

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.

**On Application to Stay the Order of the
United States District Court
for the District of Columbia**

**BRIEF OF BIPARTISAN CURRENT AND FORMER MEMBERS OF
CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. The Administration Is Not Likely to Succeed in Showing It Complied with the Privacy Act	4
A. Debates from the 1950s to the 1970s Led to Strong Opposition to a National Data Bank	6
B. Congress Passed the Privacy Act in 1974 to Prohibit a Database like Modified SAVE	12
II. Congress’s Refusal to Pass the SAVE Act and SAVE America Act Cut Against a Stay	18
CONCLUSION	23
APPENDIX: LIST OF <i>AMICI CURIAE</i>	1a

TABLE OF AUTHORITIES

CASES

<i>Arizona v. United States</i> , 567 U.S. 387 (2012)	22
<i>Bond v. United States</i> , 572 U.S. 844 (2014)	6
<i>Fischer v. United States</i> , 603 U.S. 480 (2024)	6
<i>King v. Burwell</i> , 576 U.S. 473 (2015)	3
<i>League of Women Voters v. U.S. Dep’t of Homeland Sec.</i> , 835 F. Supp. 3d 79 (D.D.C. 2026)	2-3, 14, 16-17
<i>League of Women Voters v. U.S. Dep’t of Homeland Sec.</i> , No. 26-5243, 2026 WL 2643439 (D.C. Cir. Sept. 4, 2026) (per curiam)	1-2, 5
<i>Mellouli v. Lynch</i> , 575 U.S. 798 (2015)	3
<i>Morrison v. Olson</i> , 487 U.S. 654 (1988)	2
<i>Salazar v. Buono</i> , 559 U.S. 700 (2010)	5
<i>Sampson v. Murray</i> , 415 U.S. 61 (1974)	5-6
<i>United States v. Weber</i> , 816 F. Supp. 3d 1168 (C.D. Cal. 2026)	18
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022)	4, 20, 22
<i>Zuni Pub. Sch. Dist. No. 89 v. Dep’t of Educ.</i> , 550 U.S. 81 (2007)	6

CONSTITUTIONAL PROVISION

U.S. Const. art. I	1
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FEDERAL STATUTES

5 U.S.C. § 552a(a)(7)	16
5 U.S.C. § 552a(e)(4)(D)	17
5 U.S.C. § 552a(e)(11)	17
42 U.S.C. § 405(c)(2)(C)(viii)(I)	1
Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (Dec. 31, 1974)	8, 16

LEGISLATIVE MATERIALS

111 Cong. Rec. 23,027 (1965).....	7
120 Cong. Rec. H36,664 (daily ed. Nov. 20, 1974)	15
120 Cong. Rec. H36,655 (daily ed. Nov. 20, 1974)	17
<i>Analysis of House and Senate Compromise Amendments to the Federal Privacy Act</i>	16
<i>The Computer and Invasion of Privacy: Hearings Before the Special Subcomm. on Invasion of Priv. of the H. Comm. on Gov't Operations, 89th Cong. (1966)</i>	7, 9-11, 13
<i>Computer Privacy: Hearings Before the Subcomm. on Admin. Prac. & Proc. of the S. Comm. on the Judiciary, 90th Cong. (1967)</i>	12
<i>Federal Data Banks, Computers and the Bill of Rights: Hearings Before the Subcomm. on Const. Rts. of the S. Comm. on the Judiciary, 92d Cong. (1971)</i>	12
H.R. 8281, 118th Cong. (2024)	19
H.R. 22, 119th Cong. (2025)	18-22
H.R. 7296, 119th Cong. (2026)	19
<i>Report of the Committee on the Preservation and Use of Economic Data to the Social Science Research Council (Apr. 1965)</i>	7-9
S. 1383, 119th Cong. (2026).....	18-22
S. 3752, 119th Cong. (2026).....	19

S. Amdt. 5779 to S. Amdt. 5453 to S. 2, 119th Cong. (2026).....	19
S. Comm. on Gov't Operations & H.R. Comm. on Gov't Operations, 94th Cong., <i>Source Book on Privacy</i> (Joint Comm. Print 1976)	3, 6, 8, 13, 15-18
S. Rep. No. 93-1183 (1974)	3, 6, 13-15
Subcomm. on Const. Rts. of the S. Comm. on the Judiciary, 93d Cong., <i>Federal Data Banks and Constitutional Rights</i> (Comm. Print 1974)	6-8, 10, 12-13

OTHER AUTHORITIES

Richard E. Cohen, <i>Justice Report/New Privacy Law to Have Major Impact on Government Data</i> , Nat'l J. Rep. (Jan. 4, 1975)	15
Edgar S. Dunn, Jr., <i>Statistical Evaluation Report No. 6—Review of Proposal for a National Data Center</i> (Nov. 1, 1965)	9-10
Michael Gold, <i>Senate Bows to Reality, Leaving Trump's Voting Bill Undone</i> , N.Y. Times (Aug. 9, 2026)	19
James T. Lynn, Dir., Off. of Mgmt. & Budget, <i>Implementation of the Privacy Act of 1974</i> (Nov. 21, 1975)	17-18
Jerome Hanus, <i>Citizen Access to Records: A Guide to Federal Statutory Requirements</i> , Cong. Rsch. Serv. (1976)	8
Carl Kaysen, <i>Data Banks and Dossiers</i> , The Pub. Int. (Spring 1967)	11-12
Off. of Mgmt. & Budget, <i>Guidelines for Implementing Section 552a of Title 5 of the United States Code</i> (July 1, 1975)	16
<i>To Preserve Privacy</i> , N.Y. Times (Aug. 9, 1966)	11
U.S. Dep't of Health, Educ. & Welfare, Sec'y's Advisory Comm. on Automated Pers. Data Sys., <i>Records, Computers, and the Rights of Citizens</i> (1973)	7-8, 14
U.S. Dep't of Just., <i>Overview of the Privacy Act of 1974</i> (2020)	14

INTEREST OF *AMICI CURIAE*

Amici are current and former Members of Congress who share a commitment to upholding personal privacy, security, and election integrity; who recognize the ongoing vitality of the Privacy Act of 1974; and who can speak to the grounds on which Congress has refused to pass the proposed SAVE Act and SAVE America Act. As members of the Legislative Branch, *Amici* have strong interests in the interpretation of federal law and the separation of powers guaranteed by the Constitution. A complete list of *Amici* is set forth in the appendix to this brief.¹

SUMMARY OF ARGUMENT

In denying the Administration’s request for a stay pending appeal, the D.C. Circuit concluded that the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), likely prohibited modified SAVE. *See League of Women Voters v. U.S. Dep’t of Homeland Sec.*, No. 26-5243, 2026 WL 2643439, at *5-12 (D.C. Cir. Sept. 4, 2026) (per curiam) (“D.C. Circuit Op.”).² It also held that the Administration’s forfeiture of the principal legal arguments pressed on appeal undercut any basis for emergency equitable relief. *See id.* Finally, the D.C. Circuit found that the equities did not support a stay, noting that use of modified SAVE would risk harm to the rights of voters and that there was little apparent urgency to implementing modified SAVE given statutory restrictions

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

² Because Congress is an integral and co-equal part of the federal government, *see* U.S. Const. art. I, we do not refer to the executive agencies at issue in this litigation as “the government.” Instead, we generally refer to them as “the Administration.” We otherwise adopt the parties’ preferred short-hand descriptors.

on the lawful uses of any such system in advance of the upcoming elections. *See id.* at *12-13. This Court should deny emergency equitable relief on those same grounds.

The lack of merit in the Administration’s request is further confirmed by the additional legal defects in modified SAVE that the district court so thoroughly documented. In particular, as the district court held, modified SAVE offends the Privacy Act of 1974, which was enacted by Congress following extensive hearings to impose procedural and substantive safeguards on the use and integration of federal data banks. *See League of Women Voters v. U.S. Dep’t of Homeland Sec.*, 835 F. Supp. 3d 79, 97-100, 120-30 (D.D.C. 2026) (“District Court Op.”).

Drawing upon *Amici*’s experience and perspectives as Members of Congress, this brief advances two key points—one about the legislative origins and ongoing vitality of the Privacy Act in this context; the other about the legal significance of Congress’s decision to twice reject proposed legislation that would (among other things) effectively implement modified SAVE. Both points powerfully undercut the Administration’s emergency request to implement modified SAVE.

First, as measured against the concerns animating adoption of the Privacy Act, modified SAVE is not merely a step along the slippery slope—it is the very bottom of the slope. *See Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting) (“[T]his wolf comes as a wolf.”). In the mid-twentieth century, the question arose whether the Executive Branch should create a centralized, searchable national data bank of records about American citizens. Through the Privacy Act, Congress

delivered an unequivocal answer: “no.” In doing so, Congress recognized that “a dictatorship of data banks can be just as repressive, just as chilling and just as debilitating on our constitutional protections” as a dictatorship of “hobnailed boots and tanks and machineguns.” S. Rep. No. 93-1183, at 7-8 (1974) (quoting Professor Arthur R. Miller), *reprinted in* S. Comm. on Gov’t Operations & H.R. Comm. on Gov’t Operations, 94th Cong., *Source Book on Privacy* at 827 (Joint Comm. Print 1976) (“Source Book”).

To effectuate this legislative mandate, the Privacy Act (among other things) imposed substantive limits through the routine use provision on how executive agencies may share personal records, as well as procedural rules to ensure public accountability of the agencies’ routine uses. As the district court concluded, the Administration violated both aspects of the Privacy Act’s routine use provision in modified SAVE, which links Social Security Administration records to a government-wide verification system, enables bulk searches of American citizens’ most sensitive personal data, and repurposes information collected for one purpose to serve an entirely different one. *See* District Court Op., 835 F. Supp. 3d at 120-30. This view is confirmed by a study of the context in which the Privacy Act was first adopted. *See Mellouli v. Lynch*, 575 U.S. 798, 812 (2015) (considering “[t]he historical background” of a statutory provision to determine its meaning); *King v. Burwell*, 576 U.S. 473, 498 (2015) (“A fair reading of legislation demands a fair understanding of the legislative plan.”). Because modified SAVE offends the substantive and procedural dimensions

of the Privacy Act’s routine use provision, as the district court held, this Court should decline to grant emergency relief allowing it to be operationalized.

Second, and relatedly, this Court should not issue extraordinary remedies to allow the Administration to use a system that Congress has not only prohibited but has repeatedly and recently declined to authorize through legislation. The SAVE Act and the SAVE America Act—bills that very closely tracked modified SAVE in every salient respect—failed in Congress earlier this year. As precedent instructs, the Court should “not ignore” that “Congress considered and rejected multiple times” the “program” that the Executive Branch now has unilaterally “enact[ed].” *West Virginia v. EPA*, 597 U.S. 697, 731 (2022) (citation modified). Doing so would offend the separation of powers and send a chilling message that legislative failure is just an invitation for executive lawlessness.

At bottom, this case reduces to a simple principle: when Congress enacts a statute to prohibit a specific government practice, and then repeatedly declines to authorize that same practice through new legislation, the Executive may not simply do it anyway. The Court should deny the Administration’s request for a stay.

ARGUMENT

I. The Administration Is Not Likely to Succeed in Showing It Complied with the Privacy Act.

Congress enacted the Privacy Act as a rejection of the very kind of integrated, easily searched national data bank that the modified SAVE system represents. As the district court correctly held, the modified SAVE system violates the Privacy Act

by allowing federal agencies at the push of a button to search for (and to disclose) personal data for purposes far afield from the original reason the federal government collected that information. The Administration also violated the Privacy Act in creating modified SAVE by failing to allow the public an opportunity of notice and comment before it bulldozed through the Privacy Act's limits.

The dissenting opinion in the D.C. Circuit treated the Privacy Act's substantive and procedural limits as imposing only frail, paper-pusher requirements on the Administration. *See* D.C. Circuit Op., 2026 WL 2643439, at *19-20 (Katsas, J., dissenting). That understanding of the Privacy Act is mistaken for the reasons given by the district court. It is also inconsistent with the context, history, and congressional deliberations that led to the adoption of the Privacy Act in the first place. *See Salazar v. Buono*, 559 U.S. 700, 715 (2010) (plurality opinion) (explaining that a lower court erred in taking "insufficient account of the context in which the statute was enacted and the reasons for its passage").

As we recount below, the federal government sought repeatedly in the mid-twentieth century to create a centralized, searchable national data bank of the electronic records that federal agencies possess about individuals. These efforts, even when high minded, provoked fierce and steadfast opposition by Congress and the public. Opponents of such proposals saw that the centralization of records about individuals would significantly erode personal privacy and potentially pave the way for an Orwellian "Big Brother" state. *See, e.g., Sampson v. Murray*, 415 U.S. 61, 96

n.2 (1974) (Douglas, J., dissenting) (remarking upon “congressional concern” that “we live in an Orwellian age in which the computer has become the heart of a national surveillance system” (citation modified)).

Notwithstanding this early opposition, the federal government’s efforts to centralize records about individuals into a searchable national data bank did not die away, and Congress concluded that legislation was needed to finally put an end to such proposals. It passed the Privacy Act of 1974 to directly prevent “the creation of formal or de facto national data banks, or of centralized Federal information systems without certain statutory guarantees.” S. Rep. No. 93-1183, at 15 (1974), *reprinted in* Source Book at 168.

This context for the Privacy Act makes clear why the Administration is not likely to succeed and why its emergency application should be denied. *See Fischer v. United States*, 603 U.S. 480, 498 (2024) (“declin[ing] to adopt [an] interpretation” that “is inconsistent with ‘the context from which the statute arose’” (quoting *Bond v. United States*, 572 U.S. 844, 860 (2014))); *Zuni Pub. Sch. Dist. No. 89 v. Dep’t of Educ.*, 550 U.S. 81, 98 (2007) (rejecting “a reading of the statutory language that ignores its basic purpose and history”).

A. Debates from the 1950s to the 1970s Led to Strong Opposition to a National Data Bank.

The roots of the Privacy Act stretch back several decades before its enactment. As federal programs expanded during the New Deal, so too did the volume and nature of data that federal agencies collected and maintained about many individuals. *See*

Subcomm. on Const. Rts. of the S. Comm. on the Judiciary, 93d Cong., *Federal Data Banks and Constitutional Rights* at 3 (Comm. Print 1974). In the 1930s and 1940s, however, the analog format of these records limited the government’s capacity to store and analyze them. “[D]ata could not be kept for long periods by Government agencies, since room had to be made for the continuous inflow of new punchcards.” *Report of the Committee on the Preservation and Use of Economic Data to the Social Science Research Council* (Apr. 1965) (“Ruggles Rpt.”), reprinted in *The Computer and Invasion of Privacy: Hearings Before the Special Subcomm. on Invasion of Priv. of the H. Comm. on Gov’t Operations*, 89th Cong. 199 (1966). And analyzing such data required “lengthy processes” consisting of “a great many steps,” all conducted manually by “a large organization of clerks and punchcard machine operators.” *Id.* at 198.

The mid-century arrival of the computer rapidly eroded these practical limitations on the government’s ability to collate and analyze data about individuals. In 1951, the first commercial computer—called the UNIVAC I—was installed in the Bureau of the Census. *See The Computer and Invasion of Privacy, supra*, at 36. Just over a decade later, “[c]omputers [already] ma[de] out 95 percent of the Government’s paychecks” and “check[ed] all business income tax returns and a third of the individual returns.” 111 Cong. Rec. 23,027 (1965) (statement of Rep. Fascell).

Computer technology allowed transformative new federal programs. Medicare, for example, “would [have been] impossible to administer without computers.” U.S.

Dep't of Health, Educ. & Welfare, Sec'y's Advisory Comm. on Automated Pers. Data Sys., *Records, Computers, and the Rights of Citizens* at v (1973) ("HEW Rpt.").

But the public recognized that this technology also posed a corresponding threat to individual privacy and freedom. By the mid-1960s, "[f]ederal files contained more than three billion records on individual citizens," including "over 27.2 billion names, 2.3 billion present and past addresses, 264.5 million criminal histories, 279.6 million mental health records, 916.4 million profiles on alcoholism and drug addiction, and over 1.2 billion financial records." *Federal Data Banks and Constitutional Rights*, *supra*, at 10. Increasingly, these records were retrievable by computer. *Id.*; *see also id.* at 33. Absent legislative guardrails, the proliferation of digital records "lent substance to the worries of many that the nation's tradition of limited government was in jeopardy." Jerome Hanus, *Citizen Access to Records: A Guide to Federal Statutory Requirements*, Cong. Rsch. Serv. (1976), *reprinted in* Source Book at 1295; *see also* Privacy Act of 1974, Pub. L. No. 93-579, § 2(a)(2), 88 Stat. 1896, 1896 (Dec. 31, 1974) ("[T]he increasing use of computers and sophisticated information technology, while essential to the efficient operations of the government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information . . .").

These concerns erupted in public when the federal government's plans to establish a national data bank became known. In April 1965, a committee of social scientists led by economist Richard Ruggles produced a report—the Ruggles Report—

bemoaning the “highly decentralized” nature of the federal statistical system. Ruggles Rpt. at 197. This decentralization made it “extremely difficult” for people within and outside the government “to find out what data exist[ed] on various topics and how to obtain access to them.” *Id.* at 201.

To address this perceived problem, the Ruggles Report recommended that the Bureau of the Budget (now known as the Office of Management and Budget) “immediately take steps to establish a Federal Data Center,” which would “have the authority to obtain computer tapes and other machine readable data produced by all Federal agencies.” *Id.* at 195. The Report likened the proposed data bank to a Library of Congress for all data collected across federal agencies; it would be “responsible for providing a systematic and comprehensive coverage of the materials available in its areas of competence.” *Id.* at 203.

After the Bureau of the Budget received the Ruggles Report, it promptly hired economist Edgar S. Dunn, Jr. “to examine the proposal” and “study ways of implementing it.” Edgar S. Dunn, Jr., *Statistical Evaluation Report No. 6—Review of Proposal for a National Data Center* (Nov. 1, 1965) (“Dunn Rpt.”), reprinted in *The Computer and Invasion of Privacy*, *supra*, at 254. Dunn credited the Ruggles Report with “a healthy beginning toward an evaluation of th[e] problem in realistic terms.” *Id.* at 259. But Dunn’s own report maintained that merely “bringing a large number of tapes into a common repository” would not suffice. *Id.* at 256. Instead, he proposed the establishment of a National Data Service Center with comprehensive “file

management and utilization services.” *Id.* at 257, 266. The Dunn Report viewed these features as “key to solving” the problems that the Ruggles Report had first identified. *Id.* at 266.

The Dunn Report was published in 1965 and went off like a hand grenade. Its data bank proposal was “labeled in the press, and before Congress, as a giant step towards centralization of power, de-personalization, and realization of the totalitarian society . . . Orwell portrayed in his novel, *1984*.” *Federal Data Banks and Constitutional Rights, supra*, at 4.

In June 1966, the Senate Subcommittee on Administrative Practice and Procedure called Dunn to testify about what Senator Edward V. Long characterized as “a single machine age information reservoir.” *Id.* at 8 (internal quotation marks omitted). Dunn diplomatically “stressed . . . that only traditional records containing non-sensitive information would be stored in the proposed center.” *Id.* But his testimony “did not allay congressional skepticism and concern.” *Id.* at 9. Rather, Congress’s brewing, privacy-centered opposition to the national data bank proposal continued to gather steam.

One month later, the House Special Subcommittee on Invasion of Privacy convened hearings on “The Computer and Invasion of Privacy.” *The Computer and Invasion of Privacy, supra*, at 1. Chairman Cornelius E. Gallagher opened with a warning that, without proper vigilance, Americans might “awaken some morning in the future and find that the dossier bank is an established fact, and that liberty as

we knew it vanished overnight.” *Id.* at 3. During these hearings, Vance Packard, bestselling author of *The Naked Society*, offered a striking warning: “My own hunch is that Big Brother, if he ever comes to these United States, may turn out to be not a greedy power seeker, but rather a relentless bureaucrat obsessed with efficiency.” *Id.* at 13. Ruggles and Dunn both appeared at the hearing in an unsuccessful attempt to assuage Congress’s concerns. *Id.* at 89-117.

Public opposition to the national data center proposal swelled in the wake of the House hearings. On August 9, 1966, for example, the *New York Times* published an editorial warning that “[t]he Orwellian nightmare” depicted in *1984* “would be brought very close indeed if Congress permit[ted] the proposed computer National Data Center to come into being.” *To Preserve Privacy*, N.Y. Times (Aug. 9, 1966), reprinted in *The Computer and Invasion of Privacy*, *supra*, at 317-18. The *Times* thus “join[ed]” in the “vigorous protest” that “th[e] idea had brought.” *Id.* at 318.

Meanwhile, the Bureau of the Budget had appointed a task force to consider “measures which should be taken to improve the storage of and access to U.S. Government statistics.” *The Computer and Invasion of Privacy*, *supra*, at 50 (internal quotation marks omitted). This task force was chaired by Carl Kaysen, an economist and former White House national security official. *See id.* Recognizing the headwinds that the proposal faced, Kaysen reflected that it “appear[ed] as if the public outcry which the Committee hearings started ha[d] raised great difficulties in the way of the proposed National Data Center.” Carl Kaysen, *Data Banks and Dossiers*, The Pub.

Int. (Spring 1967), *reprinted in Computer Privacy: Hearings Before the Subcomm. on Admin. Prac. & Proc. of the S. Comm. on the Judiciary*, 90th Cong. 266 (1967).

In March 1967, the Senate Subcommittee on Administrative Practice and Procedure convened hearings on “Computer Privacy.” *Id.* at 1. This time, Kaysen appeared to try to persuade Congress that its concerns regarding the national data bank proposal were misplaced. *See id.* at 3-37. Like Ruggles and Dunn before him, Kaysen was decidedly unsuccessful.

Ultimately, and as remains relevant today, “it was determined that a National Data Bank was not in the best interests of the American people and the formal proposal [was] effectively buried.” *Federal Data Banks, Computers and the Bill of Rights: Hearings Before the Subcomm. on Const. Rts. of the S. Comm. on the Judiciary*, 92d Cong. 1566 (1971); *see also Federal Data Banks and Constitutional Rights, supra*, at 4 (“[W]hen Congress and the public expressed unqualified objection to this national data bank proposal, which would have had profound effects on personal privacy and individual freedom from government control, the proposal was abandoned.”).

B. Congress Passed the Privacy Act in 1974 to Prohibit a Database like Modified SAVE.

Even after Congress and the public resoundingly rejected calls by Ruggles, Dunn, Kaysen, and others for an integrated national data bank, this threat to individual privacy and freedom persisted within the Executive Branch. In early 1972, for example, the General Services Administration quietly prepared to establish a

large, computerized data bank called FEDNET, which would “centralize the data processing and telecommunications operations” of various federal agencies, beginning with the Department of Agriculture. *Federal Data Banks and Constitutional Rights, supra*, at 32. The Senate Subcommittee on Constitutional Rights characterized FEDNET as “a reincarnation of the National Data Center which . . . the executive branch was forced to abandon in the late 1960’s because of strenuous public and Congressional opposition on privacy grounds.” *Id.*

It thus became clear that legislation was necessary to prevent the emergence of a centralized, national data bank once and for all. As law professor Charles A. Reich had advised during the 1966 House hearings, “real protection in this world comes not from people’s good intentions but from the law.” *The Computer and Invasion of Privacy, supra*, at 31. In particular, he called on Congress to pass a law ensuring that information “needed for one particular . . . agency . . . go[es] to no one else,” rather than “assum[ing] that information that is useful for one purpose ought to be handed out to anybody else for other purposes.” *Id.* at 32.

Congress responded to the Executive Branch’s conduct by passing the Privacy Act of 1974, which imposed substantive and procedural guardrails on the Executive’s use of records about individuals. The Act’s purpose was widely understood and plainly stated: to stop “the creation of formal or de facto national data banks, or of centralized Federal information systems without certain statutory guarantees.” S. Rep. No. 93-1183, at 15, *reprinted in* Source Book at 168. As the district court below concluded in

this very litigation, modified SAVE offends the text, structure, and plain purpose and plan of the Privacy Act as understood consistently from 1974 to the present day. *See* District Court Op., 835 F. Supp. 3d at 95 (“[S]everal federal agencies have joined forces to create a centralized federal database that contains the private information of United States citizens, including Social Security numbers, citizenship status, and other sensitive data. But decades ago, Congress put protections in place to prevent precisely this type of centralized data bank.”).

Presciently, the Congress that passed the Privacy Act was particularly concerned about the possibility of a national data bank that would allow government bureaucrats to search using individuals’ Social Security Numbers (“SSNs”) as a unique identifier—the precise (and unlawful) search mechanism that the modified SAVE system adopts.

For example, a Department of Health, Education, and Welfare report from 1973—which substantially influenced deliberations over the Privacy Act—stated that the SSN was increasingly being used “for purposes other than those for which it was designed,” despite its recognized “deficiencies” for such purposes. HEW Rpt. at 114; *see also* U.S. Dep’t of Just., *Overview of the Privacy Act of 1974*, at 1 (2020).

Similarly, the Senate Government Operations Committee acknowledged that the SSN was “a major element in the national debate over privacy since a common numerical identifier or symbol to designate and index each person is an essential feature of a national data bank” or “any information system which allows creation of

an instant dossier or which permits quick retrieval of all personal information which flows through that system about an individual.” S. Rep. No. 93-1183, at 29, *reprinted in* Source Book at 182. Congress feared that “the number may become a means of violating civil liberties by easing the way for intelligence and surveillance uses of the number for indexing or locating the person.” *Id.*

To maintain decentralized records while allowing the government some flexibility in record sharing, the Privacy Act deploys several protections—including, as relevant here (because the Administration has failed to comply with it), the “routine use” provision. In crafting this provision, Congress recognized that some degree of flexibility was required to prevent “the government [from] grind[ing] to a halt.” Richard E. Cohen, *Justice Report/New Privacy Law to Have Major Impact on Government Data*, Nat’l J. Rep. (Jan. 4, 1975) (quoting House aide Norman Cornish), *reprinted in* Source Book at 1209. It thus allowed routine-use sharing of records, but only within a framework making such transfers the exception rather than the norm and requiring sunshine before they could occur. As Congressman Moorhead explained, the purpose of prohibiting non-routine transfers was to “make it legally impossible for the Federal Government in the future to put together anything resembling a ‘1984’ personal dossier on a citizen.” 120 Cong. Rec. H36,664 (daily ed. Nov. 20, 1974) (statement of Rep. Moorhead), *reprinted in* Source Book at 884.

When Congress first set itself to the task of writing the Privacy Act, the House and Senate took different approaches to routine use: the House allowed some such

transfers, whereas the Senate did not include a routine-use provision at all. They resolved this issue through a negotiated compromise. The final text of the Privacy Act included a routine use limitation and defined “routine use” to be limited to “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). The committee staff explained that this routine use language was “intended to discourage the unnecessary exchange of information to another person or to agencies who may not be as sensitive to the collecting agency’s reasons for using and interpreting the material.” *Analysis of House and Senate Compromise Amendments to the Federal Privacy Act, reprinted in Source Book* at 859-60, 988.

Congress thus saw the final routine use provision as furthering the Act’s purpose by “permit[ting] an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent.” Privacy Act of 1974, § 2(b)(2), 88 Stat. at 1896; *see also* Off. of Mgmt. & Budget, *Guidelines for Implementing Section 552a of Title 5 of the United States Code* at 16 (July 1, 1975), *reprinted in Source Book* at 1030 (“One of the primary objectives of the Act is to restrict the use of information to the purposes for which it was collected.”). As the district court here determined, modified SAVE does not comply with that settled reading of the Privacy Act’s routine use provision. *See* District Court Op., 835 F. Supp. 3d at 124 (“[T]he Court concludes that DHS’s use of Social Security numbers and other SSA data for voter verification through SAVE

is not a routine use under the Privacy Act.”). The Solicitor General’s argument to the contrary is unavailing, because it focuses on common uses of Social Security Numbers by an array of actors, not the purpose for which the SSA collected that data. Social Security Numbers, as demonstrated by the context in which the Privacy Act was enacted, were expressly not intended to be “all-purpose numeric identifiers” that could be used to index and identify any and all records in the federal government’s possession about an individual. Stay Application at 27.

The final version of the Privacy Act also included a procedural dimension to the routine use provision—which modified SAVE separately violated, District Court Op., 835 F. Supp. 3d at 127-30—to guard against the possibility that executive agencies would abuse the cabined flexibility that the routine use provision allowed. Congress perceived “[t]he danger” that “[a] bureaucrat might be tempted to include a ‘nonroutine’ use in the definition of ‘routine’ and subvert the safeguards set up for individual privacy in th[e] bill.” 120 Cong. Rec. H36,655 (daily ed. Nov. 20, 1974) (statement of Rep. Moorhead), *reprinted in* Source Book at 907. Believing that public transparency would provide an important accountability check, Congress required agencies to publish each routine use of records, “including . . . the purpose of such use,” in the Federal Register at least 30 days in advance of any new use and to provide an opportunity for comment. 5 U.S.C. § 552a(e)(4)(D), (e)(11). The notice-and-comment requirement thus complemented the central routine use requirement by “deter[ring] promiscuous use of th[e] concept.” James T. Lynn, Dir., Off. of Mgmt. &

Budget, *Implementation of the Privacy Act of 1974* (Nov. 21, 1975), reprinted in Source Book at 1131.

As courts have since recognized—but as the Administration ignored in modified SAVE—these procedural rules are an “essential component of the Act” and an “essential piece of American democracy” because “Americans deserve to know the nature, scope, and routine uses of the records *before* they are collected by the federal government.” *United States v. Weber*, 816 F. Supp. 3d 1168, 1193 (C.D. Cal. 2026) (emphasis added).

* * *

As this history reflects, the context of the Privacy Act evinces an unmistakable congressional decision to prevent the creation of an integrated federal computer database like modified SAVE. Congress foresaw that the Executive Branch might continue to assert that efficiency, economy, or security should prevail against this legislative judgment on individual privacy and freedom—so it wrote substantive and procedural rules meant to fix legal limits around the Executive. To grant the Administration’s request for a stay and to impose modified SAVE would eviscerate those legal limits and destroy privacy rights secured by statute.

II. Congress’s Refusal to Pass the SAVE Act and SAVE America Act Cut Against a Stay.

In creating modified SAVE, the Administration not only violated the law, but also defied congressional judgment and the constitutional separation of powers. Modified SAVE closely tracks the SAVE Act and SAVE America Act. *See* H.R. 22,

119th Cong. § 2(f)(3) (2025); S. 1383, 119th Cong. § 2(f)(3) (2026). Congress has recently and repeatedly decided against enacting those bills, notwithstanding a pressure campaign by President Trump, and the Executive should not be given a free pass in its lawless efforts to circumvent the legislative process through modified SAVE.

The SAVE Act was first introduced in the House on May 7, 2024, as H.R. 8281, 118th Cong. (2024). It passed the House on July 10, 2024, but never received a vote in the Senate. The SAVE Act was reintroduced in the 119th Congress as H.R. 22, 119th Cong. (2025). It passed the House on April 10, 2025, then stalled in the Senate. It stands no reasonable chance of passage.

In late January 2026, a second and more extreme iteration of this bill—now dubbed the SAVE America Act—was introduced in the Senate as S. 3752, 119th Cong. (2026), and in the House as H.R. 7296, 119th Cong. (2026). It passed the House on February 11, 2026, as an amendment to S. 1383, 119th Cong. (2025). On June 4, 2026, the Senate blocked an amendment that would have incorporated the SAVE America Act into a budget reconciliation bill. *See* S. Amdt. 5779 to S. Amdt. 5453 to S. 2, 119th Cong. (2026). The SAVE America Act remained stalled when the Senate recessed in August 2026. *See* Michael Gold, *Senate Bows to Reality, Leaving Trump’s Voting Bill Undone*, N.Y. Times (Aug. 9, 2026). This legislation, too, enjoys no reasonable prospect of enactment.

Presidents do not ask Congress to pass new laws granting them additional authority when they are satisfied with what the law currently allows them to do. It is therefore telling that President Trump has so desperately urged Congress to pass new laws that would (among other things) authorize many of the same, legally defective changes reflected in modified SAVE. *See West Virginia*, 597 U.S. at 731 (refusing to “ignore” that “Congress considered and rejected multiple times” the “program” that the Executive unilaterally enacted (citation modified)).

As relevant to this analysis, modified SAVE (1) linked SSA data to a specific preexisting Department of Homeland Security (“DHS”) database; (2) expanded its coverage to include U.S.-born citizens; and (3) enabled bulk searches. Congress rejected each of these changes when it declined to enact either the SAVE Act or the SAVE America Act.

First, both failed bills would have linked SSA data to the SAVE system. The SAVE Act would have permitted states to query voter rolls using information supplied by “[t]he Social Security Administration through the Social Security Number Verification Service, or otherwise.” H.R. 22, 119th Cong. § 2(f)(3), ¶ (4)(B) (2025). The SAVE America Act would have authorized the use of “databases and information provided pursuant to an agreement with the Commissioner of Social Security under section 205(r)(9) of the Social Security Act, which can be used to confirm United States citizenship status.” S. 1383, 119th Cong. § 2(f)(3), ¶ (4)(C)(ii) (2026). And both bills would have mandated inter-agency data sharing to make this

data accessible, providing that “[t]he heads of Federal departments and agencies shall share information with each other with respect to an individual who is the subject of a request received under paragraph (A) in order to enable them to respond to the request.” H.R. 22, 119th Cong. § 2(f)(3), ¶ (5)(C) (2025); S. 1383, 119th Cong. § 2(f)(3), ¶ (5)(C) (2026) (same). In effect, these provisions would have created authority for a key aspect of modified SAVE, which as set forth above is otherwise plainly unlawful.

Second, the SAVE Act contemplated expanding the SAVE system to include the records of any registered voter, including U.S.-born citizens. The bill would have required federal agencies to provide state officials with “such information as may be necessary to enable the official to verify that an applicant for voter registration in elections for Federal office held in the State or a registrant on the official list of eligible voters in elections for Federal office held in the State is a citizen of the United States.” H.R. 22, 119th Cong. § 2(f)(3), ¶ (5)(A) (2025). The SAVE America Act, as introduced in the Senate as an amendment to the Veterans Accessibility Advisory Committee Act of 2026, would have gone further, requiring states to submit “the complete, official list of individuals registered as eligible voters for Federal office in the State”—including citizens—“to [DHS] for comparison through the Systematic Alien Verification for Entitlements (“SAVE”) system.” S. 1383, 119th Cong. § 2(f)(3), ¶ (4)(B) (2026). Here, too, President Trump sought (but did not get) approval for modified SAVE.

Finally, both the SAVE Act and the SAVE America Act would have required federal agencies to provide state election officials with “such *batched* information as may be requested by the official.” H.R. 22, 119th Cong. § 2(f)(3), ¶ (5)(A) (2025) (emphasis added); S. 1383, 119th Cong. § 2(f)(3), ¶ (5)(A) (2026) (emphasis added). Here we see an effort to secure the batching authorization that is absent from current federal law.

In these three central and highly specific respects, Congress’s recent “reject[ion]” of the Administration’s proposed legislation is strong evidence that it “made a deliberate choice not to” authorize modified SAVE. *Arizona v. United States*, 567 U.S. 387, 405 (2012). As Justice Gorsuch has remarked in the major questions context, the Court is wary of circumstances where “an agency is attempting to work around the legislative process to resolve for itself a question of great political significance.” *West Virginia*, 597 U.S. at 743 (Gorsuch, J., concurring) (citation modified). That is precisely what is occurring here. The Court should not endorse it and thus undermine the constitutional separation of powers through a grant of extraordinary relief.

CONCLUSION

The Court should deny the Administration's emergency motion for a stay pending appeal.

Respectfully Submitted,

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Dated: September 15, 2026

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX: List of <i>Amici Curiae</i>	1a
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APPENDIX: LIST OF *AMICI CURIAE*

Current Members of the U.S. House of Representatives

1. **Jamie Raskin**
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2. **Joseph D. Morelle**
Representative of New York
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Representative of California
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Representative of Mississippi
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Representative of New York
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Representative of California
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Representative of Rhode Island
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Representative of Missouri
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Representative of Virginia

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Representative of Georgia
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Representative of Ohio
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Representative of California
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