

First, Federal Defendants Todd Blanche and Harmeet K. Dhillon **failed to file any opposition by the Court’s August 7, 2026 deadline (Dkt. 7).** Under Local Rule 7.1(b)(2), the U.S. Department of Justice has waived opposition, **leaving Defendant Galvin without federal support for disabling electronic ballot image retention.**

Second, Defendant Galvin’s reliance on the Rooker-Feldman doctrine is misplaced, and his argument regarding a “private right of action” ignores Plaintiff’s explicit civil rights claim under 42 U.S.C. § 1983 to enforce 52 U.S.C. § 20701.

II. ARGUMENT

A. Federal Subject-Matter Jurisdiction Is Proper (Rooker-Feldman Inapplicable).

Defendant Galvin erroneously asserts that Rooker-Feldman bars this action. Rooker-Feldman applies strictly to final state-court judgments. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The denial of an interlocutory emergency petition in state court is not a final judgment on the merits.

Because Plaintiff asserts prospective federal civil rights claims against state and federal officers for the upcoming November 2026 U.S. Senate election, state interlocutory remedies are fully exhausted, and federal jurisdiction under 28 U.S.C. § 1331 is mandatory.

B. 42 U.S.C. § 1983 Provides the Enforceable Cause of Action.

Defendant Galvin argues that 52 U.S.C. § 20701 contains no private right of action. Plaintiff does not bring a direct statutory claim under Title 52; rather, Plaintiff brings a constitutional action under 42 U.S.C. § 1983 to enforce federal statutory preservation duties imposed on state election officers.

52 U.S.C. § 20701 commands that election officers “shall retain and preserve for twenty-two months... all records and papers which come into [their] possession relating to any... act requisite to voting.” When state officials instruct vendors to configure optical scan tabulators (DS200, DS450, ImageCast) **to auto-delete digital ballot images** generated in memory during scanner tabulation, they violate federal preservation mandates enforceable via § 1983.

C. Digital Ballot Images Are Generated Records Subject to Mandatory Preservation.

Defendant Galvin admits in official certification documents that optical scanners physically scan paper ballots, convert them into high-resolution digital ballot images in memory, and process those exact images through a recognition engine to calculate vote tallies.

Toggling a software switch to “disable storage” does not mean the record was never created; it means a generated federal election record was actively destroyed in memory.

Under the Supremacy Clause (Art. VI, cl. 2), state certification rules requiring image capabilities to be “turned off” cannot override Congress’s mandatory 22-month preservation directive.

D. The Federal Government Has Waived Opposition.

The U.S. Department of Justice - the agency charged with enforcing Title 52 - **offered zero legal defense for Defendant Galvin’s practice. By defaulting on the Court’s August 7, 2026 deadline (Dkt. 7), Federal Defendants Blanche and Dhillon have conceded that preserving digital ballot images generated during federal election tabulation aligns with federal preservation mandates.**

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court GRANT Plaintiff’s Emergency Motion for Preliminary Injunction (Dkt. 2).

Respectfully submitted,

Dated: August 16, 2026

A handwritten signature in black ink, reading "Shiva Ayyadurai". The signature is written in a cursive, flowing style. The first name "Shiva" is written in a larger, more prominent script, and the last name "Ayyadurai" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

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