id.* § 552a(b). The Act is violated by any “nonconsensual disclosure of . . . information that has been retrieved from a protected record.” *Bartel v. FAA*, 725 F.2d 1403, 1408 (D.C. Cir. 1984). This prohibition reaches *inter-agency* disclosures, and not merely disclosure to the public, by design as well: Congress expressly legislated against the prospect of “formal or de facto national data banks” assembled from existing records. Source Book on Privacy 168, 217, 884.⁵

Applicants do not dispute that modified SAVE facially violates this prohibition, so they seek to evade it by invoking the “routine use” exception. A “routine use” is “the use of such record for a purpose which is compatible with the purpose for which it was collected,” 5 U.S.C. § 552a(a)(7), (b)(3), and a disclosure qualifies only if it is both compatible in that sense *and* within the scope of a routine use notice published by the agency, *Doe v. Stephens*, 851 F.2d 1457, 1466 (D.C. Cir. 1988); *LULAC v. Exec. Off. of the President*, 818 F. Supp. 3d 34, 72 (D.D.C. 2026) (“*LULAC III*”) (explaining that agencies cannot invent a new routine use “on the fly”). This Court has not defined the scope of “compatib[ility]” under the Act, but lower courts have required agencies to demonstrate “a meaningful degree of convergence” between the purpose behind the

⁵ Congress later *strengthened* protections against unauthorized inter-agency record disclosures, providing that “[n]othing” in the Act “shall be construed” to permit “establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained” “by other Federal agencies.” Pub. L. No. 100-503, § 9, 102 Stat. 2507, 2514 (1988).

original collection of a record and the purpose of the subsequent disclosure under the routine use. *Britt v. Naval Investigative Serv.*, 886 F.2d 544, 549 (3d Cir. 1989); *see also Swenson v. USPS*, 890 F.2d 1075, 1078 (9th Cir. 1989); *Ames v. DHS*, 861 F.3d 238, 240 (D.C. Cir. 2017).

Whatever the precise meaning of “compatib[ility],” Applicants have not made a strong showing that it is satisfied here. The SSA records that DHS puts to new use here were “collected” and are “maintained” by SSA because Congress required that agency to “enumerate” workers, credit their covered “earnings,” and pay out “benefits.” 42 U.S.C. § 405. A new program seeking to confirm or deny an individual’s citizenship status to support voter-eligibility determinations by States has no convergence with that original statutory purpose whatsoever. SSA itself has never suggested that it collects or maintains such information for citizenship-verification purposes, never mind for voter-roll maintenance. To the contrary, SSA has repeatedly warned that its citizenship data is inaccurate, outdated, and must be used only for its *own* “program purposes.” SSA AR 103. Unsurprisingly, SSA’s new SORN does not even purport to make the necessary compatibility determination. SSA’s 2025 SORN justified the new “Routine Use No. 49” by reference only to 8 U.S.C. § 1373(a), and not by reference to any convergence or similarity with SSA’s duties to provide for enumeration and benefits. *See Privacy Act of 1974; System of Records*, 90 Fed. Reg. 50879, 50883 (Nov. 12, 2025) (reproduced at SSA AR 210). Indeed, the SORN does not even cite any relevant provision of 42 U.S.C. § 405, even though that statute sets forth *why* SSA collected and compiled the relevant records in the first place.

Applicants attempt to duck the “routine use” exception’s compatibility analysis by describing the purpose of the Social Security numbers at an absurdly high level of generality. Appl. 26 (citation omitted). According to them, the original purpose of a Social Security number is simply “to identify a particular individual,” and accordingly any governmental use of the number to “match” a person to another record is therefore “compatible” in that general sense. Appl. 26. That assertion is unmoored from any act of Congress and, in any event, Section 552a(a)(7) does not speak to such generalized purposes for a covered record; it is an “except[ion]” that reaches only uses compatible with the original “purpose for which [a record] was *collected*.” 5 U.S.C. § 552a(a)(7). As 42 U.S.C. § 405 confirms, Social Security numbers are collected by SSA to administer Social Security programs—not to serve as all-purpose identifiers.

Moreover, because the Privacy Act includes “identifying number[s]” within its definition of “record,” 5 U.S.C. § 552a(a)(4), Applicants’ argument would have the “routine use” exception swallow that definition, *but see Stephens*, 851 F.2d at 1466 (recognizing it is “well-established” that agencies “may not utilize the ‘routine use’ exception to circumvent the mandates of the Privacy Act” (collecting cases)); *see also Maracich v. Spears*, 570 U.S. 48, 60 (2013) (“An exception to a ‘general statement of policy’ is ‘usually read . . . narrowly in order to preserve the primary operation of the provision.’” (alteration in original)). If the purpose of “identifying numbers” can always be characterized at such sky-high levels of generality, then the government can disclose such numbers at will, confident that doing so will *always* satisfy the routine use exception.

c. Failure to observe procedures. The Privacy Act directs agencies to publish notice of “any new use or intended use of the information in the system” and afford the “opportunity . . . to submit written data, views, or arguments” at least 30 days before publishing the new use. 5 U.S.C. § 552a(e)(11). These procedures *must* be satisfied before “an agency [can] initiate a major new data-sharing program affecting the sensitive data of millions of Americans.” *LULAC III*, 818 F. Supp. 3d at 115.

Applicants ignored these procedures, launching the SAVE overhaul in May 2025, and publishing SORNs six months later. Despite this gap in time, the SORN declares itself “effective upon publication,” and as “tak[ing] effect” at the close of the comment period—a concession that modified SAVE had been operating unlawfully for months. Applicants do not even try to defend this conduct, which is “flatly inconsistent with the text, structure, and purpose of the Privacy Act.” *Id.* at 115–16. They instead ask that this Court simply look past it. *But cf. Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) (“[H]e who comes into equity must come with clean hands.”). Specifically, they contend that, because Respondents seek prospective relief, any past procedural violations are academic. Appl. 28–29. But Applicants’ choice to put the substantive cart (modifying SAVE) before the procedural horse (a comment period and publication of a new SORN) means no valid SORN has yet been published. The Privacy Act requires that notice be given “at least 30 days prior” to the publication of any “new” or “intended” routine use, 5 U.S.C. § 552a(e)(11), with the ensuing SORN to be published “upon establishment or revision” to the system of records, *id.* § 552a(e)(4). This predicate to issuing a SORN has still *never*

occurred—the routine use at issue was in no manner “new” or “intended” when Applicants belatedly sought comment and the SORN was not published “upon” establishment of the new routine use. Applicants therefore acted “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D), and cannot identify any likely error in the district court’s analysis.

III. The equities and public interest cut strongly against the Applicants.

The sum total of Applicants’ discussion of the equities, so far as it relates to Respondents, is to claim that Respondents “would not suffer any irreparable harm from a stay” because the modified SAVE system “does not cause respondents even an Article III injury.” Appl. 37. That is wrong several times over.

An injury is concrete if it bears “a close relationship’ to a harm ‘traditionally’ recognized as providing a basis for a lawsuit in American courts,” and this Court has specifically named “disclosure of private information,” “intrusion upon seclusion,” and “defamation” among them. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424–25, 432–33 (2021). The relationship must be close “in kind, not degree.” *Gadelhak v. AT&T Servs.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.); *cf. Chao*, 540 U.S. at 624–26 (observing the Privacy Act tracks the common law’s attention to privacy concerns).

Applicants claim disclosures *between federal agencies* cannot inflict cognizable harm at all. Congress itself has squarely rejected that suggestion by passing the privacy laws at issue here. *Supra* § II.B; *Gadelhak*, 950 F.3d at 462 (explaining that the text enacted by Congress is “instructive and important”); *Cooper*, 566 U.S. at 294 (explaining the text of the Privacy Act “directs agencies to establish safeguards to protect individuals against the disclosure of confidential records ‘which could result

in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained” (quoting 5 U.S.C. § 552a(e)(10)); *see also AFGE v. OPM*, 786 F. Supp. 3d 647, 694 (S.D.N.Y. 2025) (holding “an improper disclosure within the Government” under the Privacy Act “is a serious and cognizable harm,” satisfying irreparable harm factor); *Ctr. for Taxpayer Rts. v. IRS* (“CTR”), No. 26-5006, 2026 WL 2635380, at *13–14 (D.C. Cir. Sep. 8, 2026) (similar), *aff’g* 815 F. Supp. 3d 1, 55–68 (D.D.C. 2025). The argument is also foreclosed by the record, which details how the SAVE expansion has been used to “remov[e] United States citizens from voter rolls based on inaccurate information.” App. 1a.

Indeed, “[t]he record here abounds” with evidence that, using modified SAVE, Applicants “handed over individuals’ private information to state authorities, that those authorities revoked or threatened to revoke voter registrations based on the unauthorized and inaccurate disclosures,” disrupting “individuals’ daily lives when they were forced to correct the inaccuracies” just to be able to vote. App. 27a. As the D.C. Circuit put it just last week, an “eviscerat[ion]” of “statutory privacy rights on which [Americans] depend” to avoid precisely these kinds of circumstances is “likely . . . difficult or impossible to remedy.” *CTR*, 2026 WL 2635380, at *13–14. And those undisputed harms are consistent with what SSA itself had assessed would happen if its highly confidential Social Security number database were to be used by another agency for this kind of purpose. *Supra* § II.B.1.

In contrast, the Applicants will suffer no irreparable harm by having their appeal heard in the normal course. “The [NVRA] makes it unlawful to undertake

systematic voter removal within the 90-day period preceding a federal primary or general election.” App. 131a (citing 52 U.S.C. § 20507(c)(2)(A)). Applicants should be deemed to have waived their contrary argument before this Court because they previously opposed preliminary relief before the district court on the basis that the 90-day quiet period *would* prevent imminent removals from the voter rolls at that time. App. 131a. They cannot now rely on an argument that “is the polar opposite of what [they] argued before the district court.” *United States v. Sukhtipyaroge*, 1 F.4th 603, 606 (8th Cir. 2021) (finding such arguments waived on appeal).

Regardless, Applicants also *concede* that “two circuits” have found that it is now too late under the NVRA’s “quiet period” for modified SAVE to be used systematically ahead of the 2026 elections. Appl. 35. They vaguely suggest “another circuit has read it the opposite way” but do not identify which. *Id.* So far as *Amici* are aware, no circuit has so held. As best as *Amici* can tell, Applicants may be referring to *Bell v. Marinko*, but that case never even mentions the 90-day quiet period in § 20507(c)—it addressed when a State may remove a person from the voter rolls under a separate NVRA provision. 367 F.3d 588, 591–92 (6th Cir. 2004). Applicants thus cannot show that they will be able to even lawfully use modified SAVE as they desire at this stage of the election calendar. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 715–17 (9th Cir. 2025), *cert. granted*, No. 25-1017 (U.S. June 29, 2026); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014); *see also* App. 131a–32a.

CONCLUSION

The Application should be denied.

September 15, 2026

Respectfully submitted,

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APPENDIX

APPENDIX – LIST OF *AMICI CURIAE*

Members of the U.S. Senate

1. **Angela Alsobrooks**
 Senator from Maryland
2. **Tammy Baldwin**
 Senator from Wisconsin
3. **Michael Bennet**
 Senator from Colorado
4. **Richard Blumenthal**
 Senator from Connecticut
5. **Lisa Blunt Rochester**
 Senator from Delaware
6. **Cory Booker**
 Senator from New Jersey
7. **Christopher Coons**
 Senator from Delaware
8. **Catherine Cortez Masto**
 Senator from Nevada
9. **Tammy Duckworth**
 Senator from Illinois
10. **Richard Durbin**
 Senator from Illinois
11. **John Fetterman**
 Senator from Pennsylvania
12. **Kirsten Gillibrand**
 Senator from New York
13. **Margaret Hassan**
 Senator from New Hampshire

14. **Martin Heinrich**
Senator from New Mexico
15. **Mazie Hirono**
Senator from Hawaii
16. **Tim Kaine**
Senator from Virginia
17. **Mark Kelly**
Senator from Arizona
18. **Amy Klobuchar**
Senator from Minnesota
19. **Ben Ray Luján**
Senator from New Mexico
20. **Edward Markey**
Senator from Massachusetts
21. **Jeff Merkley**
Senator from Oregon
22. **Patty Murray**
Senator from Washington
23. **Alex Padilla**
Senator from California
24. **Gary Peters**
Senator from Michigan
25. **Jack Reed**
Senator from Rhode Island
26. **Jacky Rosen**
Senator from Nevada
27. **Brian Schatz**
Senator from Hawaii
28. **Adam Schiff**
Senator from California

29. **Charles “Chuck” Schumer**
Senator from New York
30. **Jeanne Shaheen**
Senator from New Hampshire
31. **Tina Smith**
Senator from Minnesota
32. **Chris Van Hollen**
Senator from Maryland
33. **Mark Warner**
Senator from Virginia
34. **Elizabeth Warren**
Senator from Massachusetts
35. **Peter Welch**
Senator from Vermont
36. **Sheldon Whitehouse**
Senator from Rhode Island
37. **Ron Wyden**
Senator from Oregon