

In the Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Applicants,

v.

LEAGUE OF WOMEN VOTERS, ET AL.

ON APPLICATION FOR STAY
TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**BRIEF OF COREY J. BIAZZO, ESQ.,
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*

Corey J. Biazzo is a civil trial and appellate attorney. His practice includes federal appellate litigation and matters before this Court. His work includes briefing statutory and constitutional limits on agency action in emergency proceedings. He is also a U. S. Navy veteran. *Amicus* has a professional and civic interest in the separation of powers, federalism, election administration, the privacy of personal identifiers, and faithful adherence to the limits Congress places on executive access to sensitive records.

This brief develops a narrow statutory synthesis that the Application and opinions below do not fully address: Congress's later, election-specific amendment to the Social Security Act confirms that 8 U.S.C. §1373 does not independently authorize SSA to disclose records to DHS for voter verification. That point bears directly on whether Applicants have made the strong merits showing required for emergency relief.

SUMMARY OF ARGUMENT

Section 1373(c) directs DHS to respond to lawful inquiries seeking citizenship or immigration-status information. It neither directs SSA to furnish records to DHS nor supplies a method for DHS to acquire them. Congress placed broad notwithstanding clauses in subsections (a) and (b), but omitted one from subsection (c). Subsection (b), moreover, addresses immigration status, not citizenship. Those textual differences cannot be erased by subsection (b)'s heading or by moving language across subsection boundaries.

The Application's reliance on *Free Speech Coalition, Inc. v. Paxton* does not fill the gap. That decision held that a State's constitutionally reserved authority to keep minors from accessing material obscene to them includes ordinary means of enforcing an age limit. 606 U.S. 461, 478 (2025). The Court was not defining the statutory authority of a federal agency. Its discussion of less restrictive alternatives applied intermediate First Amendment scrutiny; it did not hold that an agency may select a useful means that a separate Act of Congress restricts. The predicate-act principle presupposes power already granted. It cannot create authority in SSA that § 1373(c) never confers.

Congress's treatment of election-related SSA matching confirms the narrower reading. As a general rule, HAVA requires an applicant who has an SSN but no current valid driver's license number to provide the last four digits of the SSN. 52 U.S.C. § 21083(a)(5)(A)(i). An applicant who has neither number receives a unique state-assigned identifier, and paragraph (5) is optional for certain States already permitted to use SSNs on registration applications. *Id.* § 21083(a)(5)(A)(ii), (D). HAVA routes matching through state motor-vehicle officials, authorizes SSA to return a defined set of match and death indicators, reserves control over the method to the Commissioner, permits withholding in exceptional circumstances, and makes the information strictly confidential and use-limited. *Id.* § 21083(a)(5); 42 U.S.C. § 405(r)(9).

Modified SAVE follows a materially different path. A SAVE user may submit bulk requests using names, dates of birth, full or partial SSNs, and other identifiers. SSA returns query-specific match fields and, when a partial SSN produces a match, the complete nine-digit number to DHS. DHS creates a person-

specific SAVE case that it retains for ten years. App. 106a–108a, 125a, 129a. HAVA does not occupy the field of voter verification, and its matching mechanism does not itself determine citizenship. But Congress’s decision to create an express, carefully bounded SSA pathway for voter-registration matching is powerful evidence against finding a broader pathway hidden in §1373.

The Privacy Act presents an additional unresolved obstacle. Section 552a(e)(3) requires individualized notice, on the collection form or a form the individual may retain, of the routine uses that may be made of requested information. The D.C. Circuit has held that actual notice is an implicit condition of the routine-use exception. *U. S. Postal Service v. National Ass’n of Letter Carriers, AFL-CIO*, 9 F.3d 138, 146–147 (CA DC 1993). The district court found no record evidence that Respondents’ members received notice, when SSA collected their information, that it could later be used for voter verification. App. 51a n.12. The Application does not answer that record-based problem. These unresolved statutory questions foreclose the strong showing necessary to disturb the lower-court relief while the expedited appeal proceeds.

ARGUMENT

I. Section 1373 Does Not Supply the Missing SSA Disclosure Authority

Applicants describe §1373 as one undifferentiated grant of authority. It is not. The provision contains three subsections with different subjects, verbs, objects, and overrides. Reading those differences as written allows §1373, the Social Security Act, and the Privacy Act to operate together. Applicants’ reading transforms a duty imposed on DHS into disclosure authority for SSA and extends two notwithstanding clauses beyond the language Congress enacted.

A. Subsection (c) imposes a response duty on DHS, not a disclosure duty on SSA

Section 1373(c) provides that the Immigration and Naturalization Service, whose relevant functions now reside in DHS, “shall respond” to an inquiry from a federal, state, or local agency seeking to verify or ascertain an individual’s citizenship or immigration status for a lawful purpose “by providing the requested verification or status information.” 8 U.S.C. §1373(c). The subject of the sentence is the Immigration Service. The required act is responding. The recipient is the requesting agency. SSA appears nowhere.

The Application reasons that the command includes permission and therefore authorizes DHS to verify the citizenship status of “any individual.” Appl. 19–21. But permission to perform the commanded act does not identify every permissible means of performance, much less transfer independent authority to another agency. DHS may respond with information it lawfully possesses. Nothing in subsection (c) directs SSA to open its records to DHS or displaces the conditions Congress placed on SSA disclosures.

That distinction follows ordinary administrative law. An agency “literally has no power to act” unless Congress confers it. *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374 (1986). Even if subsection (c) permits DHS to organize its own records and establish reasonable response procedures, the challenged system depends on an interagency transfer. SSA needs authority to disclose. Section 1373(c) addresses DHS’s answer rather than SSA’s records.

Nor does “any individual” require a different result. The phrase identifies whose status a requesting agency may inquire about; it does not require

DHS to possess a conclusive citizenship record for every person. Modified SAVE itself may respond that available records do not confirm citizenship and instruct the user to obtain proof from the individual. App. 107a–108a. Section 1373(c)’s response duty can therefore operate without the unrestricted SSA access Applicants claim.

The surrounding enactment reinforces that distinction. In the same 1996 legislation, Congress expressly authorized SSA to participate in an employment-verification program, specified the matching SSA could perform and the information it could return, and restricted use of that information. App. 121a. Section 1373(c) contains no comparable reference to SSA, SSNs, record matching, or the Social Security Act. Congress thus distinguished between directing DHS to answer an inquiry and authorizing SSA to support an interagency matching system.

B. The clauses in subsections (a) and (b) cannot be moved into subsection (c)

Applicants answer the omission by importing language from the other subsections. The Application says §1373 “twice provides” that, notwithstanding other law, no entity may restrict sharing with or by DHS. Appl. 5. It later faults the court of appeals for discussing subsection (c) without treating the clauses in subsections (a) and (b) as controlling. *Id.*, at 22–23. The distinct text of the three subsections defeats that approach.

First, Congress placed a notwithstanding clause at the beginning of subsections (a) and (b), but not subsection (c). A difference within the same provision is ordinarily deliberate. *Russello v. United States*, 464 U. S. 16, 23 (1983). The Court should not carry an override from one subsection into another, particularly

when the imported language would displace express federal confidentiality protections.

Second, subsection (b) does not cover the information central to Applicants' theory. Subsection (a) addresses information regarding "citizenship or immigration status." Subsection (b) addresses information regarding "immigration status," omitting citizenship. 8 U.S.C. §1373(a)–(b). That omission matters because Applicants rely on SSA data to reach natural-born citizens who generally lack immigration files. App. 6, 20–21.

Third, subsections (a) and (b) are anti-restriction provisions. Subsection (a) prevents a government entity or official from prohibiting another government entity or official from sending citizenship or immigration-status information to, or receiving it from, DHS. Subsection (b) prevents a person or agency from restricting specified acts concerning immigration-status information. Neither directs SSA to create query-specific match records, return a complete SSN supplied only in part, or provide the additional fields modified SAVE uses.

The word "regarding" in subsection (a) does not remove the subject-matter limit. Applicants rely on *Patel v. Garland*, 596 U. S. 328, 339 (2022), for that word's ordinary breadth. Appl. 20. But context still defines the required relationship. Modified SAVE returns SSN, name, and date-of-birth match results; complete SSNs when partial numbers match; citizenship and foreign-birth indicators; state or country codes; alien registration numbers; death indicators; and error codes. App. 106a–107a. Treating every identifying field useful to a citizenship inquiry as information "regarding" citizenship would leave no operative boundary.

Subsection (b)’s caption, “Additional Authority of Government Entities,” cannot expand the enacted words. A heading may resolve doubt, but it does not “override the plain words” of a statute. *Dubin v. United States*, 599 U.S. 110, 120–121 (2023). The text prohibits restrictions on specified conduct involving immigration-status information. Its caption cannot convert that prohibition into affirmative SSA disclosure authority covering citizenship and SSNs.

C. *Free Speech Coalition* does not enlarge delegated federal authority

The Application invokes a “predicate-act canon,” asserting that authorization of an act includes reasonably necessary predicate acts. Appl. 20. It cites *Free Speech Coalition* for the proposition that a power includes “ordinary and appropriate means” of exercising it and relies on the decision’s discussion of less restrictive alternatives. 606 U.S., at 478, 497–498. That decision concerned a different source of power and a different legal question.

Free Speech Coalition considered Texas’s authority to require age verification before commercial websites gave minors access to sexual material that was obscene as to them. The Court began with a power the Constitution reserves to the States. It explained that when the Constitution reserves a power to the States, it also reserves ordinary and appropriate means of exercising that power. *Id.*, at 478. Age verification was a familiar means of enforcing an age limit. *Id.*, at 478–479.

No comparable reservoir of power exists here. Federal agencies possess only authority Congress delegates. Section 1373(c) directs DHS to answer inquiries; the records at issue belong to SSA and are subject to independent statutory

restrictions. A predicate-act principle may permit DHS to take reasonable steps within its delegated sphere. It cannot create interagency disclosure authority that Congress omitted or move a notwithstanding clause between subsections.

The Application's citation to pages 497–498 is still further removed. That portion of *Free Speech Coalition* applied intermediate First Amendment scrutiny and held that Texas was not required to adopt the least speech-restrictive alternative. It did not address statutory authority. Whether a legislature must choose the least restrictive constitutionally permissible method does not determine whether an agency may use a method Congress has not authorized.

The formulation also contains its own limit: an ancillary act must be reasonably necessary to carry out a power already granted. Appl. 20. Congress's election-specific SSA framework shows that disclosure through DHS is not an unstated administrative detail inherent in §1373(c). Congress addressed the same institutional problem through express permissions, identified participants, defined data, and safeguards.

II. HAVA's Election-Specific SSA Provisions Create Substantial Doubt About Applicants' Reading

A. Congress prescribed a specific election-matching pathway

Six years after enacting §1373, Congress addressed election-related matching against SSA records in HAVA. Help America Vote Act of 2002, Pub. L. No. 107–252, §303(a)(5), 116 Stat. 1666, 1710–1712 (2002). The resulting provisions specify information collected from a voter-registration applicant, the officials who exchange it, the response SSA may provide, and safeguards governing its use.

That later enactment informs the meaning of the earlier one. A court reads statutory text in context and seeks a coherent regulatory scheme; the meaning of one Act may be affected by later legislation addressing the same subject more specifically. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). HAVA did exactly that: it amended the Social Security Act to identify when and how SSA could participate in voter-registration matching.

HAVA's applicant-identification rule is precise and qualified. As a general rule, an application for voter registration in a federal election may not be accepted or processed unless it includes the applicant's current valid driver's license number or, for an applicant with an SSN but no such license, the last four digits of the SSN. 52 U.S.C. §21083(a)(5)(A)(i). If the applicant has neither, the State assigns a unique identifying number. *Id.* §21083(a)(5)(A)(ii). And paragraph (5) is optional in a State already permitted to use SSNs on voter-registration applications under §7 of the Privacy Act. *Id.* §21083(a)(5)(D). Subject to those express qualifications, Congress selected a limited identifier rather than a categorical demand for a complete SSN. It also provided that the last four digits are not considered an SSN for purposes of Privacy Act §7. *Id.* §21083(c).

Congress then prescribed the exchange. The chief state election official and the state motor-vehicle official must agree to match the statewide registration database against the motor-vehicle database. *Id.* §21083(a)(5)(B)(i). The motor-vehicle official enters a separate agreement with the Commissioner of Social Security. *Id.* §21083(a)(5)(B)(ii). HAVA directly amended §405 of the Social Security Act to authorize that agreement. The provision first appeared as §405(r)(8) and is now §405(r)(9).

Section 405(r)(9) specifies the Commissioner’s obligations. Upon a qualifying request, the Commissioner must enter an agreement to verify “applicable information” if the reimbursement and nonconflict conditions incorporated from §405(r)(3)(A)–(B) are satisfied. 42 U.S.C. §405(r)(9)(A). The agreement must safeguard confidentiality, and the Commissioner controls the time, place, and manner of providing information. *Id.* §405(r)(9)(A)–(B). SSA must develop methods for applicants who supplied the last four digits of an SSN. *Id.* §405(r)(9)(C).

Congress also defined the output. “Applicable information” is limited to whether the submitted name, date of birth, and SSN match SSA’s records and whether the individual is shown as deceased. *Id.* §405(r)(9)(D). Nothing requires the Commissioner to provide a record when exceptional circumstances, such as individual safety or interference with an investigation, warrant an exception. *Id.* §405(r)(9)(E). Congress made the information “strictly confidential,” restricted it to the statutory purpose and agreement, and attached felony penalties to unauthorized communication by specified state personnel and contractors. *Id.* §405(r)(9)(F).

These choices matter even though the HAVA match does not determine citizenship. Congress confronted the institutional question presented here: when voter-registration administration calls for checking applicant information against SSA records, who may ask SSA, what may SSA return, and under what safeguards? It answered each question expressly rather than relying on §1373.

The structure also complements HAVA’s voter-list provisions. Applicants cite §21083(a)(4)’s requirement that States maintain accurate and regularly updated rolls. Appl. 5, 34. The same statute requires adequate technological security, §21083(a)(3), and safeguards ensuring that eligible voters are

not removed in error, §21083(a)(4)(B). Congress paired accuracy with a defined matching pathway and protections against erroneous removal. The general duty does not itself supply an unlimited means.

B. Modified SAVE materially departs from the pathway Congress selected

Modified SAVE does not operate through HAVA's prescribed chain. A SAVE user may upload bulk requests containing names, dates of birth, full or partial SSNs or other identifiers, and the reason for verification. SAVE sends the submitted information to SSA. SSA creates query-specific results showing whether the submitted SSN, name, and date of birth match its records, together with citizenship, foreign-birth, death, and other fields. When a user supplies only a partial SSN and the query produces a match, SSA sends DHS the complete nine-digit number. App. 106a–108a, 125a–128a. DHS creates and retains a person-specific SAVE case for ten years. App. 125a, 129a.

The comparison does not establish that HAVA prohibits every other verification tool. It does show why §1373 is an implausible source for the missing SSA authority. HAVA generally limits the applicant-facing SSN field to four digits, subject to stated exceptions. Modified SAVE accepts full or partial SSNs and other identifiers. HAVA routes the exchange from election officials through state motor-vehicle officials to SSA. Modified SAVE routes it through DHS. HAVA defines SSA's answer as specified match and death indicators. Modified SAVE produces broader query-specific records and, in some circumstances, transfers a full SSN that DHS did not possess. HAVA places the method under the Commissioner's control and expressly imposes confidentiality, use limits, an exceptional-circumstances

provision, and criminal penalties. Modified SAVE uses a DHS-operated workflow and creates cases retained for a decade.

The inference follows from the statutes' combined structure, not from treating HAVA as field preemption. *Brown & Williamson* directs courts to interpret related enactments as a coherent whole. 529 U.S., at 133. And the specific-over-general principle reinforces that a general provision should not be applied in a way that renders a more focused provision largely superfluous. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645–646 (2012). HAVA retains independent force when §1373 governs DHS responses based on information DHS may lawfully use. Its carefully bounded SSA pathway loses much of its work if §1373 silently authorizes a broader election-related exchange on different terms.

HAVA is especially probative because Congress amended the statute that Applicants contend §1373 overrides. Congress knew how to make SSA a participant in election matching. It added a provision to §405, identified the recipient, limited the response, and imposed confidentiality. The Court should not conclude that an earlier immigration provision had already accomplished a broader result without mentioning SSA.

The 1996 employment-verification provisions reveal the same drafting pattern. App. 121a. In the same enactment as §1373, Congress addressed SSA matching expressly and imposed limits on the exchange. HAVA later did so again for voter-registration administration. In both settings, Congress treated access to SSA records as a subject requiring specific authorization and safeguards. Modified SAVE cannot be characterized as an ordinary predicate step when Congress repeatedly legislated such steps in detail.

C. HAVA’s minimum-requirements clause does not create federal disclosure authority

Applicants may answer that HAVA establishes only minimum requirements. Section 21084 preserves stricter state election-technology and administration requirements only if they are “not inconsistent with the Federal requirements under this subchapter or any law described in section 21145.” 52 U.S.C. §21084. That provision preserves a measure of state regulatory authority. It does not authorize SSA to disclose records, expand the “applicable information” defined in §405(r)(9), or eliminate the confidentiality and use restrictions Congress placed there.

Nor does the distinction between identity matching and citizenship verification make HAVA irrelevant. HAVA’s match does not purport to establish citizenship, and *amicus* does not contend otherwise. But modified SAVE incorporates the same identity and death matching as components of its citizenship workflow, then adds broader disclosures and DHS retention. App. 106a–108a, 125a. Congress’s precise regulation of the overlapping components is evidence against deriving the broader system from §1373(c)’s general response duty.

At the emergency stage, the Court need not decide that HAVA makes its pathway exclusive. The later statute at least creates substantial doubt about Applicants’ claim that modified SAVE is unambiguously authorized. That doubt defeats the required strong merits showing while the expedited appeal proceeds.

III. The Record Presents an Additional Actual-Notice Problem

Applicants contend that the modified routine uses comply with the Privacy Act. Appl. 25–29. But Federal Register publication does not resolve a

distinct statutory condition. Section 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the collection form or a separate form the individual may retain, of the authority for the solicitation, the collection's principal purposes, contemplated routine uses, and the consequences of withholding information. 5 U.S.C. §552a(e)(3)(A)–(D).

The D.C. Circuit has held that actual notice is an implicit condition of the routine-use exception. *U.S. Postal Service v. National Ass'n of Letter Carriers, AFL-CIO*, 9 F.3d 138, 146 (CA DC 1993) (opinion of Silberman, J.); *id.*, at 146–147 (Williams, J., joining Part II(C)). That notice must accompany collection; a later publication cannot retroactively supply it. *Id.*, at 146 n.12. The Ninth Circuit has reached the same conclusion. *Covert v. Harrington*, 876 F.2d 751, 755–756 (CA9 1989).

The district court found nothing in the record showing that Respondents' members received notice, when SSA collected their identifying and citizenship information, that the information could later be used for voter verification. App. 51a n.12. The court did not rely on the issue as an independent holding because the parties had not briefed it. *Ibid.* Applicants answer that SSA assigns rather than collects an SSN, Appl. 27, but §552a(e)(3) also covers associated information SSA asks an individual to supply, including name, date of birth, and citizenship or alien status. App. 24a, 51a–54a.

The Court need not resolve the actual-notice question here. The undeveloped record is another reason not to restore mass interagency matching through emergency relief. Leaving vacatur in place preserves the preexisting SAVE

system while avoiding additional interagency disclosures during the expedited appeal. See App. 130a–131a.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted,

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