

In the Supreme Court of the United States

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REPUBLICAN NATIONAL COMMITTEE, ET AL.  
APPLICANTS,  
V.  
MI FAMILIA VOTA, ET AL.

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ARIZONA SECRETARY OF STATE'S  
APPENDIX TO RESPONSE TO EMERGENCY APPLICATION FOR STAY

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To the Honorable Elena Kagan  
Associate Justice of the Supreme Court of the United States and  
Circuit Justice for the Ninth Circuit

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No. 24A164

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**DISTRICT JUDGE'S CIVIL MINUTES  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA – PHOENIX**

**U.S. District Judge: Susan R. Bolton**

**Date: October 24, 2023**

**Case Number: CV-22-00509-PHX-SRB**

**Mi Familia Vota, et al. v. Adrian Fontes, et al.**

**APPEARANCES:** Danielle Lang, Sadik Huseny,  
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Elisabeth Frost, John  
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Erika Cervantes, Ernest  
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**PRETRIAL CONFERENCE:**

This is the time set for Final Pretrial Conference re: November 6, 2023, Bench Trial. With no objection by the defendants, Plaintiff's Motion for Extension of Time to Respond to Intervenor-Defendant the Republican National Committee's Rule 54(b) Motion (Doc. 574) is granted. Defendant's Motion for Clarification as to Trial of Claims Seeking Alternative Grounds for Relief (Doc. 555) is granted. The court will not consider either evidence or further legal argument with respect to alternative grounds for the rulings that were made in the Court's Order on 9/14/2023, with respect to the motions for summary judgment and cross-motions for summary judgment.

Plaintiff's Notice Regarding Proposed Party-Specific Admissions (Doc. 598) in support of the Motion in Limine (Doc. 570) is argued to the Court. As to Exhibits: A, B, and C, the Court will not consider them for evidentiary purposes as admissions. As to Exhibit D, Defendants are to review the items in Exhibit D and file with the court a response objecting to any admissions that they dispute. No reply will be allowed. The parties are further directed to review and stipulate as to which items in Exhibit D are to be considered by the Court as evidence of the positions of the county recorders with respect to certain facts.

**CV-22-00509-PHX-SRB**

**October 24, 2023**

**Mi Familia Vota, et al. v. Adrian Fontes, et al.**

Page 2 of 2

Republican National Committee's Motion in Limine re: Admissibility of Legal Opinions (Doc. 568) is a matter for objection at trial and will not be ruled on.

Pending Motions in Limine are argued to the Court. For reasons as stated on the record, the Court rules as follows:

1. Plaintiff's Motion in Limine re: Evidence of State Interest (Doc. 569) is granted.
2. Plaintiff's Motion in Limine re: To Exclude Witnesses and Materials not Timely Disclosed (Doc. 567) is taken under advisement as to the new witness. As to materials not timely disclosed, counsel withdraws the motion.
3. Plaintiffs' Motion in Limine to bar Intervenor-Defendants Ben Toma and Warren Petersen from Adducing Evidence at Trial (Doc. 566) is taken under advisement.

Discussion held regarding the Joint Proposed Pretrial Order. The parties are directed to email to chambers mailbox no later than October 30, 2023, the Joint Proposed Pretrial Order (but not the over 8000 pages of Exhibits) in Word along with a Supplement to the Joint Proposed Pretrial Order amending the issues to be tried in light of the ruling on the Motion for Clarification.

Trial matters discussed. Trial will be held November 6, 2023 to November 9, 2023 and November 13, 2023 to November 17, 2023, with a possibility of Monday, November 20, 2023 and Tuesday, November 21, 2023 from 9:00 AM to 5:00 PM. Counsel are advised that opening statements are not required. Closing arguments will be held after the bench trial and after the proposed Findings and Conclusions are submitted to the Court.

Deputy Clerk: Elaine Garcia  
Court Reporter: Scott Coniam

**Start: 10:03 AM**  
**Stop: 11:51 AM**  
Total: 1 hr 48 mins

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,  
Plaintiffs,  
v.  
Adrian Fontes, et al.,  
Defendants.

Case No. CV-22-00509-PHX-SRB  
(lead)

**ORDER GRANTING JOINT  
MOTION FOR ENTRY OF  
JUDGMENT UNDER RULE 58(D)**

AND CONSOLIDATED CASES.

No. CV-22-00519-PHX-SRB  
No. CV-22-01003-PHX-SRB  
No. CV-22-01124-PHX-SRB  
No. CV-22-01369-PHX-SRB  
No. CV-22-01381-PHX-SRB  
No. CV-22-01602-PHX-SRB  
No. CV-22-01901-PHX-SRB


The non-U.S. Plaintiffs and the United States, as well as the State of Arizona, Attorney General Mayes, the Republican Party Intervenor-Defendants, and the legislator Intervenor-Defendants, jointly move for entry of judgment under Rule 58(d). No party opposes the motion. Upon review of the motion, and for good cause shown, the joint motion for entry of judgment under Rule 58(d) is **GRANTED**.

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1           **IT IS ORDERED** that the parties jointly lodge a proposed form of judgment in  
2 accordance with the rulings set forth in the Court’s Order of September 14, 2023 (ECF No.  
3 534) and the Court’s Amended Order of February 29, 2024 (ECF No. 709).

4           Dated this 22nd day of March, 2024.

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Susan R. Bolton  
United States District Judge

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,  
Plaintiffs,  
v.  
Adrian Fontes, et al.,  
Defendants.

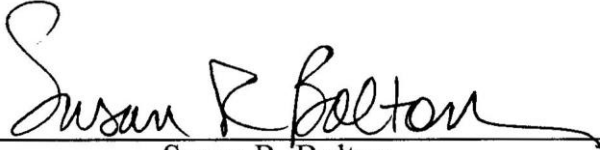
Case No. CV 22-00509-PHX-SRB (lead)  
**ORDER**

AND CONSOLIDATED CASES.

On March 22, 2023 this Court granted the parties Joint Motion for Entry of Judgment Under Rule 58(D) and ordered that “the parties jointly lodge a proposed form of judgment in accordance with the rulings set forth in the Court’s Order of September 14, 2023 (ECF No. 534) and the Court’s Amended Order of February 29, 2024 (ECF No. 709).” As of the date of this Order no proposed form of judgment has been lodged.

IT IS ORDERED that counsel file a status report within 7 days of the date of this Order.

Dated this 23rd day of April, 2024.

  
\_\_\_\_\_  
Susan R. Bolton  
United States District Judge



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**UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

16 Mi Familia Vota, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 Adrian Fontes, et al.,  
 20 Defendants.

Case No. 2:22-cv-00509-SRB (lead)

**JOINT STATUS REPORT AND  
 JOINT NOTICE OF LODGING OF  
 PROPOSED FORM OF JUDGMENT**

21  
 22 AND CONSOLIDATED CASES.

No. CV-22-00519-PHX-SRB  
 No. CV-22-01003-PHX-SRB  
 No. CV-22-01124-PHX-SRB  
 No. CV-22-01369-PHX-SRB  
 No. CV-22-01381-PHX-SRB  
 No. CV-22-01602-PHX-SRB  
 No. CV-22-01901-PHX-SRB

1 On March 22, the Court ordered that the parties jointly lodge a proposed form of  
2 judgment. (Doc. 713 at 2.) On April 23, having not received a proposed form of judgment,  
3 the Court ordered that the parties submit a status report within seven days. (Doc. 718 at 1.)

4 Pursuant to these orders, the non-U.S. Plaintiffs and the United States, along with  
5 Defendant State of Arizona, Defendant Attorney General Mayes, Defendant Secretary of  
6 State Fontes, the Republican Party Intervenor-Defendants, and the legislator Intervenor-  
7 Defendants, jointly request that the Court enter the proposed form of judgment lodged  
8 herewith. This request is unopposed.<sup>1</sup>

9  
10 Dated: April 30, 2024

Respectfully submitted,

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<sup>1</sup> The various County Recorder Defendants were given a copy of the proposed form of judgment for review and have not indicated any opposition.

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3 Mi Familia Vota, et al.,

No. 2:22-cv-00509-SRB (Lead)

4 Plaintiffs,

**[PROPOSED] FINAL  
JUDGMENT**

5 v.

6 Adrian Fontes, in his official capacity as  
7 Arizona Secretary of State, et al.,

No. CV-22-00519-PHX-SRB  
No. CV-22-01003-PHX-SRB  
No. CV-22-01124-PHX-SRB  
No. CV-22-01369-PHX-SRB  
No. CV-22-01381-PHX-SRB  
No. CV-22-01602-PHX-SRB  
No. CV-22-01901-PHX-SRB

8 Defendants.  
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11

12 This case arose out of eight consolidated lawsuits challenging various provisions of  
13 H.B. 2492 and H.B. 2243, enacted in 2022 (“Challenged Laws”). *See Mi Familia Vota v.*  
14 *Fontes*, No. 2:22-cv-00509-SRB (D. Ariz. Mar. 31, 2022); *Living United for Change in*  
15 *Ariz. v. Fontes*, No. 2:22-cv-00519-SRB (D. Ariz. Mar. 31, 2022); *United States v. Arizona*,  
16 No. 2:22-cv-01124-SRB (D. Ariz. July 5, 2022); *Poder Latinx v. Fontes*, No. 2:22-cv-  
17 1003-MTL (D. Ariz. June 9, 2022); *Democratic Nat’l Comm. v. Fontes*, No. 2:22-cv-  
18 01369-SRB (D. Ariz. Aug. 15, 2022); *Ariz. Asian Am. Native Hawaiian & Pac. Islander*  
19 *for Equity Coal. v. Fontes*, No. 2:22-cv-01381-SRB (D. Ariz. Aug. 16, 2022); *Promise*  
20 *Ariz. v. Fontes*, No. 2:22-cv-01602-SRB (D. Ariz. Sept. 20, 2022); *Tohono O’odham*  
21 *Nation v. Mayes*, No. 2:22-cv-01901-SRB (D. Ariz. Nov. 7, 2022).  
22

23 Defendants in this litigation are the State of Arizona, Adrian Fontes, in his official  
24 capacity as Arizona Secretary of State, Attorney General Kris Mayes, in her official  
25 capacity, and the county recorders for each county in Arizona.

26 On September 14, 2023, the Court entered a partial summary judgment order. (Doc.  
27 534.) On February 29, 2024, after a bench trial, the Court issued findings of fact and  
28

1 conclusions of law. (Doc. 709.) In accordance with those rulings, the Court hereby  
2 **ORDERS, ADJUDGES, AND DECREES** as follows:

3 1. **IT IS ORDERED AND DECLARED** that H.B. 2492’s restrictions on  
4 registration for presidential elections and voting by mail, *see* A.R.S. §§ 16-121.01(E), 16-  
5 127(A), are preempted by Section 6 of the National Voter Registration Act, 52 U.S.C. §  
6 20505. It is therefore **FURTHER ORDERED** that Defendants, their officers, agents,  
7 servants, employees, and attorneys, and anyone else in active concert or participation with  
8 them are **PERMANENTLY ENJOINED** from enforcing such restrictions.

9 2. **IT IS ORDERED AND DECLARED** that H.B. 2492’s mandate to reject  
10 any State Form without accompanying Documentary Proof of Citizenship (“DPOC”), *see*  
11 A.R.S. § 16-121.01(C), may not be enforced given the LULAC Consent Decree.<sup>1</sup> It is  
12 therefore **FURTHER ORDERED** that Defendants, their officers, agents, servants,  
13 employees, and attorneys, and anyone else in active concert or participation with them are  
14 **PERMANENTLY ENJOINED** from enforcing this mandate and that Arizona must abide  
15 by the LULAC Consent Decree and register eligible State Form users without DPOC for  
16 federal elections.

17 3. **IT IS ORDERED AND DECLARED** that H.B. 2492’s checkbox  
18 requirement, *see* A.R.S. § 16-121.01(A), violates the Materiality Provision of the Civil  
19 Rights Act, 52 U.S.C. § 10101(a)(2)(B), when enforced as to a person who provides DPOC  
20 and is otherwise eligible to vote. It is therefore **FURTHER ORDERED** that Defendants,  
21 their officers, agents, servants, employees, and attorneys, and anyone else in active concert  
22 or participation with them are **PERMANENTLY ENJOINED** from enforcing the  
checkbox requirement when a person provides DPOC and is otherwise eligible to vote.

23 4. **IT IS ORDERED AND DECLARED** that H.B. 2492’s requirement that  
24 individuals who register to vote using the State Form must include their place of birth, *see*  
25 A.R.S. § 16-121.01(A), violates the Materiality Provision of the Civil Rights Act, 52  
26 U.S.C. § 10101(a)(2)(B). It is therefore **FURTHER ORDERED** that Defendants, their

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28 <sup>1</sup> *League of United Latin American Citizens of Arizona et al. v. Reagan et al.*, Case No. 2:17-cv-04102-DGC (D. Ariz.), Doc. 37 (6/18/18).

1 officers, agents, servants, employees, and attorneys, and anyone else in active concert or  
2 participation with them are **PERMANENTLY ENJOINED** from enforcing this  
3 requirement and may not reject State Form registrations that lack an individual's place of  
4 birth and must register an individual if that individual is found eligible to vote.

5 5. **IT IS ORDERED AND DECLARED** that, with respect to H.B. 2492's  
6 proof of location of residence requirement, *see* A.R.S. § 16-123:

7 a. A.R.S. § 16-123 references A.R.S. § 16-579(A)(1) for a list of  
8 documents that satisfy the documentary proof of location of residence requirement  
9 in A.R.S. § 16-123. The reference to § 16-579(A)(1) provides examples of  
10 documents, but is not an exhaustive list of the documents, that can be used to satisfy  
11 A.R.S. § 16-123.

12 b. A.R.S. § 16-123 does not require tribal members or other Arizona  
13 residents to have a standard street address for their home to satisfy A.R.S. § 16-123.

14 c. In addition to the documents listed in A.R.S. § 16-579(A)(1), the  
15 following documents satisfy the requirement in A.R.S. § 16-123:

16 ○ A valid unexpired Arizona driver license or nonoperating ID  
17 ("AZ-issued ID"), regardless of whether the address on the AZ-issued ID  
18 matches the address on the ID-holder's voter registration form and even if  
19 the AZ-issued ID lists only a P.O. Box.

20 ○ Any Tribal identification document, including but not limited  
21 to a census card, an identification card issued by a tribal government, or a  
22 tribal enrollment card, regardless of whether the Tribal identification  
23 document contains a photo, a physical address, a P.O. Box, or no address.

24 ○ Written confirmation signed by the registrant that they qualify  
25 to register pursuant to A.R.S. § 16-121(B), regarding registration of persons  
26 who do not reside at a fixed, permanent, or private structure.

27 6. **IT IS ORDERED AND DECLARED** that H.B. 2492's requirement that  
28 individuals registering to vote with the State Form must include documentary proof of

1 location of residence to register for federal elections, *see* A.R.S. § 16-121.01(A), violates  
2 Sections 6 and 7 of the NVRA, 52 U.S.C. §§ 20505, 20506. It is therefore **FURTHER**  
3 **ORDERED** that Defendants, their officers, agents, servants, employees, and attorneys, and  
4 anyone else in active concert or participation with them are **PERMANENTLY**  
5 **ENJOINED** from enforcing this requirement and may not reject State Form registrations  
6 that lack documentary proof of location of residence but must register an otherwise eligible  
7 voter registrant as a Federal-Only Voter.

8 7. **IT IS ORDERED AND DECLARED** that H.B. 2243's provisions requiring  
9 the systematic investigation and removal of registered voters within 90 days of a federal  
10 election, *see* A.R.S. § 16-165(A)(10), violate Section 8(c) of the NVRA, 52 U.S.C. §  
11 20507(c)(2)(A). It is therefore **FURTHER ORDERED** that Defendants, their officers,  
12 agents, servants, employees, and attorneys, and anyone else in active concert or  
13 participation with them are **PERMANENTLY ENJOINED** from enforcing these  
14 requirements within the 90-day period prior to the date of an election for federal office.

15 8. **IT IS ORDERED AND DECLARED** that H.B. 2243's requirement that  
16 county recorders conduct a citizenship check using USCIS's SAVE system when they have  
17 reason to believe a registered voter is not a U.S. citizen, *see* A.R.S. § 16-165(I), violates  
18 the Different Standards, Practices, or Procedures Provision of the Civil Rights Act, 52  
19 U.S.C. § 10101(a)(2)(A), and Section 8(b) of the NVRA, 52 U.S.C. § 20507(b). It is  
20 therefore **FURTHER ORDERED** that Defendants, their officers, agents, servants,  
21 employees, and attorneys, and anyone else in active concert or participation with them are  
22 **PERMANENTLY ENJOINED** from enforcing this requirement and may not conduct  
23 citizenship checks using USCIS's SAVE system on registered voters whom county  
24 recorders have reason to believe lack U.S. citizenship.

25 9. **IT IS FURTHER ORDERED** that judgment is otherwise entered in favor  
26 of Defendants on all other claims addressed in the Court's September 14, 2023 partial  
27 summary judgment order (Doc. 534) and February 29, 2024 Amended Order (Doc. 709).  
28 The Court does not reach the plaintiffs' alternative claims against the Challenged Laws  
already declared unlawful in the Court's partial summary judgment order or plaintiffs'

1 constitutional claims for those sections of the Challenged Laws ruled unlawful on statutory  
2 grounds. *See* Minute Entry for 10-24-23 Pretrial Conference (Doc. 600) (limiting claims to  
3 be presented at trial); Supplement to the Joint Pretrial Order (Doc. 607) (identifying claims  
4 to be presented at trial); Order Approving Joint Pretrial Order as Amended by Supplement  
5 (Doc. 608); Amended Order (Doc. 709) (findings of fact and conclusions of law) at 89 n.58  
6 and at 108.

7           10.     **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction to  
8 enforce the terms of this Final Judgment and to award such other relief as may be  
9 appropriate.

10           The Clerk of Court is ordered to enter this Final Judgment forthwith.

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14

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF ARIZONA**

17 Mi Familia Vota, et al.,  
18 Plaintiffs,  
19 v.

20 Adrian Fontes, et al.,  
21 Defendants.  
22

Case No: 2:22-cv-00509-SRB (Lead)

**INTERVENOR-DEFENDANTS’  
MOTION FOR A PARTIAL  
STAY OF THE INJUNCTION  
PENDING APPEAL**

*(Expedited Consideration  
Requested)*

23 **AND CONSOLIDATED CASES**  
24  
25  
26  
27

1 Pursuant to Federal Rule of Civil Procedure Rule 62(d), Intervenor-Defendants  
2 Warren Petersen, in his official capacity as the President of the Arizona State Senate; Ben  
3 Toma, in his official capacity as the Speaker of the Arizona House of Representatives  
4 (together, the “Legislative Intervenors”); and the Republican National Committee  
5 (“RNC”) respectfully move for a stay pending appeal of this Court’s injunction (Doc. 720)  
6 against the enforcement of those provisions of 2022 Ariz. Laws ch. 99 (H.B. 2492) that:

- 7 1. Prohibit registered voters who have not provided documentary proof of citizenship  
8 (“DPOC”) from voting for President of the United States;
- 9 2. Prohibit registered voters who have not provided DPOC from voting by mail; or
- 10 3. Are inconsistent with the consent decree entered in *League of United Latin*  
11 *American Citizens of Arizona v. Reagan*, No. 2:17-cv-04102-DGC (D. Ariz.), Doc.  
12 37 (Jun. 18, 2018) (the “LULAC Consent Decree”).

13 *See* A.R.S. §§ 16-121.01(C), (E), 16-127(A).

## 14 MEMORANDUM OF POINTS AND AUTHORITIES

### 15 INTRODUCTION

16 Determining who may participate in the selection of presidential electors and  
17 prescribing procedures governing the issuance, casting, and tabulation of ballots are  
18 foundational attributes of state sovereignty. *See* U.S. Const. art. II, § 1, cl. 2 (“Each State  
19 shall appoint, in such Manner as the Legislature thereof may direct,” its presidential  
20 electors); *Chiafalo v. Washington*, 591 U.S. 578, 588-89 (2020) (“Article II, § 1’s  
21 appointments power gives the States far-reaching authority over presidential electors,  
22 absent some other constitutional constraint”); *Clingman v. Beaver*, 544 U.S. 581, 586  
23 (2005) (“The Constitution grants States ‘broad power to prescribe the Times, Places and  
24 Manner of holding Elections for Senators and Representatives, which power is matched  
25 by state control over the election process for state offices.” (internal citations and  
26 quotations omitted)). The Court’s conclusions that Congress could and did displace these  
27 prerogatives in the National Voter Registration Act of 1993, 52 U.S.C. § 20501, *et seq.*  
28 (“NVRA”)—and that the Secretary of State could and did permanently abrogate the



1 Legislature’s lawmaking functions by unilaterally signing the LULAC Consent Decree—  
 2 mutes the results of Arizona’s democratic process on the eve of a historic exercise of that  
 3 very process. To preserve Arizona’s ability to protect the integrity of its elections pending  
 4 the appellate courts’ disposition of these consequential questions, the Court should stay its  
 5 injunction in part.

#### 6 ARGUMENT

7 When weighing a stay application, the Court must consider “four factors: ‘(1)  
 8 whether the stay applicant has made a strong showing that he is likely to succeed on the  
 9 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether  
 10 issuance of the stay will substantially injure the other parties interested in the proceeding;  
 11 and (4) where the public interest lies.’” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation  
 12 omitted); *see also Duncan v. Bonta*, 83 F.4th 803, 805 (9th Cir. 2023). “The first two  
 13 factors . . . are the most critical.” *Nken*, 556 U.S. at 434. Although this rubric resembles  
 14 that governing the issuance of injunctive relief, “[i]f anything, a flexible approach is  
 15 even *more* appropriate in the stay context” because “a stay operates only ‘upon the judicial  
 16 proceeding itself . . . either by halting or postponing some portion of the proceeding, or by  
 17 temporarily divesting an order of enforceability.’” *Leiva-Perez v. Holder*, 640 F.3d 962,  
 18 966 (9th Cir. 2011) (quoting *Nken*, 556 U.S. at 428)). While the decision to grant a stay is  
 19 discretionary, “[s]tay motions and other requests for interlocutory relief are nothing new  
 20 or particularly remarkable. In truth, they are perhaps ‘as old as the judicial system of the  
 21 [N]ation.’” *Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 922 (2024) (Gorsuch, J.,  
 22 concurring) (citation omitted). All four considerations—individually and collectively—  
 23 recommend a partial stay.

#### 24 **I. The Ninth Circuit Is Likely to Find That Neither the NVRA Nor the LULAC** 25 **Consent Decree Preempts H.B. 2492**

26 Few courts think the decision they just issued is likely to be reversed on appeal. *See*  
 27 *Cigar Ass’n of Am. v. FDA*, 317 F. Supp. 3d 555, 561 n.4 (D.D.C. 2018). But the Federal  
 28 Rules contemplate that district courts will stay their own decisions pending appeal, *see*



1 Fed. R. App. P. 8(a), and for good reason. Under the Ninth Circuit’s “sliding scale”  
2 approach, a stay may be appropriate when the balance of equities decidedly favors the  
3 appellant and “offset[s] a weaker showing of” the appellant’s likelihood of success on the  
4 merits. *Leiva-Perez*, 640 F.3d at 964 (quoting *All. for the Wild Rockies v. Cottrell*, 632  
5 F.3d 1127, 1131 (9th Cir. 2011)). In other words, the district court can grant the stay  
6 (without questioning its own decision) on the ground that the movant has raised “serious  
7 legal questions” that are fair grounds for appeal. *Manrique v. Kolc*, 65 F.4th 1037, 1041  
8 (9th Cir. 2023). Movants believe they are likely to prevail on appeal. At a minimum,  
9 though, this motion presents several “serious” questions that warrant further review. *Id.*

10 **A. The NVRA Cannot Preempt State Laws Concerning the Selection of**  
11 **Presidential Electors**

12 The NVRA applies to federal congressional elections, not to presidential elections.  
13 The registration rules of the NVRA are classic “Manner” election regulations. U.S. Const.  
14 art. I, § 4, cl. 1. But Congress has power to regulate the “Manner” only of congressional  
15 elections—the Constitution does not give Congress power to regulate the “Manner” of  
16 presidential elections. When it comes to presidential elections, Congress has authority only  
17 to “determine the Time of chusing the Electors, and the Day on which they shall give their  
18 Votes.” U.S. Const. art II, § 1, cl. 4. Neither Congress nor the courts can constitutionally  
19 apply the NVRA to presidential elections.

20 Nevertheless, the Court ruled that Section 6 of the NVRA—which requires that  
21 States “accept and use” the Federal Form to register voters in federal elections—also  
22 applies to presidential elections. Doc. 534 at 9-12. The Court relied on the text of the  
23 NVRA, which it said “reflects an intent to regulate all elections for ‘[f]ederal office,’  
24 including for ‘President or Vice President.’” Doc. 534 at 10 (quoting 52 U.S.C. §  
25 § 20507(a)). That would have been the correct starting point if the Constitution had nothing  
26 to say on the matter. But it does. And because the Constitution is “the supreme Law of the  
27 Land,” U.S. Const. art. VI, “the preemption analysis” for election laws “must place  
28 particular importance on the first step in the determination as to whether Congress lawfully

1 preempted state law: identifying the enumerated power under which Congress claims to  
2 have acted.” *Tex. Voters All. v. Dallas Cnty.*, 495 F. Supp. 3d 441, 467 (E.D. Tex. 2020).

3  
4 1. The Constitution does not permit Congress to regulate the “Manner”  
of presidential elections

5 “Congress enacted the National Voter Registration Act under the authority granted  
6 it in [the Elections Clause].” *Ass’n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833,  
7 836 (6th Cir. 1997); *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 7-8  
8 (2013). The Elections Clause gives Congress power to regulate “[t]he Times, Places and  
9 Manner of holding Elections” for “Senators and Representatives.” U.S. Const. art. I, § 4,  
10 cl. 1. This power to regulate congressional elections is expansive—it gives Congress  
11 authority “to enact the numerous requirements as to procedure and safeguards.” *Smiley v.*  
12 *Holm*, 285 U.S. 355, 366 (1932). But the Elections Clause does not extend to presidential  
13 elections.

14 A different clause of the Constitution governs presidential elections. Under the  
15 Electors Clause, “Congress may determine the Time of chusing the Electors, and the Day  
16 on which they shall give their Votes.” U.S. Const. art II, § 1, cl. 4. This power to regulate  
17 the presidential elections is far more limited. Congress has power over only the “Time” of  
18 choosing presidential electors. Congress’s power does not extend to the “Places and  
19 Manner” of presidential elections, as it does with congressional elections. “That omission  
20 is telling,” because when the Constitution “includes particular language in one section ...  
21 but omits it in another section,” courts “generally presume[.]” the drafters acted  
22 “intentionally and purposely in the disparate inclusion or exclusion.” *Collins v. Yellen*, 141  
23 S. Ct. 1761, 1782 (2021); *see Pine Grove Twp. v. Talcott*, 86 U.S. 666, 674-75 (1873)  
24 (applying the rule to constitutional interpretation).

25 The Constitution’s text does not give Congress power to regulate the “Places and  
26 Manner” of presidential elections. The NVRA facially applies to elections for “Federal  
27 office,” 52 U.S.C. § 20502(2), which include “the office of President or Vice President,”  
28 *id.* § 30101(3). But the NVRA, like every other act of Congress, must be squared with the

1 Constitution. And Congress cannot “exceed constitutional limits on the exercise of its  
2 authority.” *Moore v. Harper*, 600 U.S. 1, 19 (2023). To the extent the NVRA regulates the  
3 “Manner” of presidential elections by imposing registration requirements on States for  
4 presidential elections, it exceeds Congress’s power under the Elections and Electors  
5 Clauses.

6 H.B. 2492’s citizenship verification rules do not run afoul of the NVRA. Those  
7 rules apply only to state elections and federal *presidential* elections. *See* A.R.S. § 16-  
8 121.01. Nothing in H.B. 2492 prevents a federal form applicant from being registered to  
9 vote in congressional elections.

10  
11 2. Precedent does not permit Congress to regulate the “Manner” of  
12 presidential elections

13 This Court thought itself bound by precedent, but no court has decided this issue.  
14 To start, the Supreme Court has never held that Congress possesses power to regulate the  
15 “Places and Manner” of presidential elections. This Court relied in part on *Burroughs v.*  
16 *United States*, 290 U.S. 534 (1934), although it recognized that *Burroughs* only “addressed  
17 the constitutionality of a federal statute regulating campaign contributions in presidential  
18 elections.” Doc. 534 at 10-11. The statute at issue had nothing to do with the appointment  
19 of presidential electors. *See Burroughs*, 290 U.S. at 540-43. Indeed, *Burroughs* rested on  
20 the premise that if the statute *did* interfere with the “exclusive state power” over  
21 presidential elections, it would be unconstitutional. *Id.* at 544-45. That premise applies  
22 here: to the extent the NVRA interferes with Arizona’s authority to regulate the manner of  
23 presidential elections, it is unconstitutional.

24 This Court next turned to *Buckley v. Valeo*, 424 U.S. 1 (1976). *See* Doc. 534 at 11.  
25 But *Buckley* didn’t address the Elections Clause or the Electors Clause any more than  
26 *Burroughs* did. This Court reasoned that *Buckley* interpreted *Burroughs* “more generally”  
27 to recognize “broad congressional power to legislate in connection with the elections of  
28 the President and Vice President.” Doc. 534 at 11 (quoting *Buckley*, 424 U.S. at 13 n.16).  
But the Supreme Court upheld the campaign finance laws at issue in *Buckley* under the

1 “General Welfare Clause” and “the Necessary and Proper Clause.” *Buckley*, 424 U.S. at  
2 90. The Court did not apply the Elections or Electors Clauses, and its passing mention of  
3 *Burroughs* says nothing about the scope of Congress’s power to regulate presidential  
4 elections. Neither *Burroughs* nor *Buckley* addressed preemption of state laws governing  
5 the manner of presidential elections.

6 Other Supreme Court cases confirm that Congress does not have power to regulate  
7 the “Manner” of presidential elections. Long before *Buckley* and *Burroughs*, the Supreme  
8 Court held that the Electors Clause gives “plenary power to the state legislatures in the  
9 matter of the appointment of electors.” *McPherson v. Blacker*, 146 U.S. 1, 35 (1892). The  
10 Court thus upheld Michigan’s law dividing the State into separate congressional districts  
11 and awarding one of the State’s electoral votes to the winner of each district. *Id.* at 35-37.  
12 After *Buckley* and *Burroughs*, the Supreme Court reiterated that “the state legislature’s  
13 power to select the manner for appointing electors is plenary.” *Bush v. Gore*, 531 U.S. 98,  
14 104 (2000) (per curiam). The Supreme Court did not note any conflict with *Buckley* or  
15 *Burroughs*. That’s unsurprising because, properly read, “*Burroughs* ... reinforce[s] the  
16 principle that the manner of appointment is exclusive to the states.” *In re Guerra*, 441 P.3d  
17 807, 814 (Wash. 2019), *aff’d sub nom. Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).  
18 This question “is not one of policy[,] but of power.” *McPherson*, 146 U.S. at 35. And  
19 unless the Constitution is amended, “the appointment and mode of appointment of electors  
20 belong exclusively to the states under the constitution of the United States.” *Id.*

21 The Ninth Circuit has not deviated from these binding principles. In *Voting Rights*  
22 *Coalition v. Wilson*, the Ninth Circuit considered a challenge to the NVRA based on  
23 “[t]hree provisions of the Constitution.” 60 F.3d 1411, 1413 (9th Cir. 1995) (citing U.S.  
24 Const. article I, § 4; article I, § 2; and the Tenth Amendment). The Electors Clause of  
25 Article II was not one of them. The Ninth Circuit cited *Burroughs* in passing for the  
26 proposition that the “broad power given to Congress over congressional elections has been  
27 extended to presidential elections.” *Voting Rts. Coal.*, 60 F.3d at 1414. But that half-  
28 sentence misreads *Burroughs*, as explained above. It also conflicts with binding Supreme

1 Court precedent holding that “the state legislature’s power to select the manner for  
2 appointing electors is plenary.” *Bush*, 531 U.S. at 104. And even if it didn’t misread  
3 precedent and didn’t conflict with the Constitution, “[d]icta that does not analyze the  
4 relevant statutory provision cannot be said to have resolved the statute’s meaning.”  
5 *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2498 (2022). The Ninth Circuit did not and  
6 could not hold that Congress had power to regulate the “Manner” of presidential elections.

7 This Court reasoned that the language in *Voting Rights Coalition* was not dicta  
8 because “the NVRA plainly regulates congressional and presidential elections.” Doc. 534  
9 at 11. But that reasoning is circular—it doesn’t explain the constitutional source of that  
10 power. This Court appeared to ground Congress’s authority to regulate presidential  
11 elections under the Elections Clause. *See* Doc. 534 at 11. But as explained, the Elections  
12 Clause applies only to congressional elections.

13 When interpreting the NVRA, the Supreme Court has been careful about which  
14 clause applies (the Elections Clause) and which elections it applies to (congressional  
15 elections). *Inter Tribal*, 570 U.S. at 8-9. The “substantive scope” of the Elections Clause  
16 “is broad,” but it covers only “congressional elections.” *Id.* And “[o]ne cannot read the  
17 Elections Clause as treating implicitly what these other constitutional provisions regulate  
18 explicitly.” *Id.* at 16. Under the *Electors* Clause, the “plenary” power to regulate the  
19 manner of presidential elections rests with the state legislatures. *Bush*, 531 U.S. at 104.

## 20 **B. The NVRA Does Not Preempt State Laws Concerning Mail-In Voting**

21 However broadly the NVRA regulates voter registration, the statute says nothing  
22 about the procedures States can adopt for mail voting. The NVRA sets rules governing  
23 “procedures to register to vote in elections.” 52 U.S.C. § 20503(a). One of those rules is  
24 that States must “accept and use” the federal registration form “for the registration of voters  
25 in elections for Federal office.” *Id.* § 20505(a). The NVRA says nothing about the  
26 *mechanisms* for mail voting. Nevertheless, this Court held that the “accept and use”  
27 requirement for the “registration of voters,” *id.*, also preempts Arizona’s requirement that  
28

1 residents who wish to vote by mail provide documentary proof of citizenship. Doc. 534 at  
2 12-15. But the NVRA is silent about what information States can require of residents who  
3 wish to vote by mail.

4 Section 20505(c)(1) supports this reading. In that section, Congress explicitly  
5 permitted States to “require a person to vote in person if—(A) the person was registered  
6 to vote in a jurisdiction by mail; and (B) the person has not previously voted in that  
7 jurisdiction.” 52 U.S.C. § 20505(c). This Court reasoned “that a state may not limit  
8 absentee voting outside of these prescribed circumstances.” Doc. 534 at 13. But no court  
9 has interpreted the NVRA to “limit the number of circumstances in which a state could  
10 prevent an individual from voting by mail.” Doc. 534 at 13. For good reason—that novel  
11 reading would eviscerate States’ longstanding authority to regulate mail voting. *See, e.g.,*  
12 Conn. Gen. Stat. § 9-135 (permitting voting by mail only if the voter provides an excuse  
13 approved by the Legislature). The better reading of paragraph (c)(1) is a rule of  
14 construction—it instructs courts that Congress’s provision for *mail-in registration* for first-  
15 time voters does not preclude States from requiring *in-person voting* for first-time voters.  
16 That general requirement is bolstered by the carve-out for voters who are “entitled to vote  
17 otherwise than in person under any ... Federal law.” 52 U.S.C. § 20505(c)(2). Subsection  
18 (c) provides a guarantee for those specific voters to be able to vote in person,  
19 notwithstanding any first-time voter laws. Construing that provision to wipe out mail-  
20 voting rules by implication finds no support in the text or the caselaw.

21 Moreover, Congress did not enact the NVRA merely to increase the number of  
22 registered voters. *Contra* Doc. 543 at 13-14. It also enacted the NVRA “to protect the  
23 integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). Arizona’s proof-of-citizenship  
24 requirements for mail voting do just that. The Supreme Court has recognized that “[f]raud  
25 is a real risk that accompanies mail-in voting even if Arizona had the good fortune to avoid  
26 it.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348 (2021). The legislative  
27 history confirms that Congress inserted § 20505(c)(1) to address “concerns regarding  
28 fraud,” and that the provision “demonstrates the concern of the Committee that each State



1 should develop mechanisms to ensure the integrity of the voting rolls.” S. Rep. No. 103-6,  
2 at 13 (1993). This Court inferred the opposite, interpreting the provision to restrict what  
3 information States can require of absentee voters. But § 20505(c)(1) says nothing—either  
4 explicitly or implicitly—about the information States can require of voters before they can  
5 vote by mail.

6 Finally, caselaw confirms that the NVRA did not eliminate state rules governing  
7 mail voting. “[V]oting by absentee ballot” is a “privilege” that “make[s] voting easier,”  
8 not a right secured by the Constitution, the NVRA, or any other federal statute. *Luft v.*  
9 *Evers*, 963 F.3d 665, 672 (7th Cir. 2020); *see also McDonald v. Bd. of Election Comm’rs*  
10 *of Chi.*, 394 U.S. 802, 809 (1969); *Mi Familia Vota v. Hobbs*, 608 F. Supp. 3d 827, 848  
11 (D. Ariz. 2022) (observing that “there is no constitutional right to use [an] alternative  
12 voting method,” such as voting by mail). And the NVRA sets rules in pursuit of “the right  
13 of citizens of the United States to vote.” 52 U.S.C. § 20501(a)(1). It says little about the  
14 “privilege” of “voting by absentee ballot.” *Luft*, 963 F.3d at 672; *cf.* 52 U.S.C. § 20505(c)  
15 (permitting States to require first-time voters to vote in person and providing a carve-out  
16 for absentee voters under federal law). Arizona thus retains “wide leeway ... to enact  
17 legislation” governing mail voting. *McDonald*, 394 U.S. at 808. The Court erred in holding  
18 otherwise.

19  
20 **C. The LULAC Consent Decree Cannot Perpetually Constrain the  
Legislature’s Exercise of Its Sovereign Powers**

21 The Ninth Circuit is unlikely to hold that the LULAC Consent Decree permanently  
22 precludes the Arizona Legislature from enacting prospective legislation that is inconsistent  
23 with its terms. As this Court has recounted, the LULAC Consent Decree requires county  
24 recorders “to accept State Form applications submitted without DPOC,” if information on  
25 file with the Arizona Department of Transportation permits the recorder to identify the  
26 putative applicant and verify her citizenship. *See* Doc. 534 at 21, 34; Ex. 24 at 7-10. This  
27 directive collides squarely with section 4 of H.B. 2492, which instructs the county  
28

1 recorders to “reject any [State Form] application for registration that is not accompanied  
2 by satisfactory evidence of citizenship.” A.R.S. § 16-121.01(C).

3 Subordinating the statute to then-Secretary of State Reagan’s bilateral agreement  
4 with private litigants inverts Arizona’s construct of sovereignty. “The legislature has the  
5 exclusive power to declare what the law shall be” in Arizona. *State v. Prentiss*, 786 P.2d  
6 932, 936 (Ariz. 1989). And under the federal Constitution, the “state legislatures” have the  
7 “‘duty’ to prescribe rules governing federal elections.” *Moore v. Harper*, 143 S. Ct. 2065,  
8 2074 (2023). Neither the Legislature nor even the State of Arizona was a party to the  
9 LULAC Consent Decree. Indeed, the LULAC Consent decree itself specifically denotes  
10 the defendant “Parties” as only the Secretary of State and Maricopa County Recorder. *See*  
11 *Ex. 24* at 1; *see also Roosevelt Irr. Dist. v. Salt River Project Agric. Imp. & Power Dist.*,  
12 39 F. Supp. 3d 1051, 1054-55 (D. Ariz. 2014) (noting that consent decree did not purport  
13 to bind all political subdivisions of the state, and emphasizing that “[c]ourts must find the  
14 meaning of a consent decree ‘within its four corners.’” (citation omitted)); *United States*  
15 *v. State of Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) (a consent decree “is not a decision  
16 on the merits or the achievement of the optimal outcome for all parties, but is the product  
17 of negotiation and compromise.”).

18 The notion that the Secretary of State—an executive officer whose authority is  
19 denoted entirely by statute, *see* Ariz. Const. art. V, § 9—can irrevocably forfeit any portion  
20 of the lawmaking power, particularly in the realm of election administration, is dissonant  
21 with the U.S. Constitution, the Arizona Constitution, the relevant case law, and separation  
22 of powers precepts. *See, e.g., Carson v. Simon*, 978 F.3d 1051, 1060 (8th Cir. 2020)  
23 (“Simply put, the Secretary [of State] has no power to override the Minnesota Legislature”  
24 by stipulating to the tabulation of absentee ballots received after Election Day). And the  
25 LULAC Consent Decree itself manifests no such relinquishment. *See Doe v. Pataki*, 481  
26 F.3d 69, 78 (2d Cir. 2007) (emphasizing that “proper regard for state authority requires a  
27 federal court to have a clear indication that a state has intended to surrender its normal  
28 authority to amend its statutes”). Regardless, this Court’s jurisdiction to enforce the



1 LULAC Consent Decree expired on December 31, 2020. *See* Ex. 24 at 16. It follows that  
 2 “the judgment . . . was executed. The case is over.” *Taylor v. United States*, 181 F.3d 1017,  
 3 1023 (9th Cir. 1999).<sup>1</sup> Even by its own terms, the LULAC Consent Decree exerts no  
 4 ongoing force.

5 **II. The Partial Nullification of H.B. 2492 Irreparably Injures the Legislative**  
 6 **Intervenors as Representatives of the State and of the Legislative Institution,**  
 7 **and Inflicts a Competitive Injury on the RNC**

8 **A. The Suspension of Duly Enacted Laws Inflicts Both Sovereign and**  
 9 **Institutional Harms**

10 Enjoining H.B. 2492 exacts two variants of irreparable injury: one to the State itself  
 11 and one to the legislative institution that the Legislative Intervenors represent. Each is  
 12 independently sufficient to warrant a partial stay of the Court’s injunction pending appeal.

13 1. Arizona Law Empowers Legislative Intervenors to Assert the State’s  
 14 Interests in the Effectuation of Its Own Duly Enacted Laws

15 An “injunction[] barring the State from conducting this year’s elections pursuant to  
 16 a statute enacted by the Legislature . . . would seriously and irreparably harm the State,” if  
 17 the statute is ultimately determined to be valid. *Abbott v. Perez*, 585 U.S. 579, 602 (2018);  
 18 *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)  
 19 (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by  
 20 representatives of its people, it suffers a form of irreparable injury.” (citation omitted));  
 21 *Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a  
 22 state suffers irreparable injury whenever an enactment of its people or their representatives  
 23 is enjoined.”); *News v. Shinn*, No. CV-15-02245-PHX-ROS, 2020 WL 409113, at \*3 (D.  
 24 Ariz. Jan. 24, 2020) (agreeing that enjoining “an enactment of Arizona’s representatives .

25 <sup>1</sup> Central to the *Taylor* court’s apprehension of a potential separation of powers problem  
 26 in the congressional termination of an existing consent decree was the fact that the  
 27 judgment at issue “awarded no prospective relief.” 181 F.3d at 1025. Here, the RNC and  
 28 Legislative Intervenors do not wish to “reopen,” *id.*, the LULAC Consent Decree or to  
 retroactively nullify voter registrations conducted under its auspices. Rather, they seek  
 only a recognition that it cannot mandate any continuing, judicially enforceable  
 modification of extant Arizona statutes.

1 . . . constitutes a form of irreparable injury”); *cf. Cameron v. EMW Women’s Surgical Ctr.*,  
2 *P.S.C.*, 595 U.S. 267, 277 (2022) (“[A] State ‘clearly has a legitimate interest in the  
3 continued enforceability of its own statutes,’ and a federal court must ‘respect . . . the place  
4 of the States on our federal system.’” (citations omitted)).

5 This axiom of sovereignty—which derives from a confluence of federalism  
6 protections and separation of powers principles—is not the province of any single state  
7 actor. To the contrary, “a State is free to ‘empowe[r] multiple officials to defend its  
8 sovereign interests in federal court.’” *Berger v. N.C. State Conference of the NAACP*, 597  
9 U.S. 179, 192 (2022) (citation omitted). While the named defendants who are encumbered  
10 by an injunction will almost always have standing to contest it, they are not the only  
11 conduits for asserting the State’s resultant injury. *See League of Women Voters of Florida*  
12 *Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 945 (11th Cir. 2023) (“The Secretary has standing  
13 to appeal the judgment . . . He need not be bound by an injunction nor even bear the primary  
14 responsibility for enforcing the solicitation provision to enjoy the requisite interest.”). In  
15 this vein, “the State’s executive branch” does not necessarily “hold[] a constitutional  
16 monopoly on representing [Arizona]’s practical interests in court.” *Berger*, 597 U.S. at  
17 194. Rather, federal courts must look to state law to discern the dispersion of this authority,  
18 and must heed “a State’s chosen means of diffusing its sovereign powers among various  
19 branches and officials.” *Id.* at 191.

20 Arizona law empowers the Legislative Intervenors to assert and vindicate in the  
21 judiciary the State’s interest in formulating, enacting, and enforcing its own laws. The  
22 Legislature is the locus of sovereignty in Arizona government. *Whitney v. Bolin*, 330 P.2d  
23 1003, 1004 (Ariz. 1958) (“[T]he power of the legislature is plenary and unless that power  
24 is limited by express or inferential provisions of the Constitution, the legislature may enact  
25 any law which in its discretion it may desire.”). While the Attorney General typically  
26 represents the State’s interests in judicial proceedings, *see* A.R.S. § 41-193(A)(3), the  
27 Arizona Legislature “has also reserved to itself some authority to defend state law on  
28 behalf of the State.” *Berger*, 597 U.S. at 194.

1           At least two specific provisions of Arizona law undergird the Legislative  
2 Intervenor’s standing to contest the Court’s suspension of the Legislature’s enactments.  
3 First, A.R.S. § 12-1841—which bears strong parallels to the North Carolina statute that  
4 the Supreme Court found “expressly authorized the legislative leaders to defend the State’s  
5 practical interests in litigation,” *Berger*, 597 U.S. at 193 (citing N.C. Gen. Stat. Ann. § 1-  
6 72.2 (2021))—reserves for the Speaker of the Arizona House of Representatives and the  
7 President of the Arizona Senate an “entitle[ment] to be heard,” in any proceeding  
8 implicating the constitutionality of a state law, to include “interven[ing] as a party” or  
9 “fil[ing] briefs in the matter.” A.R.S. § 12-1841(A), (D). As this Court has recognized, the  
10 statute embodies Arizona’s “policy decision to vest in its legislative leaders an interest in  
11 defending the constitutionality of the legislature’s enactments” in federal and state courts.  
12 *Isaacson v. Mayes*, 2:21-cv-1417, 2023 WL 2403519, at \*1 (D. Ariz. Mar. 8, 2023); *see*  
13 *also* Doc. 535 at 6 (affirming that “the Speaker and the President are authorized to defend  
14 Arizona’s statutes and the Court declines to limit their right to represent the Arizona  
15 Legislature’s interests”). Because this Court’s partial injunction “implicat[es] the  
16 constitutionality” of H.B. 2492 in relation to Congress’ and the States’ respective powers  
17 under the Presidential Electors Clause, *see* U.S. Const. art. II, § 1, the Elections Clause,  
18 *see id.* art. I, § 4, and the Supremacy Clause, *see id.* art. VI, Arizona law entitles the  
19 Legislative Intervenors to protect and pursue the State’s sovereign interests in court.

20           Second, the Arizona Constitution incorporates explicit protections of state  
21 sovereignty against unconstitutional federal incursion. *See* Ariz. Const. art. II, § 3. The  
22 provision affirms that the State may “pursu[e] any . . . available legal remedy” to counter  
23 perceived unconstitutional federal overreach, and contemplates that “the people or their  
24 representatives [may] exercise” authority to that end. *Id.* This intended bulwark against  
25 unlawful federal encroachment is, by its terms, not the exclusive domain of the Attorney  
26 General, but rather is vested collectively in the elected branches of Arizona state  
27 government. When, as here, a federal court truncates powers that arguably are entrusted to  
28 the State, legislative “representatives” may seek appropriate relief on its behalf.

1                   2.     Curtailment of the Legislature’s Authority to Select Presidential  
2                   Electors and to Structure Methods of Registration and Voting in  
3                   Arizona Elections Irreparably Injures the Institution

4                   Even if the Legislative Intervenors could not assert and advance the State’s  
5                   sovereign interests in this Court, they certainly may seek redress of injuries to the  
6                   legislative institution they represent. An extrinsic constraint on a legislative body’s  
7                   lawmaking functions inflicts a cognizable institutional injury. *See Ariz. State Legislature*  
8                   *v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 800 (2015) (finding that the Arizona  
9                   Legislature had standing to bring claim that initiative measure “strips the Legislature of its  
10                  alleged prerogative to initiate redistricting”).

11                  The injunction thwarts the State from disallowing individuals who have not proved  
12                  their U.S. citizenship from participating in Arizona’s selection of its presidential electors,  
13                  or from utilizing Arizona’s generous mail-in voting option. It also elevates the Secretary  
14                  of State’s improvident promises in the LULAC Consent decree over the laws of the State.  
15                  In doing so, the injunction abrogates three constitutional prerogatives that are vested  
16                  expressly and exclusively in the Arizona Legislature. First, the “Manner” of selecting a  
17                  State’s presidential electors is prescribed solely by “the Legislature thereof.” U.S. Const.  
18                  art. II, § 1; *see also Carson*, 978 F.3d at 1060 (explaining that “when a state legislature  
19                  enacts statutes governing presidential elections, it operates ‘by virtue of a direct grant of  
20                  authority’ under the United States Constitution” (citation omitted)). Second, the Elections  
21                  Clause imbues “the Legislature” of each State with the responsibility of regulating voting  
22                  methods and procedures in federal elections, unless until Congress “alter[s]” them. U.S.  
23                  Const. art. I, § 4; *Ariz. State Legislature*, 576 U.S. at 800 (recognizing Legislature’s  
24                  standing to assert alleged injury to its authority under the Elections Clause). Finally, the  
25                  Arizona Constitution explicitly charges the Legislature with “enact[ing] registration and  
26                  other laws to secure the purity of elections and guard against abuses of the elective  
27                  franchise.” Ariz. Const. art. VII, § 12; *see also Priorities USA v. Nessel*, 978 F.3d 976,  
28                  981-82 (6th Cir. 2020) (citing parallel provision in Michigan Constitution and explaining

1 that, when an election law is enjoined, “[t]he legislature has lost the ability to regulate that  
2 election in a particular way”).

3 In short, the Arizona Legislature has sustained an irreparable injury because its  
4 “specific powers are disrupted” by the injunction. *Id.* at 982. The Legislative Intervenors  
5 may seek redress of this harm on the institution’s behalf, as both chambers have adopted  
6 rules empowering the Legislative Intervenors to “bring or assert in any forum on behalf of  
7 the[ir houses] any claim or right arising out of any injury to [their houses’] powers or duties  
8 under the Constitution or Laws of this state.” State of Arizona, *Senate Rules*, 56th  
9 Legislature 2023-2024, Rule 2(N), <https://bit.ly/3WXFLDv>; State of Arizona, *Rules of the*  
10 *Ariz. House of Representatives*, 56th Legislature 2023-2024, Rule 4(K),  
11 <https://bit.ly/3HuL9bz>. *See also* Doc. 535 at 8 (recognizing the Legislative Intervenors’  
12 “right to represent the Arizona Legislature’s interests”).

13  
14 **B. Enjoining H.B. 2492’s Provisions Governing Voting in Presidential  
Elections and By Mail Forces Inflicts a Competitive Injury on the RNC**

15 In overriding the Legislature’s determination that Federal Only voters—*i.e.*,  
16 individuals who have not provided DPOC—may not vote for Arizona’s presidential  
17 electors or vote by mail, the injunction distorts the competitive environment underpinning  
18 the 2024 election in a manner that is unfavorable to the RNC and Republican candidates.<sup>2</sup>  
19 “Competitive standing recognizes the injury that results from being forced to participate  
20 in an ‘illegally structure[d] competitive environment.’” *Mecinas v. Hobbs*, 30 F.4th 890  
21 898 (9th Cir. 2022) (citation omitted); *see also Owen v. Mulligan*, 640 F.2d 1130, 1132  
22 (9th Cir. 1981) (holding that “the potential loss of an election” due to allegedly unlawful  
23 attributes of the electoral system is an injury). “Voluminous” authority shows that  
24 candidates and parties suffer injury when their “chances of victory would be reduced.”  
25 *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 & n.4 (5th Cir. 2006) (collecting  
26 cases).

27  
28 <sup>2</sup> The Legislative Intervenors’ demonstration of cognizable irreparable sovereign and  
institutional injuries, however, obviates the need for an independent showing by the RNC.  
*See Priorities USA v. Nessel*, 860 Fed. Appx. 419, 421 (6th Cir. 2021).

1 According to Non-U.S. Plaintiffs' own expert witness, only 14.3% of Federal Only  
2 voters are registered as members of the Republican Party, while Republicans comprise  
3 34.5% of the total active registered voter population in Arizona. *See* Ex. 340. The judicially  
4 mandated inclusion of these individuals in the presidential electorate hence necessarily  
5 impairs the relative competitive position of the Republican presidential nominee. If, as the  
6 RNC and Legislative Intervenors maintain, the Arizona Legislature is entitled to limit  
7 participation in presidential elections and use of mail-in voting to only voters who have  
8 sufficiently established their U.S. citizenship, the injunction's effective nullification of  
9 these public policy determinations alters Arizona's electoral terrain to the RNC's  
10 disadvantage. *See Mecinas*, 30 F.4th at 898 (finding that DNC had adequately alleged  
11 injury "based on the ongoing, unfair advantage conferred to their rival candidates"); *see*  
12 *also Ariz. State Legislature*, 576 U.S. at 800 (cautioning against a conflation of standing  
13 and the merits).

### 14 **III. The Balance of Equities and Public Policy Support a Partial Stay**

15 When, as here, a governmental party seeks a stay, "its interest and harm merge with  
16 that of the public." *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017); *see also E. Bay*  
17 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021) (holding in preliminary  
18 injunction context that "[w]hen the government is a party, the last two factors (equities and  
19 public interest) merge"). The administration of the 2024 election in accordance with  
20 safeguards devised by Arizonans' elected representatives to limit the franchise to verified  
21 United States citizens is a public interest of the highest order. *See Mi Familia Vota v.*  
22 *Hobbs*, 977 F.3d 948, 954 (9th Cir. 2020) ("States have 'an interest in protecting the  
23 integrity, fairness, and efficiency of their ballots and election processes.'" (quoting  
24 *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997))).

25 There is no substantial countervailing harm that an injunction is necessary to  
26 remediate. Although the Court found that each of the Plaintiff groups had associational or  
27 organizational standing to assert at least one of their respective claims, *see* Doc. 709 at 55-  
28 62, it also recognized that "Plaintiffs offered no witness testimony or other 'concrete

1 evidence’ to corroborate that the Voting Laws’ DPOC Requirements will in fact impede  
2 any qualified elector from registering to vote or staying on the voter rolls,” *id.* at 92, and  
3 that “[t]he Voting Laws do not impose an excessive burden on any specific subgroup of  
4 voters,” *id.* at 95. The absence of any articulable harm that the relevant provisions of H.B.  
5 2492 will exact on any identifiable individual underscores the appropriateness of a partial  
6 stay. *See Duncan*, 83 F.4th at 806 (stay was warranted where there was no indication that  
7 it would “substantially injure” the general public’s exercise of Second Amendment rights);  
8 *A. Philip Randolph Institute of Ohio v. LaRose*, 831 Fed. App’x 188, 192 (6th Cir. 2020)  
9 (concluding that stay of order authorizing counties to deploy ballot drop-boxes “is unlikely  
10 to harm anyone” by preventing them from voting).

11 **CONCLUSION**

12 For the foregoing reasons, the Court should stay pending appeal its injunction to  
13 the extent it prohibits the implementation or enforcement of H.B. 2492’s provisions that  
14 (1) restrict Federal Only voters from voting for president; (2) restrict Federal Only voters  
15 from voting by mail, or (3) are inconsistent with the LULAC Consent Decree. To expedite  
16 resolution of this motion, Movants waive their right to a reply brief and request that the  
17 Court order that any responses to the motion must be filed by May 29, 2024.

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RESPECTFULLY SUBMITTED this 17th day of May, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of May, 2024, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

*/s/ Thomas Basile* \_\_\_\_\_

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,  
Plaintiffs,

v.

Adrian Fontes, et al.,  
Defendants.

Case No. 2:22-cv-00509-SRB  
(Lead)

**ARIZONA SECRETARY OF STATE**  
**ADRIAN FONTES' RESPONSE TO**  
**INTERVENOR-DEFENDANTS'**  
**MOTION FOR A PARTIAL STAY**  
**OF THE INJUNCTION PENDING**  
**APPEAL**

(Before the Hon. Susan R. Bolton)

AND CONSOLIDATED CASES.

No. CV-22-00519-PHX-SRB  
No. CV-22-01003-PHX-SRB  
No. CV-22-01124-PHX-SRB  
No. CV-22-01369-PHX-SRB  
No. CV-22-01381-PHX-SRB  
No. CV-22-01602-PHX-SRB  
No. CV-22-01901-PHX-SRB

Adrian Fontes, Arizona’s Secretary of State (“Secretary Fontes”) and Chief Election Officer, asks this Court to deny the Intervenor-Defendants Motion for a Partial Stay of the Injunction Pending Appeal (the Motion) because a stay this close to an election is bound to create chaos and confusion, and undermine the credibility of our elections and related processes. *See* Doc 730.

1 Our elections are a cornerstone of our democracy. Preserving their integrity and  
2 reliability are paramount among Secretary Fontes' responsibilities. He takes that  
3 responsibility *very* seriously. That is why, although a nominal party to this action, he was  
4 willing to stipulate to the relief sought from the beginning so as to facilitate this action's  
5 swift resolution, and in turn, preclude it from in any way interfering with the upcoming  
6 2024 election cycle. This Court, the litigating parties, and even the nominal parties worked  
7 extremely hard to ensure that this action was tried, and a decision rendered, in advance of  
8 2024 election-related deadlines to minimize this action's interference with election-related  
9 preparation and execution.

10 This Court entered its Judgment on May 2, 2024. *See* Doc. 720. Now, just weeks  
11 before early voting begins, the Intervenor-Defendants seek a stay. While Secretary Fontes  
12 takes no position on the legal arguments made in the Motion, given its timing, he opposes  
13 entry of a stay.

14 "In election matters, time is of the essence ...." *Harris v. Purcell*, 193 Ariz. 409,  
15 412, ¶ 15 (1998). "Confidence in the integrity of our electoral processes is essential to the  
16 functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).  
17 "The Supreme Court has repeatedly emphasized that lower federal courts should ordinarily  
18 not alter the election rules on the eve of an election." *Lake v. Hobbs*, 623 F. Supp. 3d 1015,  
19 1027 (D. Ariz. 2022), *aff'd sub nom. Lake v. Fontes*, 83 F.4th 1199 (9th Cir. 2023), cert.  
20 denied, 23-1021, 2024 WL 1706042 (U.S. Apr. 22, 2024) (cleaned up). This is why the  
21 Purcell Doctrine exists and "discourages courts from creating or altering election rules close  
22 to elections to avoid voter confusion." *Mi Familia Vota v. Hobbs*, 492 F. Supp. 3d 980, 985  
23 (D. Ariz. 2020) (citing *Purcell*, 549 U.S. 1 at 4-5). Entry of a stay will, in effect, alter  
24 election rules and procedures on the cusp of the 2024 election cycle.

25 The 2024 election cycle, including for the office of President of the United States,  
26 is upon us. *See* Secretary Fontes' Decl. attached hereto at ¶ 4. Secretary Fontes' Office has  
27 worked with election officials across Arizona for many months to prepare for the 2024  
28 election cycle. *Id.* at ¶ 4. The total number of active/inactive Federal Only voters in Arizona

1 is 35,430. *See id.* at ¶ 5. Of those, 19,130 are active presumably in-person voters, and 4,195  
 2 are on the Arizona Early Voter List. *Id.* at ¶ 5. In the 2020 election, the voter turnout was  
 3 nearly 80%. *Id.* at ¶ 6; *see also* [2020\\_general\\_state\\_canvass.pdf \(azsos.gov\)](#). Secretary  
 4 Fontes expects, and believes Arizona’s counties are preparing, for at least, a similar turnout  
 5 in 2024. *Id.* at ¶ 6.

6 It cannot be sincerely contested that the processes and procedures that must be put  
 7 in motion so that our 2024 elections in Arizona can occur timely and without voter  
 8 confusion are well under way. For example:

- 9 • On May 1, 2024, election officials sent voters their 90-day notice. *See* A.R.S.  
 10 § 16-544(D); Secretary Fontes’ Decl. at ¶ 7.
- 11 • The deadline to print sample ballots is June 20, 2024. *See* A.R.S. § 16-461;  
 12 Secretary Fontes’ Decl. at ¶ 8.
- 13 • Early voting begins, and the initiative filing deadline, is on July 3, 2024. *See*  
 14 A.R.S. § 16-542(C); Secretary Fontes’ Decl. at ¶ 9.
- 15 • Signature rosters are printed on July 20, 2024, the DPOC cure deadline is on  
 16 July 25, 2024, and early voting ends on July 30, 2024. *See* A.R.S. § 16-542(E)  
 17 (early voting); Election Procedures Manual at p. 7 (incorporating LULAC  
 18 Consent Decree requirements related to DPOC); A.R.S. § 16-166(A)  
 19 (signature rosters); Secretary Fontes’ Decl. at ¶ 10.<sup>1</sup>
- 20 • Non-partisan election challenges must be filed by July 22, 2024 and decided  
 21 by August 1, 2024. *See* Secretary Fontes’ Decl. at ¶ 11.
- 22 • The Presidential Primary Election occurs on July 30, 2024. *See* Secretary  
 23 Fontes’ Decl. at ¶ 12.

24 \_\_\_\_\_  
 25 <sup>1</sup> The Election Procedures Manual has the force of law in Arizona. *Ariz. Pub. Integrity All.*  
 26 *v. Fontes*, 250 Ariz. 58, 63, ¶ 16, 475 P.3d 303, 308 (2020) (“Once adopted, the EPM has  
 27 the force of law; any violation of an EPM rule is punishable as a class two misdemeanor.”).  
 28 The Election Procedures Manual incorporates the relevant portion of the LULAC Consent  
 Decree. *See* Secretary Fontes’ Decl. at ¶ 10; Election Procedures Manual at 7. Thus, the  
 Intervenor/Defendants’ argument about the viability of the LULAC Consent Decree fails  
 inasmuch as it is and shall remain part of the Election Procedures Manual, and thus, the  
 law in Arizona.

- 1 • The deadline for the Secretary of State to transmit a 5% random sample of  
2 signatures related to ballot measures is August 1, 2024. *See* A.R.S. § 19-  
3 121.01; Secretary Fontes’ Decl. at ¶ 13.
- 4 • The deadline for counties to complete review of ballot-related signature  
5 samples is August 22, 2024. *See* Secretary Fontes’ Decl. at ¶ 14.
- 6 • The deadline to print publicity pamphlets is August 29, 2024. *See* Secretary  
7 Fontes’ Decl. at ¶ 15.

8 Entering a stay, at this stage, will only create confusion and chaos for voters and  
9 election officials alike. *See* Secretary Fontes’ Decl. at ¶ 16. The Election Procedures  
10 Manual reflects and accounts for, among other things, this Court’s Judgment. *See* Secretary  
11 Fontes’ Decl. at ¶ 17. The Election Procedures Manual has been approved by Secretary  
12 Fontes, Arizona’s Governor, and even Arizona’s Attorney General. *See id.* Secretary  
13 Fontes’ office understands that Counties across Arizona have implemented processes and  
14 procedures, or are well into the process of doing so, reliant and complaint with those set  
15 forth in the Election Procedurals Manual. *Id.* To be sure, at this juncture in Arizona  
16 Elections, time is not only of the essence, but it is in short supply. Election officials across  
17 Arizona are preparing for what is expected to be a very active 2024 election cycle. Last  
18 minute state-wide policy changes like those requested in the Motion, no matter how small  
19 they may seem to some, can (and Secretary Fontes believes will) drastically impact how  
20 affected votes are collected and processed. *Id.* Such confusion and chaos on the cusp of an  
21 election will undoubtedly cause voters to harbor doubts about our election procedures, our  
22 election officials, and our elections themselves. That risk alone, in the context of this action,  
23 strongly cautions against “creating or altering election rules close to elections to avoid voter  
24 confusion.” *Mi Familia Vota*, 492 F. Supp. 3d at 985; *see also* Secretary Fontes’ Decl. at ¶  
25 17 (expressing agreement with this sentiment).

26 Accordingly, Secretary Fontes asks this Court to preserve the status quo and deny  
27 the Motion.

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RESPECTFULLY SUBMITTED: May 21, 2024.

SHERMAN & HOWARD L.L.C.

By /s/ Craig A. Morgan  
Craig A. Morgan  
Shayna Stuart  
Jake Rapp  
*Attorneys for Defendant Arizona  
Secretary of State Adrian Fontes*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2024, I caused a true and correct copy of the foregoing document, to be filed with Clerk of the Court of the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all parties who have appeared will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ Ella Meshke

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**DECLARATION OF ADRIAN FONTES**

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

Adrian Fontes, for his unsworn declaration, says:

1. I am over 21 years of age and competent to offer this testimony. I have personal knowledge of the facts stated in this Declaration. My personal knowledge is based on my own participation in, or observation of, the matters set forth herein. If called as a witness to testify as to the matters set forth in this Declaration, I could and would testify competently.

2. I am making this declaration in connection with the *Mi Familia Vota. et al. v. Adrian Fontes et al.*, Case No. 2:22-cv-00509-SRB (the “Lawsuit”), which is pending in the District Court for the District of Arizona.

3. I am Arizona’s 22nd and current Secretary of State. I make this Declaration on my Office’s behalf.

4. The 2024 election cycle, including for the office of President of the United States, is upon us. Our Office has worked with election officials across Arizona for many months to prepare for the 2024 election cycle.

5. The total number of active/inactive Federal Only voters in Arizona is 35,430. Of those, 19,130 are active presumably in-person voters, and 4,195 are on the Arizona Early Voter List.

6. In the 2020 election, the voter turnout was nearly 80%. *See* [2020 general state canvass.pdf \(azsos.gov\)](https://www.azsos.gov/2020-general-state-canvass.pdf). Our Office expects, and I believes Arizona’s counties are preparing, for at least a similar turnout in 2024.

7. On May 1, 2024, election officials sent voters their 90-day notice. *See* A.R.S. § 16-544(D).

8. The deadline to print sample ballots is June 20, 2024. *See* A.R.S. § 16-461.

9. Early voting begins, and the initiative filing deadline, is on July 3, 2024.

1 See A.R.S. § 16-542(C).

2 10. Signature rosters are printed on July 20, 2024, the DPOC cure deadline is  
3 on July 25, 2024, and early voting ends on July 30, 2024. See A.R.S. § 16-542(E) (early  
4 voting); Election Procedures Manual at p. 7 (incorporating LULAC Consent Decree  
5 requirements related to DPOC); A.R.S. § 16-166(A) (signature rosters).

6 11. Non-partisan election challenges must be filed by July 22, 2024 and  
7 decided by August 1, 2024.

8 12. The Presidential Primary Election occurs on July 30, 2024.

9 13. The deadline for my Office to transmit a 5% random sample of signatures  
10 related to ballot measures is August 1, 2024. See A.R.S. § 19-121.01.

11 14. The deadline for counties to complete review of ballot-related signature  
12 samples is August 22, 2024.

13 15. The deadline to print publicity pamphlets is August 29, 2024.

14 16. In my experience as an election official, including as the former Maricopa  
15 County Recorder, I believe that entering a stay of this Court's Judgment, at this stage, will  
16 only create confusion and chaos for voters and election officials alike in the upcoming 2024  
17 election cycle.

18 17. The Election Procedures Manual reflects and accounts for, among other  
19 things, this Court's Judgment. The Election Procedures Manual has been approved by  
20 Arizona's Governor, Arizona's Attorney General, and myself. My Office understands that  
21 Counties across Arizona have implemented processes and procedures, or are well into the  
22 process of doing so, reliant and complaint with those set forth in the Election Procedurals  
23 Manual. To be sure, at this juncture in Arizona Elections, time is not only of the essence  
24 but it is in short supply. I understand that election officials across Arizona are preparing for  
25 what is expected to be a very active 2024 election cycle. Last minute state-wide policy  
26 changes like those requested in the Motion, no matter how small they may seem to some,  
27 can (and I believe will) drastically impact how affected votes are collected and processed.  
28 Such confusion and chaos on the cusp of an election will undoubtedly cause voters to harbor



1 doubts about our election procedures, our election officials, and our elections themselves.  
2 That risk alone, in the context of this action, strongly cautions against “creating or altering  
3 election rules close to elections to avoid voter confusion.” *Mi Familia Vota v. Hobbs*, 492  
4 F. Supp. 3d 980, 985 (D. Ariz. 2020) (citing *Purcell*, 549 U.S. 1 at 4-5).

5 18. I declare under penalty of perjury that the foregoing is true and correct.  
6 Executed on May 21, 2024.

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By: s Adrian Fontes  
Adrian Fontes

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15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF ARIZONA**

17 Mi Familia Vota, et al.,  
Plaintiffs,

18 (Consolidated)

19 v.

20  
21  
22 Adrian Fontes, et al.,  
Defendants.

No. 2:22-cv-00509-SRB (Lead Case)  
No. 2:22-cv-01124-SRB

United States' Opposition to  
Intervenor-Defendants' Motion for  
Partial Stay

23  
24 And associated consolidated matters.

25  
26 The United States respectfully opposes Intervenor-Defendants' Motion for a  
27 Partial Stay of the Injunction Pending Appeal ("Stay Mot."), ECF No. 730. Intervenor-  
28 Defendants fail to meet their high burden of establishing that a stay is warranted.

1 On September 14, 2023, the Court entered a partial summary judgment order,  
2 finding in part that Section 6 of the National Voter Registration Act of 1993 (“NVRA”)  
3 preempts H.B. 2492’s limitations on federal-only voters voting in presidential elections  
4 and by mail. Order on Mot. Summ. J. (“SJ Order”) at 9-10, ECF No. 534. On  
5 February 29, 2024, after a bench trial, the Court issued findings of fact and conclusions  
6 of law, and acknowledged its prior ruling that the NVRA preempts H.B. 2492’s  
7 Documentary Proof of Citizenship (DPOC) requirement for Federal Form registrants  
8 seeking to vote in presidential elections or by mail. ECF No. 709 at 6 n.12. The Court  
9 issued its final judgment on May 2, 2024. Final J., ECF No. 720. Now, months after  
10 the Court’s summary judgment order, more than two weeks after the Court’s final  
11 judgment, and on the eve of the July primary deadlines, Intervenor-Defendants seek to  
12 stay the injunction of H.B. 2492’s provisions that prohibit registered voters who have  
13 not provided DPOC from (1) voting for President of the United States and (2) voting  
14 by mail. *See* Ariz. Rev. Stat. §§ 16-121.01(E), 16-127(A); Final J. at 2.<sup>1</sup> Intervenor-  
15 Defendants’ stay request merely repeats merits arguments the Court has already  
16 considered and rejected, asserts no cognizable form of irreparable harm, and threatens  
17 to disrupt the electoral process just weeks before early voting by mail is set to begin.  
18 And because state and county officials *never* implemented the enjoined provisions of  
19 H.B. 2492, Intervenor-Defendants unjustifiably seek to upend the status quo that  
20 preceded even this Court’s injunction. The motion for a stay should be rejected.

21 In determining whether to grant a motion for stay pending appeal, courts  
22 consider four factors: “(1) whether the stay applicant has made a strong showing that  
23 he is likely to succeed on the merits; (2) whether the applicant will be irreparably  
24 injured absent a stay; (3) whether issuance of the stay will substantially injure the other  
25 parties interested in the proceeding; and (4) where the public interest lies.” *Nken v.*  
26 *Holder*, 556 U.S. 418, 426 (2009). The first two factors “are the most critical.” *Id.* at

27 \_\_\_\_\_  
28 <sup>1</sup> Intervenor-Defendants also challenge the portion of the injunction pertaining to  
provisions that are inconsistent with the LULUC Consent Decree. Stay Mot. at 1, 9-  
11. The United States takes no position on this aspect of the Motion.

1 434. A stay is “an exercise of judicial discretion,” and, as movants, Intervenor-  
2 Defendants “bear[] the burden of showing that the circumstances justify an exercise of  
3 that discretion.” *Id.* at 433-34. Where, as here, a movant fails to show a strong  
4 likelihood of success on the merits, the Ninth’s Circuit’s sliding-scale approach  
5 requires the party seeking the stay to raise “serious questions going to the merits” *and*  
6 show that “the balance of hardships tips sharply in the [party’s] favor.” *All. for the*  
7 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). Intervenor-  
8 Defendants’ renewed merits arguments fail to demonstrate a strong likelihood of  
9 success, raise no “serious questions” as to the merits, and the balance of hardships  
10 favors the non-movants.

11 **I. Intervenor-Defendants Are Unlikely to Succeed on the Merits.**

12 Stay applicants must “show a *strong* likelihood of success on the merits.” *Index*  
13 *Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 824 (9th Cir. 2020).  
14 Intervenor-Defendants fail to do so.

15 **A. The NVRA Preempts H.B. 2492’s DPOC Requirements Because**  
16 **Congress May Regulate Presidential Elections.**

17 Intervenor-Defendants’ argument that the NVRA may not regulate presidential  
18 elections has been thoroughly considered and rejected by this Court. *Compare* Stay  
19 Mot. at 3 *and* RNC Mot. for Summ. J. at 2-8, ECF No. 367 *with* SJ Order at 10; U.S.  
20 Mot. for Summ. J. at 7-14, ECF No. 391-1; U.S. Summ. J. Reply at 1-7, ECF No. 476;  
21 *see also* State Mot. to Dismiss at 22-23, ECF No. 127; Order on Mot. to Dismiss at 28-  
22 29, ECF No. 304. And for good reason—Congress’s authority to regulate presidential  
23 elections is well established. *See, e.g., Burroughs v. United States*, 290 U.S. 534  
24 (1934); *Buckley v. Valeo*, 424 U.S. 1, 13 n.16 (1976); *United States v. Classic*, 313  
25 U.S. 299, 320 (1941) (the Necessary and Proper Clause empowers Congress to choose  
26 the “means by which its constitutional powers are to be carried into execution”). In  
27 *Burroughs*, the Supreme Court found that a federal law seeking to protect the integrity  
28 of presidential elections “in no sense invades any exclusive state power” to “appoint  
electors or the manner in which their appointment shall be made.” 290 U.S. at 544–45.

1 Contrary to Intervenor-Defendants’ ongoing insistence, *see* RNC Mot. for Summ. J. at  
2 6, Stay Mot. at 5, *Burroughs* held that states lack “exclusive” power to regulate  
3 presidential elections because Congress is authorized to pass legislation that “seeks to  
4 preserve the purity of presidential and vice presidential elections.” 290 U.S. at 544.

5 The Ninth Circuit similarly recognized Congress’s power to regulate all federal  
6 elections under the NVRA. *Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1414 (9th Cir.  
7 1995) (“The broad power given to Congress over congressional elections has been  
8 extended to presidential elections[.]”), *cert. denied*, 516 U.S. 1093 (1996); *see* SJ Order  
9 at 11. Intervenor-Defendants again recast *Wilson*’s holding as dicta and disparage as  
10 “circular” this Court’s analysis of that holding. Stay Mot. at 7. Their arguments miss  
11 the mark. This Court appropriately reasoned that the Ninth Circuit’s broad view of  
12 Congress’s authority to regulate all federal elections must have been essential to its  
13 decision upholding the NVRA’s constitutionality—and thus not dicta—because the  
14 NVRA’s plain language regulates both congressional and presidential elections. *See* SJ  
15 Order at 11.<sup>2</sup> Intervenor-Defendants’ arguments must be rejected.

16 Intervenor-Defendants next recycle their argument that the Electors Clause of  
17 the Constitution forecloses congressional authority to regulate presidential elections.  
18 *See* Stay Mot. at 4-7; RNC Mot. for Summ. J. at 2-6; SJ Order at 10. That argument  
19 must be rejected again as well. The Electors Clause cases Intervenor-Defendants cite  
20 simply affirm what the Clause plainly says: that states are empowered to choose a  
21 procedural method of appointing presidential electors and to regulate those electors.  
22 *See* U.S. Const. art. II, § 1, cl. 2; *McPherson v. Blacker*, 146 U.S. 1, 27 (1892)  
23 (describing the Electors Clause as “leav[ing] it to the legislature exclusively to define  
24 the *method*” of choosing presidential electors (emphasis added)). Arizona decided the  
25 manner of appointing electors when the legislature enacted statutes requiring political  
26

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27 <sup>2</sup> Intervenor-Defendants’ other attempts to undercut the strength of this unbroken line  
28 of precedent fail for the reasons previously articulated by the United States. *See* U.S.  
Resp. Mot. to Dismiss at 6-9, ECF. No. 152; U.S. Mot. for Summ. J. at 7-10; U.S.  
Summ. J. Reply at 5-7.

1 parties to choose their own slates. *See* Ariz. Rev. Stat. §§ 16-341, 16-344 (outlining  
2 the process for appointing Arizona’s 11 electors). The popular vote in Arizona dictates  
3 how those electors cast their vote on the date prescribed by Congress. *See id.* § 16-212  
4 (outlining the process of Arizona’s presidential electors casting their electoral college  
5 votes). Nothing in the Electors Clause’s text indicates that the manner of *appointing*  
6 *presidential electors* subsumes Congress’s authority to determine how federal *elections*  
7 are conducted. *See* U.S. Resp. Mot. to Dismiss at 12-13. And no precedent  
8 interpreting the Electors Clause supports extending this state authority to voter  
9 registration, even if the chosen “manner” of appointing electors is by popular vote.  
10 Thus, Intervenor-Defendants’ invocation of states’ plenary power to select the manner  
11 of appointing electors does not efface Congress’s broad authority to regulate  
12 presidential elections.<sup>3</sup>

13 **B. H.B. 2492’s DPOC Requirement Is a Voter Registration**  
14 **Requirement.**

15 The Court has also considered and rejected Intervenor-Defendants’ argument  
16 that the NVRA does not apply to “mechanisms” for voting, such as voting by mail.  
17 *Compare* Stay Mot. at 7-9 *and* RNC SJ Mot. at 4, 4 n.2, 8 *with* SJ Order at 14-15. The  
18 dispute here concerns whether H.B. 2492’s DPOC requirement operates as a  
19 *registration requirement* that violates the NVRA, not whether the NVRA applies to  
20 any given mail voting requirement in the abstract. H.B. 2492’s DPOC mandate that  
21 registrants using the Federal Form provide DPOC as a prerequisite to vote in  
22 presidential elections or by mail is an explicit registration requirement that the State  
23 seeks to graft onto the Federal Form. Put differently, H.B. 2492 does not permit  
24 election officials to “accept and use” the Federal Form as is; instead, it imposes  
25 additional registration requirements onto that Form to determine whether voters can  
26 vote by mail or in presidential elections. *See* 52 U.S.C. § 20505(a)(1). It may not do

27 <sup>3</sup> Intervenor-Defendants do not address the United States’s alternative argument that  
28 the NVRA is also a valid exercise of Congress’s authority to enforce the Fourteenth  
and Fifteenth Amendments. *See* U.S. Resp. Mot. to Dismiss at 9-11; U.S. Mot. for  
Summ. J. at 11-12.

1 so. *See Arizona v. Inter-Tribal Council of Ariz., Inc.*, 570 U.S. 1, 15 (2013) (holding  
2 that “a state-imposed requirement of evidence of citizenship not required by the  
3 Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept and use’  
4 the Federal Form”).

5 That the NVRA does not explicitly mention the “privilege” of absentee voting is  
6 no matter. In practice, H.B. 2492’s DPOC requirement creates a two-tier registration  
7 system based on whether voters have provided DPOC: those who have provided DPOC  
8 are registered to vote for all federal elections and by mail, while those who have not  
9 provided DPOC may not vote in presidential elections or vote by mail. Such a two-tier  
10 registration system nullifies Section 6’s requirement that Arizona “accept and use” the  
11 form to register voters for *all* federal elections. *See id.* at 10 (interpreting the word  
12 “accept” in Section 6 of the NVRA as “its object is to be accepted *as sufficient* for the  
13 requirement it is meant to satisfy,” rather than as “to receive the form willingly”  
14 (emphasis in original)); 52 U.S.C. § 20505(a)(1).

## 15 **II. Intervenor-Defendants Cannot Show Irreparable Harm During the** 16 **Pendency of Appeal.**

17 Intervenor-Defendants fail to demonstrate a cognizable injury, much less  
18 irreparable harm. “[S]imply showing some possibility of irreparable injury” is  
19 insufficient. *Nken*, 556 U.S. at 434 (internal quotation marks omitted). Instead, an  
20 applicant for a stay must show that “irreparable injury is likely to occur during the  
21 period before the appeal is decided.” *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir.  
22 2020).

23 Even assuming Legislative Intervenors had standing to assert the State’s  
24 sovereign interest—and as the State suggests,<sup>4</sup> they do not—they fail to assert a  
25 cognizable form of irreparable harm under these circumstances. The sole injury they  
26 assert is the harm inherent to enjoining a state statute. Although a state *may* “suffer a

27 <sup>4</sup> *See* State Resp. to Stay Mot. at 3, ECF No. 733 (arguing that under Arizona law, the  
28 State Attorney General represents Arizona in federal court and noting that “Legislative  
Intervenors do not speak for the State as a whole”).



1 form of irreparable injury” when a statute is enjoined, *see Maryland v. King*, 567 U.S.  
2 1301, 1303 (2012),<sup>5</sup> the Ninth Circuit has long held that a governing body “cannot  
3 suffer harm from an injunction that merely ends an unlawful practice,” *Rodriguez v.*  
4 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *see also Zepeda v. INS*, 753 F.2d 719,  
5 727 (9th Cir. 1983) (noting that the government “cannot reasonably assert that it is  
6 harmed in any legally cognizable sense by being enjoined from constitutional  
7 violations”). The question of whether H.B. 2492 unlawfully conflicts with federal law  
8 “is at the core of this dispute, to be resolved at the merits stage of this case.” *Doe #1*,  
9 957 F.3d at 1059.

10 Legislative Intervenors’ invocation of state sovereignty, Stay Mot. at 12, is  
11 similarly unavailing. “[T]he harm of such a perceived institutional injury is not  
12 ‘irreparable,’ because the government ‘may yet pursue and vindicate its interests in the  
13 full course of this litigation.’” *Id.* (quoting *Washington v. Trump*, 847 F.3d 1151, 1168  
14 (9th Cir. 2017) (per curiam)); *see Texas v. United States*, 787 F.3d 733, 767–68 (5th  
15 Cir. 2015) (“[I]t is the resolution of the case on the merits, not whether the injunction is  
16 stayed pending appeal, that will affect those principles.”).<sup>6</sup>

17 Other than to its purported sovereign interests, Intervenor-Defendants fail to cite  
18 any harm that has occurred and would continue to occur absent a stay. As the Ninth  
19 Circuit has emphasized, the “best evidence of harms likely to occur because of the  
20 injunction” are “evidence of harms that *did* occur because of the injunction.” *Al Otro*  
21 *Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020). The stay request describes no such  
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23 <sup>5</sup> In *King*, the Supreme Court granted a stay that would have otherwise prevented  
24 Maryland from employing a law enforcement tool “used widely throughout the  
25 country,” and which “ha[d] been upheld by two Courts of Appeals and another state  
high court.” *King*, 567 U.S. at 1303–04.

26 <sup>6</sup> Intervenor-Defendants also assert that the RNC has “competitive standing” to assert  
27 injury based on the injunction. Stay Mot. at 15-16. However, the RNC does not  
28 explain why competitive injury—even if sufficient to confer Article III standing—  
constitutes irreparable harm under the *Nken* factors. *See id.* (citing standing cases). To  
the extent the RNC relies on the same institutional harms as Legislative Intervenors,  
they provide no support for the proposition that political parties can assert the State’s  
sovereign interests.



1 harms, and for good reason: no DPOC requirement had been implemented by the time  
 2 this Court issued the summary judgment order, *see infra* at 9, no such harm could have  
 3 occurred *because of* the injunction.

4 **III. The Requested Stay Would Upend the Status Quo, Invite**  
 5 **Unnecessary Chaos, and Injure Arizona Voters Irreparably.**

6 The remaining *Nken* factors ask whether issuance of the stay will injure other  
 7 interested parties and where the public interest lies. *See Nken*, 556 U.S. at 426. These  
 8 factors merge where the government opposes the stay. *Id.* at 435–36; *Leiva-Perez v.*  
 9 *Holder*, 640 F.3d 962, 970 (9th Cir. 2011). Here, the public interest is best served by  
 10 maintaining the status quo while the appeal is pending: If the United States cannot  
 11 obtain relief for affected Arizona citizens because of the stay, its enforcement interests  
 12 will be prejudiced, along with the interests of Arizona voters whose right to vote will  
 13 be wrongfully denied. *See* 52 U.S.C. § 20510 (charging the Attorney General with  
 14 enforcing the NVRA); *United States v. New York*, 700 F. Supp. 2d 186, 197 (N.D.N.Y.  
 15 2010) (“[T]he NVRA provides broad authority to the United States in ensuring  
 16 compliance with the provisions of the statute.”).<sup>7</sup>

17 Moreover, granting the stay request would introduce chaos to election  
 18 administration and confuse voters just weeks before early voting by mail begins in  
 19 Arizona. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). As Arizona Secretary of  
 20 State Adrian Fontes’s stay opposition makes plain, 2024 electoral processes and  
 21 procedures are well under way as a result of the parties’ and the Court’s diligent efforts  
 22 to resolve this litigation in advance of 2024 election-related deadlines. *See* Secretary  
 23 Fontes Resp. to Stay Mot. at 2-4, ECF No. 732; Secretary Fontes Decl. ¶¶ 7-16, ECF  
 24 No. 732-1. Arizona’s current Elections Procedures Manual (“EPM”)—approved by

25 \_\_\_\_\_  
 26 <sup>7</sup> In fact, the public interest is served by the enforcement of federal statutes that protect  
 27 constitutional rights, including voting rights. *United States v. Raines*, 362 U.S. 17, 27  
 28 (1960) (reversing denial of preliminary injunction in voting rights case and holding that  
 “there is the highest public interest in the due observance of all the constitutional  
 guarantees, including those that bear the most directly on private rights”).

1 Secretary Fontes, Governor Hobbs, and Arizona Attorney General Kris Mayes on  
2 December 30, 2023—has the force of law and incorporates this Court’s rulings in this  
3 case. Secretary Fontes Decl. ¶ 17; *see also* 2023 EPM, ECF No. 699. This means that  
4 the EPM provides no procedure for disenfranchising tens of thousands of Arizona’s  
5 already-registered federal-only voters who have not provided DPOC and who seek to  
6 vote by mail or vote in presidential elections. Election officials across Arizona have  
7 already implemented, or are in the process of implementing, procedures reliant on the  
8 parameters set forth in the EPM, including sending mail ballots to federal-only voters  
9 and providing federal-only ballots to federal-only voters. *See* Secretary Fontes Decl.  
10 ¶ 17; Am. Bench Trial Order at 8, ECF No. 709 (“The EPM . . . ‘ensure[s] election  
11 practices are consistent and efficient throughout Arizona” (citation omitted)).  
12 Arizona’s congressional primary will occur July 30, 2024, and early voting by mail  
13 begins in just over one month, on July 3. Secretary Fontes Decl. ¶¶ 9, 12. The DPOC  
14 cure deadline is July 25. *Id.* ¶ 10. Granting a partial stay would thus disrupt ongoing  
15 electoral processes at a time when consistency is most important.

16 The stay request makes no mention of the EPM, nor does it even suggest an  
17 orderly way forward for election officials who would be suddenly tasked with  
18 implementing provisions of H.B. 2492 statewide for the very first time. *See* Am.  
19 Bench Trial Order at 54 (noting that “the Voting Laws have not yet been  
20 implemented”); *id.* at 9 (noting that as of the November 2023 trial, the Voter  
21 Registration Advisory Committee had not approved any papers to guide county  
22 recorders on implementation of Voting Laws). Unable to rely on prior practice, the  
23 EPM, or any other uniform guidance, state and county officials would be unmoored  
24 and yet subject to significant time constraints. If the Court grants the stay request,  
25 Arizona’s election officials will be forced to request DPOC from Arizona’s tens of  
26 thousands of federal-only voters in the midst of the election cycle, process them, and  
27 deny voters’ right to vote by mail or in the upcoming presidential election if their  
28

1 DPOC is not received in time. To these concrete and imminent logistical hurdles,  
2 Intervenor-Defendants have no answer.

3 The Court’s Order, on the other hand, permits election officials to continue  
4 processing voter registration applications and mail ballots as they have been for years.  
5 *See Doe #1*, 957 F.3d at 1068 (denying stay pending appeal and holding that “the  
6 public interest lies with maintaining the *status quo*” where the current “stable  
7 immigration system” has been in use for decades). Under these circumstances,  
8 granting the stay request would likely create unnecessary chaos and voter confusion.

9 Finally, absent injunctive relief, the injury to federal-only voters in Arizona—  
10 the denial of the right to vote in presidential elections or by mail—would be great,  
11 especially absent a uniform procedure for implementing the enjoined portions of H.B.  
12 2492. Federal-only voters who had expected to receive their mail ballots, including  
13 those who had been voting by mail for years, would suddenly find out that they may  
14 not vote by mail; they would also be denied their right to vote in the upcoming  
15 presidential election. “Denial of the right to participate in an election is by its nature  
16 an irreparable injury.” *United States v. Berks County*, 277 F. Supp. 2d 570, 578 (E.D.  
17 Pa. 2003); *see Harris v. Graddick*, 593 F. Supp. 128, 135 (M.D. Ala. 1984) (explaining  
18 that “any illegal impediment to the right to vote, as guaranteed by the U.S. Constitution  
19 or statute, would by its nature be an irreparable injury”); *Georgia Coal. for People’s*  
20 *Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) (finding that the  
21 administrative and financial burdens on defendant were minimal, especially weighed  
22 against “the potential loss of [the] right to vote”).

### 23 CONCLUSION

24 For these reasons, the United States requests that the Court deny Intervenor-  
25 Defendants’ motion for a partial stay pending appeal.

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Date: May 31, 2024  
  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

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19 **UNITED STATES DISTRICT COURT**  
 20 **DISTRICT OF ARIZONA**

21 Mi Familia Vota, et al.,  
 22 Plaintiffs,

23 v.

24 Adrian Fontes, et al.,  
 25 Defendants.

Case No: 2:22-cv-00509-SRB (Lead)

**INTERVENOR-DEFENDANTS’  
 NOTICE OF WAIVER OF  
 REPLY**

**AND CONSOLIDATED CASES**

26

27

1 As indicated in their Motion for a Partial Stay of the Injunction Pending Appeal  
2 (Doc. 730 at 17), Intervenor-Defendants Warren Petersen, in his official capacity as the  
3 President of the Arizona State Senate, Ben Toma, in his official capacity as the Speaker of  
4 the Arizona House of Representatives, and the Republican National Committee  
5 (collectively, the “Movants”) waive their right to file a reply in support of the Motion, in  
6 the interest of facilitating an expeditious ruling.

7 The Movants strongly disagree that the Supreme Court’s admonition against last-  
8 minute judicially imposed alterations to a state’s election procedures, *see Purcell v.*  
9 *Gonzalez*, 549 U.S. 1 (2006), applies to this constellation of facts. If and to the extent that  
10 the Court’s injunction was erroneously issued, *Purcell* is no barrier to appellate  
11 intervention. *See Merrill v. Milligan*, 142 S. Ct. 879, 882 (2022) (Mem.) (Kavanaugh, J.,  
12 concurring) (“Correcting an erroneous lower court injunction of a state election law does  
13 not itself constitute a *Purcell* problem. Otherwise, appellate courts could never correct a  
14 late-breaking lower court injunction of a state election law. That would be absurd and is  
15 not the law.”). And the state and county Defendants cannot contrive a putative *Purcell*  
16 problem by willfully refusing for more than a year to implement duly enacted state laws,  
17 despite the absence of any appealable court order enjoining their enforcement.

18 That said, the Movants do believe that an approaching series of election-related  
19 deadlines—to include the close of voter registration for the July 30, 2024 primary election  
20 on July 1, *see* A.R.S. § 16-120(A)—underscores the need for a prompt appellate resolution  
21 of the consequential legal questions that the Motion presents.

22 For these reasons, the Movants respectfully request a ruling on the Motion by June  
23 14, 2024.

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RESPECTFULLY SUBMITTED this 6th day of June, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of June, 2024, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

*/s/ Thomas Basile* \_\_\_\_\_

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Katie Hobbs, et al.,

Defendants.

No. CV-22-00509-PHX-SRB

**ORDER**

Before the Court is the Republican National Committee (“RNC”), Arizona State Senate President Warren Petersen, and Arizona House of Representatives Speaker Ben Toma’s (collectively, “Intervenor Defendants”) Motion for Partial Stay of Injunction Pending Appeal (“Motion for Stay”). (Doc. 730, (“Mot. for Stay”).) Also before the Court is the Arizona Republican Party’s (“AZ GOP”) Motion to Intervene. (Doc. 721, (“Mot. to Intervene”).) For the following reasons, the Court denies both motions.

**I. BACKGROUND**

The Court held a bench trial on the legality of two election-related bills passed in 2022, H.B. 2492 and H.B. 2243 (“Voting Laws”), and issued its findings of fact and conclusions of law on February 29, 2024. (Doc. 709, 02/29/2024 Amended Order.) On May 2, 2024, the Court issued its final judgment (“Final Judgment”). (Doc. 720, Final Judgment.) That same day, the Arizona Republican Party (“AZ GOP”) filed the Motion to Intervene. (See Mot. to Intervene.) On May 8, 2024, Intervenor Defendants filed a Notice of Appeal (“Notice of Appeal”). (Doc. 723, Notice of Appeal.) On May 17, 2024,

1 the Intervenor Defendants filed the Motion for Stay. (*See* Mot. for Stay.)

2 Both motions have been fully briefed. (*See* Doc. 735, Non-U.S. Pls.’ Resp. in  
3 Opp’n to Mot. to Intervene (“Pls.’ Resp. to Intervention”); Doc. 736, State of Ariz. Resp.  
4 to Mot. to Intervene; Doc. 745, (“Intervention Reply”); Doc. 732, Sec’y of State’s Resp.  
5 to Mot. for Stay (“Sec’y Opp’n to Stay”); Doc. 733, State of Ariz. Resp. in Opp’n to Mot.  
6 for Stay (“State’s Opp’n to Stay”); Doc. 737, United States Resp. in Opp’n to Mot. for  
7 Stay (“U.S. Opp’n to Stay”); Doc. 738, Non-U.S. Pls.’ Resp. in Opp’n to Mot. for Stay  
8 (“Pls.’ Opp’n to Stay”); Doc. 744, (“Waiver of Reply”).)

## 9 **II. LEGAL STANDARDS & ANALYSIS**

### 10 **A. Motion for Partial Stay**

11 In its September 14, 2023, Order on the parties’ motions for summary judgment,  
12 the Court ruled that Section 6 of the National Voter Registration Act, (“NVRA”), 52  
13 U.S.C. § 20505, preempted H.B. 2492’s mandate that voters who register with the  
14 “Federal Form” must provide documentary proof of citizenship (“DPOC”) to vote in  
15 presidential elections or to vote by mail. (Doc. 534, 09/14/2023 Order at 9–15); *see*  
16 A.R.S. § 16-127(A). The Court also held unenforceable H.B. 2492’s mandate that “State  
17 Forms” submitted without DPOC be rejected because the LULAC Consent Decree  
18 requires county recorders to register these voters for federal elections. (09/14/2023 Order  
19 at 21–22, 34); *see* A.R.S. § 16-121.01(C). In its final judgment, the Court enjoined the  
20 State of Arizona from implementing these provisions (collectively, the “DPOC  
21 Provisions”). (Final Judgment at 2.) Intervenor Defendants move for a partial stay of  
22 these portions of the Court’s final judgment. (*See* Mot. for Stay.)

23 Whether to grant or deny a request for a stay is “‘an exercise of judicial  
24 discretion,’ and ‘the propriety of its issue is dependent upon the circumstances of the  
25 particular case.’” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted) (quoting  
26 *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672–73 (1926)). The burden of showing  
27 the circumstances that justify a stay lie with the proponent of the stay. *Id.* The Court  
28 considers the following factors when considering whether to grant a stay: “(1) whether

1 the stay applicant has made a strong showing that he is likely to succeed on the merits;  
 2 (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of  
 3 the stay will substantially injure the other parties interested in the proceeding; and (4)  
 4 where the public interest lies.” *Id.* The first two factors “are the most critical.” *Id.*

5 Under the Ninth Circuit’s “sliding scale” approach, the *Nken* factors are balanced  
 6 such that a stronger showing of one factor may offset a weaker showing of another factor.  
 7 *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020). The Ninth Circuit “recognizes  
 8 that the issues of likelihood of success and irreparable injury represent two points on a  
 9 sliding scale in which the required degree of irreparable harm increases as the probability  
 10 of success decreases.” *Humane Soc’y of U.S. v. Gutierrez*, 523 F.3d 990, 991 (9th Cir.  
 11 2008). An applicant need show only “‘serious legal questions’ going to the merits” when  
 12 there is a “high degree of irreparable injury.” *Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th  
 13 Cir. 2023) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1435–36 (9th Cir. 1983)).

#### 14 **1. Irreparable Injury**

15 The applicant seeking a stay must show that “the applicant will be irreparably  
 16 injured absent a stay.” *Doe #1 v. Trump*, 957 F.3d 1050, 1060 (9th Cir. 2020) (quoting  
 17 *Nken*, 556 U.S. at 426). “[A] stay may not issue” if the applicant fails to show irreparable  
 18 harm. *Id.* (citation omitted). But “[a] stay is not a matter of right, even if irreparable  
 19 injury might otherwise result.” *Nken*, 556 U.S. at 434 (quoting *Virginian Ry. Co.*, 272  
 20 U.S. at 672).

21 President Petersen and Speaker Toma (collectively, the “Legislators”)<sup>1</sup> first argue  
 22 that enjoining the implementation of the DPOC Provisions irreparably harms the State of  
 23 Arizona’s sovereign interests and that they may assert those interests. (Mot. for Stay at  
 24 11–13.) The Court disagrees. Under Arizona law, the Attorney General “shall”  
 25 “[r]epresent [Arizona] in any action in a federal court.” A.R.S. § 41-193(A)(3). The  
 26 Legislators cite A.R.S. § 12-1841, but that statute only entitles the Legislators to be *heard*  
 27 in any proceeding challenging the constitutionality of a state law. (*See* Mot. for Stay at

28 <sup>1</sup> The Court refers to the Legislators and RNC separately for purposes of analyzing whether they have shown irreparable injury.

1 13.) The Legislators’ citation to *Berger v. North Carolina State Conference of the*  
2 *NAACP*, is unpersuasive, as the Supreme Court in that case cited North Carolina law that  
3 expressly empowered legislative leaders to act on behalf of North Carolina “as agents of  
4 the State” in certain lawsuits. 597 U.S. 179, 193 (2022) (citing N.C. Gen. Stat. §§ 1-  
5 72.2(b), 120-32.6(b)). And as Non-U.S. Plaintiffs point out, *Berger* addressed only  
6 permissive intervention under Rule 24. *Id.*; (Pls.’ Opp’n to Stay at 12.)

7 The Legislators’ citation to the Arizona Constitution, which authorizes Arizona  
8 “representatives” to pursue “any available legal remedy” to protect against federal  
9 overreach, fares no better because as discussed, the Arizona legislature’s “available legal  
10 remedy” is the right to be heard. (*See* Mot. for Stay at 13 (citing Ariz. Const. art. II, § 3));  
11 Ariz. Const. art. IV § 18 (“The legislature shall direct by law in what manner and in what  
12 courts suits may be brought against the state.”); A.R.S. 12-1841. By contrast, the  
13 Attorney General “acts as the ‘chief legal officer’ of the State” and is vested with the  
14 power to “go to the courts for protection of the rights of the people.” *State ex rel.*  
15 *Morrison v. Thomas*, 297 P.2d 624, 627–28 (Ariz. 1956) (citing Ariz. Const. art. 5 § 9  
16 (“The powers and duties of . . . attorney general . . . shall be as prescribed by law.”)). The  
17 Court agrees with the State that the Attorney General is responsible for representing the  
18 State of Arizona in federal court. (State Resp. to Stay at 3 (citing *Arizonans for Off. Eng.*  
19 *v. Arizona*, 520 U.S. 43, 51 n.4 (1997))).

20 The Legislators next argue that the Court’s injunction irreparably harms the  
21 Arizona legislature as an institution because the injunction “disrupt[s]” its legislative  
22 powers. (Mot. for Stay at 14–15 (citation omitted).) Rehashing their arguments regarding  
23 likelihood of success on the merits, discussed below, the Legislators cite the United  
24 States Constitution and Arizona Constitution for support that the Arizona legislature, not  
25 Congress, is vested with authority to regulate the manner of its elections. (*Id.* at 14.) But  
26 the Court agrees with the United States that “whether H.B. 2492 unlawfully conflicts  
27 with federal law ‘is at the core of this dispute, to be resolved at the merits stage of this  
28 case.’” (U.S. Opp’n to Stay at 7 (quoting *Doe #1*, 957 F.3d at 1059)); *c.f.* *Doe #1*, 957

1 F.3d at 1059 (explaining that if “the irreparable harm standard is satisfied by the fact of  
 2 executive action alone, no act of the executive branch asserted to be inconsistent with a  
 3 legislative enactment could be the subject of a preliminary injunction”). Enjoining the  
 4 State’s implementation of the DPOC Provisions is not “irreparable” because the  
 5 Legislators “may yet pursue and vindicate [their] interests in the full course of this  
 6 litigation.”<sup>2</sup> *Doe #1*, 957 F.3d at 1059 (quoting *Washington v. Trump*, 847 F.3d 1151,  
 7 1168 (9th Cir. 2017) (per curium), *cert. denied sub nom. Golden v. Washington*, 583 U.S.  
 8 974 (2017)). The Legislators have not established that the Court’s injunction is likely to  
 9 result in irreparable harm to the Arizona legislature.

10 The RNC asserts that it has “competitive standing” because the Court’s injunction  
 11 unfavorably “distorts the competitive environment underpinning the 2024 election.”  
 12 (Mot. for Stay at 15.) As the United States points out, however, the RNC does not explain  
 13 how competitive injury for purposes of Article III standing per se constitutes irreparable  
 14 injury for a motion to stay. (U.S. Opp’n to Stay at 7 n.6; *see also* Pls.’ Opp’n to Stay at  
 15 14.) Intervenor Defendants have not demonstrated that enjoining the implementation of  
 16 the DPOC Provisions is likely to result in irreparable harm. Though the Court’s analysis  
 17 could stop here, it turns to the remaining *Nken* factors. *See Doe #1*, 957 F.3d at 1060.

## 18 2. Likelihood of Success on the Merits

### 19 i. DPOC Requirement for Presidential Elections

20 The Court previously ruled that the NVRA plainly reflects an intent to regulate all  
 21 elections for “federal office,” which includes “President or Vice President.” (09/14/2023  
 22 Order at 10 (citing 52 U.S.C. §§ 20507(a), 30101(3)).) And the Court cited a line of  
 23 precedent recognizing Congress’s authority to regulate presidential elections. (*See id.*)  
 24 Intervenor Defendants contend that “no court” has addressed whether Congress may  
 25 regulate the “manner” of presidential elections. (Mot. for Stay at 6.) As this Court noted,  
 26 however, the Supreme Court has specifically considered the scope of Congress’s power

27 <sup>2</sup> The Legislators’ citation to *Priorities USA v. Nessel*, is unpersuasive, as the Sixth  
 28 Circuit analyzed only whether the Michigan legislature suffered an injury-in-fact for  
 purposes of standing, not whether this injury was *irreparable*. 978 F.3d 976, 982 (6th Cir.  
 2020); (*see* Mot. for Stay at 15.)

1 regarding the appointment of presidential electors:

2 The only point of the constitutional objection necessary to be considered is  
3 that the power of appointment of presidential electors and the manner of  
4 their appointment are expressly committed by section 1, art. 2, of the  
5 Constitution to the states, and that the congressional authority is thereby  
6 limited to determining ‘the Time of chusing the Electors, and the Day on  
7 which they shall give their Votes; which Day shall be the same throughout  
8 the United States. *So narrow a view of the powers of Congress in respect of  
9 the matter is without warrant.*

7 (09/24/2023 Order at 10 (quoting *Burroughs v. United States*, 290 U.S. 534, 544 (1934))  
8 (emphasis added).) Though Intervenor Defendants correctly note that in *Buckley v. Valeo*,  
9 the Supreme Court upheld campaign finance laws under the General Welfare Clause, the  
10 Court, citing *Burroughs*, twice acknowledged Congress’s “broad congressional power to  
11 legislate in connection with the elections of the President and Vice President.” (Mot. for  
12 Stay at 5–6); 424 U.S. 1, 13 n.16 (1976); *id.* at 90 (“Congress has power to regulate  
13 Presidential elections and primaries.”); *see also Voting Rights Coal. V. Wilson*, 60 F.3d  
14 1411, 1414 (9th Cir. 1995). The United States also persuasively argues that the Electors  
15 Clause does not *foreclose* Congress from regulating how federal elections are conducted,  
16 as the Arizona legislature has exercised its power “to define the method” of choosing the  
17 State’s presidential electors, which is through the popular vote. (U.S. Opp’n to Stay at 4–  
18 5 (quoting *McPherson v. Blacker*, 146 U.S. 1, 27 (1892)).)

19 Intervenor Defendants have not shown a strong likelihood of success on the merits  
20 regarding Congress’s authority to presidential elections through the NVRA.<sup>3</sup> *Doe #1*, 957  
21 F.3d at 1062.

## 22 ii. DPOC Requirement for Voting by Mail

23 Intervenor Defendants next contend that the NVRA does not preempt H.B. 2492’s  
24 restrictions on mail-in voting because the NVRA does not regulate the “mechanisms for

25 \_\_\_\_\_  
26 <sup>3</sup> Plaintiffs also argue that, notwithstanding the Electors Clause, Congress alternatively  
27 had power to enact the NVRA under the Fourteenth and Fifteenth Amendments, which  
28 Intervenor Defendants do not discuss in the Motion. (Pls.’ Opp’n to Stay at 5–7; U.S. Opp’n to Stay  
at 5 n.3; *see* Mot. for Stay; Waiver of Reply; *see also* 09/14/2023 Order at 12 n.7  
(declining to reach non-U.S. Plaintiffs’ Fourteenth and Fifteenth Amendment  
arguments).) Because the Court finds Intervenor Defendants have not shown a likelihood  
of success on the merits, the Court need not reach Plaintiffs’ alternative argument.



1 mail voting.” (Mot. for Stay at 7–9.) Setting aside Intervenor Defendants’ arguments that  
2 the NVRA does not directly preempt the DPOC requirement for voting by mail,<sup>4</sup> they  
3 make no effort to address the Court’s ruling that obstacle preemption bars the State of  
4 Arizona’s enforcement of the statute. (09/14/2023 Order at 14–15; *see generally* Mot. for  
5 Stay.) The Court specifically held that “H.B. 2492’s limitation on voting by mail  
6 frustrates the purpose of the NVRA, as it impedes Arizona’s ‘promotion of the right’ to  
7 vote,” and that this presented an obstacle to the NVRA’s findings and purpose.  
8 (09/14/2023 Order at 14–15 (first quoting 52 U.S.C. 20501(a), then citing *Crosby v. Nat’l*  
9 *Foreign Trade Council*, 530 U.S. 363, 373 (2000)); *see also* Pls.’ Opp’n to Stay at 8.)  
10 Intervenor Defendants have not shown that they are likely to succeed on appeal regarding  
11 H.B. 2492’s DPOC requirement for voting by mail.

12 **iii. LULAC Consent Decree**

13 H.B. 2492 requires county recorders to reject State Forms submitted without  
14 DPOC. *See* A.R.S. § 16-121.01(C). The LULAC Consent Decree, entered into by the  
15 Arizona Secretary of State, requires county recorders “to accept State Form applications  
16 submitted without DPOC.” (Doc. 388-4, Ex. 12, LULAC Consent Decree at 8.) The  
17 Court ruled that the LULAC Consent Decree “resolved” Plaintiffs’ claims that H.B. 2492  
18 violated section 8(a) of the NVRA. (09/14/2023 Order at 21.) Intervenor Defendants  
19 argue that the Ninth Circuit is unlikely to hold that the LULAC Consent Decree  
20 permanently prevents the Arizona legislature from enacting legislation like H.B. 2492.  
21 (Mot. for Stay at 9–10.)

22 Relevant to this case, in 2004 Arizona voters approved Proposition 200, which  
23 required voters to submit DPOC to be registered to vote. (*See* 02/29/2024 Amended  
24 Order at 3–4.) The LULAC Consent Decree was entered into by the Arizona Secretary of  
25 State after several plaintiffs sued the Secretary of State for continuing to reject State

26 <sup>4</sup> Intervenor Defendants contend that “the NVRA is silent about what information States  
27 can require of residents who wish to vote by mail” and that voting by mail is a privilege  
28 not a right. (Mot. for Stay at 7–9.) The United States counters that “H.B. 2492’S DPOC  
requirement operates as a registration requirement that violates the NVRA” and that the  
DPOC requirement impermissibly creates a “two-tier registration system” for federal  
elections. (U.S. Opp’ to Stay at 5–6.)



1 Forms submitted without DPOC following the Supreme Court’s decision in *Inter Tribal*  
 2 *Council of Arizona, Inc.*, which held that the NVRA required Arizona to register Federal  
 3 Form users without DPOC as Federal-Only Voters. 570 U.S. 1, 20 (2013) (confirming  
 4 that Arizona’s State Form “may require information the Federal Form does not”); (*see*  
 5 LULAC Consent Decree at 1–2; Mot. for Stay at 10 (“Neither the Legislature nor even  
 6 the State of Arizona was a party to the LULAC Consent Decree.”).) The LULAC  
 7 Consent Decree required the Secretary of State to register State Form users without  
 8 DPOC for federal elections. (*See* LULAC Consent Decree at 8–12.) The Court finds that  
 9 Intervenor Defendants have raised at least a serious legal question<sup>5</sup> as to whether the  
 10 LULAC Consent Decree permanently precludes the implementation of contradictory  
 11 legislation like H.B. 2492. (*See* Mot. for Stay at 10–11); *League of Residential*  
 12 *Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007).

### 13 3. Injury to Others and the Public Interest

14 The final two factors, a stay’s impact on both the opposing parties and the interests  
 15 of the public, “merge” when the government opposes a stay. *Leiva-Perez v. Holder*, 640  
 16 F.3d 962, 970 (9th Cir. 2011) (citing *Nken*, 556 U.S. at 435–36).

17 Intervenor Defendants are correct that the State of Arizona has “an interest in  
 18 protecting the integrity, fairness, and efficiency of their ballots and election processes.”  
 19 (Mot. at 16 (quoting *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 954 (9th Cir. 2020)).) But  
 20 countervailing this interest is the fact that Arizona’s 2024 presidential primary election  
 21 procedures are “well under way.” (Sec’y Opp’n to Stay at 3.) According to Secretary of  
 22 State Adrian Fontes, election officials sent 90-day election notices to voters on May 1,  
 23 2024, and the deadline to print sample ballots was on June 20, 2024. (*Id.*); *see* A.R.S.  
 24 §§ 16-461, -544(D). Early voting runs from July 3, 2024, to July 30, 2024, and voters

25 <sup>5</sup> Citing *Manrique v. Kolc*, Intervenor Defendants argue that they may raise “serious legal  
 26 questions” going to the merits to support a stay. (Mot. for Stay at 3 (citing 65 F.4th at  
 27 1041).) A serious legal question going to the merits is sufficient where an applicant has  
 28 shown a “high degree” of irreparable harm, and as discussed *supra* Part II(A)(1),  
 Intervenor Defendants made no such showing. 65 F.4th at 1041; *see Humane Society*, 523  
 F.3d at 991. And notwithstanding any “serious legal questions” these issues present, as  
 discussed below, the balance of hardships and the public interest weigh heavily against  
 entering a stay.

1 have until only July 25, 2024, to “cure” issues with DPOC. (Sec’y Opp’n to Stay at 3);  
2 *see* A.R.S. § 16-542. Entering a stay would send election officials “scrambling to  
3 implement and to administer a new procedure [for registering voters without DPOC] at  
4 the eleventh hour” of the presidential primary and with no guidance on H.B. 2492 going  
5 forward. *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020); (Pls.’  
6 Opp’n to Stay at 15.) It would undermine the State’s “interest in orderly administration”  
7 of its elections. (U.S. Opp’n to Stay at 9 (explaining how the 2023 EPM lacks procedures  
8 for election officials to implement enjoined provisions of H.B. 2492); State’s Opp’n to  
9 Stay at 1 (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008)).)

10 The Court also notes that the timeliness of Intervenor Defendants’ Motion weighs  
11 against entering a stay. The Court ruled on the legality of the DPOC Provisions at issue in  
12 this Motion on September 14, 2023, on summary judgment. (*See* 09/14/2023 Order.) The  
13 Court subsequently informed the parties to this case that the Court would “not consider  
14 either evidence or further legal argument” regarding the DPOC Provisions at trial. (Doc.  
15 600, 10/24/2023 Pretrial Conf. Min. Entry at 1.) The Court issued its Findings of Fact and  
16 Conclusions of Law on February 29, 2024, settling all remaining claims. (*See* 02/29/2024  
17 Amended Order.) The parties waited until April 30, 2024, to file a proposed judgment in  
18 this case. (*See* Doc. 713, 03/22/2024 Order (granting parties’ joint motion for entry of  
19 judgment and ordering parties to jointly lodge a proposed form of judgment); Doc. 718,  
20 04/23/2024 Order (ordering counsel to file a status report regarding the proposed form of  
21 judgment within 7 days of the order); Doc. 719, Proposed Judgment; *see also* Final  
22 Judgment.) And Intervenor Defendants still did not file this Motion until May 17, 2024,  
23 acknowledging the rapidly “approaching series of election-related deadlines.” (Mot. for  
24 Stay at 1 (requesting “expedited consideration”); Waiver of Reply at 1.) Intervenor  
25 Defendants’ delay in filing the Motion weighs against granting a stay that would upend  
26 the administration of Arizona’s now imminent presidential primary. (U.S. Opp’n to Stay  
27 at 8; Pls.’ Opp’n to Stay at 14 (both citing *Purcell v. Gonzales*, 549 U.S. 1 (2006), to  
28 argue that the Court should take care not to disrupt the State of Arizona’s administration

1 of the presidential primary so close to the election).<sup>6</sup>

2 Relatedly, as the United States points out, federal only voters in Arizona have  
 3 been voting for president and by mail for years. (U.S. Opp’n to Stay at 10 (citing *Doe #1*,  
 4 957 F.3d at 1068).) Since 2013, election officials have been required to register  
 5 individuals who register to vote with the Federal Form and without DPOC for all federal  
 6 elections. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 20 (2013). And  
 7 since the LULAC Consent Decree in 2018, election officials have likewise registered  
 8 voters who used the State Form without DPOC for all federal elections. (*See* 02/29/2024  
 9 Amended Order at 4–5.) The Court agrees that entering a stay will sow confusion for  
 10 election officials and voters on the eve of election, and likely disenfranchise voters who  
 11 are currently registered without DPOC in the process. (*See* Sec’y Opp’n to Stay at 4; U.S.  
 12 Opp’n to Stay at 8–9.) Notwithstanding the Arizona legislature’s interests in the State’s  
 13 election processes, issuing a stay would very likely irreparably harm thousands of  
 14 Federal-Only Voters in Arizona who find themselves unable to vote by mail or for  
 15 president. (U.S. Opp’n to Stay at 10); *see Latta v. Otter*, 771 F.3d 496, 500 (9th Cir.  
 16 2014) (per curiam) (weighing state interest in continuance of a stay against “countless  
 17 gay and lesbian Idahoans [who] would face irreparable injury were we to permit the stay  
 18 to continue in effect”).<sup>7</sup> The balance of equities and interests of the public weigh heavily  
 19 against a stay.

20 <sup>6</sup> The Court finds unpersuasive Intervenor Defendants’ argument that *Purcell* is  
 21 inapplicable to this case. (Waiver of Reply at 1.) Specifically, Intervenor Defendants  
 22 contend that *Purcell*’s “admonition against last-minute judicially imposed alterations to a  
 23 state’s election procedures” is inapplicable in this case “[i]f and to the extent that the  
 24 Court’s injunction was erroneously issued.” (*Id.* at 2 (citing *Merrill v. Milligan*, 142 S.  
 25 Ct. 879, 882 (2022) (Mem.) (Kavanaugh, J., concurring)).) The flaw in this argument is  
 26 that it is *Intervenor Defendants* who seek last-minute alterations to the state’s election  
 27 procedures, as the State of Arizona has known since the Court’s summary judgment  
 28 ruling in September 2023 how it may or may not implement the DPOC Provisions. (*See*  
 09/14/2023 Order at 33–34); *Ariz. Democratic Party*, 976 F.3d at 1086 (collecting cases  
 staying lower court orders that altered election laws within 2 months of an election).

<sup>7</sup> The Ninth Circuit in *Latta* acknowledged that “there is some authority suggesting that  
 “a state suffers irreparable injury whenever an enactment of its people or their  
 representatives is enjoined,” but it noted that no Supreme Court opinion “adopts this  
 view.” 771 F.3d at 500, 500 n.1 (quoting *Coal. For Econ. Equity v. Wilson*, 122 F.3d 718,  
 719 (9th Cir. 1997)). Even so, as the Court described above, Arizona law specifically  
 empowers the Attorney General, not the Arizona legislature, to assert the *State*’s interests  
 in court.

1 After considering the *Nken* factors, the Court denies Intervenor Defendants’  
2 Motion for a Partial Stay of Injunction Pending Appeal.

3 **B. Motion to Intervene**

4 The AZ GOP moves to intervene “solely for the limited purpose of briefing the  
5 issues on appeal.” (Mot. to Intervene at 4.) Intervenor Defendants filed the Notice of  
6 Appeal on May 8, 2024, which became effective after the Court denied certain non-U.S.  
7 Plaintiffs’ Motion to Vacate on June 25, 2024. (*See* Notice of Appeal; Doc. 750,  
8 06/25/2024 Order); Fed. R. App. P. 4(a)(4)(B) (suspending effectiveness of notice of  
9 appeal until the court disposes of the last pending motion listed in Rule 4(a)(4)(A)). The  
10 Notice of Appeal divested the Court of jurisdiction to rule on AZ GOP’s Motion to  
11 Intervene. *See Stiller v. Costco Wholesale Corp.*, No. 3:09-cv-2473-GPC-BGS, 2015 WL  
12 1612001, at \*1–2 (S.D. Cal. Apr. 9, 2015) (denying motion to intervene for lack of  
13 jurisdiction where notice of appeal was filed after the motion); *United Nat’l Ins. Co.*, 242  
14 F.3d at 1109. The parties agree. (Resp. to Intervention at 4–5; Intervention Reply at 3.)  
15 The Court denies the Motion to Intervene. Should AZ GOP desire to intervene, it should  
16 file a motion with the Ninth Circuit. *See East Bay Sanctuary Covenant v. Biden*, 102  
17 F.4th 996 (9th Cir. 2024) (considering motion to intervene in case on appeal).

18 **III. CONCLUSION**


19 The Court denies Intervenor Defendants’ Motion for Partial Stay of Injunction  
20 Pending Appeal. Intervenor Defendants have not shown a likelihood of irreparable injury  
21 or made a showing that they are likely to succeed on the merits of the claims regarding  
22 the DPOC Provisions. In addition, the balance of equities and public interest weighs  
23 heavily against entering a stay because a stay would disrupt election officials’  
24 administration of the presidential primary election. The Court denies the Arizona  
25 Republican Party’s Motion to Intervene because the Court lacks jurisdiction to decide the  
26 Motion.

27 **IT IS ORDERED** denying Defendants Senate President Warren Petersen, House  
28 of Representatives Speaker Ben Toma, and the Republican National Committee’s Motion

1 for a Partial Stay of Injunction Pending Appeal (Doc. 730).

2 **IT IS FURTHER ORDERED** denying the Arizona Republican Party's Motion to  
3 Intervene (Doc. 721).

4 Dated this 28th day of June, 2024.

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10 Susan R. Bolton  
11 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

League of United Latin American Citizens  
of Arizona; Arizona Students’ Association,

No. CV17-4102-PHX DGC

Plaintiffs,

**CONSENT DECREE**

v.

Michele Reagan, in her official capacity as  
Secretary of State of Arizona; Adrian  
Fontes, in his official capacity as Maricopa  
County Recorder,

Defendants.

Before the Court is the Joint Motion Requesting Entry of Consent Decree, filed by Plaintiff League of United Latin American Citizens of Arizona (“LULAC-Arizona”), Plaintiff Arizona Students’ Association (“ASA”), Defendant Michele Reagan, in her official capacity as Secretary of State of Arizona (the “Secretary”), and Defendant Adrian Fontes, in his official capacity as Maricopa County Recorder (“Recorder Fontes”). Doc. 36. All Plaintiffs and Defendants shall hereafter be referred to as the “Parties.”

On November 7, 2017, LULAC-Arizona and ASA initiated this action against the Secretary and Recorder Fontes. The complaint alleged that Arizona’s dual voter registration policies violate the First and Fourteenth Amendments to the United States Constitution. Specifically, LULAC-Arizona and ASA alleged that Arizona treats voter

1 registration applicants differently depending on whether they use Arizona's state  
2 registration form (the "State Form") or the national registration form (the "Federal  
3 Form"). At the time the lawsuit was filed, fourteen of Arizona's County Recorders  
4 rejected State Form applications submitted without valid documentary proof of  
5 citizenship ("DPOC"). Federal law required the County Recorders to accept Federal  
6 Form applications, even when they are submitted without DPOC. The Motor Vehicles  
7 Department ("MVD") Proxy Table was then electronically checked through an  
8 automated process to determine whether the Federal Form applicants had a valid driver's  
9 license, which indicates that DPOC is supposed to be on file with the MVD. Those with  
10 DPOC on file are eligible to vote in both state and federal elections ("Full Ballot Voter").  
11 Those who did not have DPOC on file with the MVD were only able to vote in federal  
12 elections ("Fed Only Voter").

13 As a result, whether one who does not present valid DPOC is registered to vote in  
14 federal elections is entirely dependent on which form the applicant uses to register.  
15 Those using the Federal Form but not providing DPOC, are registered to vote in federal  
16 elections; and, depending on the results of the Secretary's automated review of the MVD  
17 database, may be registered to vote in state elections as well. But those using the State  
18 Form, and not providing valid DPOC, are not registered to vote in any elections because  
19 the application is rejected in its entirety. LULAC-Arizona and ASA alleged that this dual  
20 voter registration process violated the First and Fourteenth Amendments.

21 The Secretary denies that Arizona's voter registration policies violate the First  
22 and Fourteenth Amendments or are otherwise illegal under state or federal law. The  
23 Secretary asserts that Federal and State Form applicants are not similarly situated for  
24 equal protection purposes. The Secretary asserts that Arizona is constitutionally  
25 permitted to require those applying to register to vote using the State Form to personally  
26 provide DPOC at the time that they submit their State Form. The Secretary further  
27 asserts that there is no constitutional or statutory requirement that Arizona election  
28 officials register applicants for federal elections when they have chosen to use the State  
Form to register to vote rather than the Federal Form.









1 which is established pursuant to A.R.S. § 36-2902. AHCCCS is Arizona’s Medicaid  
2 agency that offers health care programs to serve Arizona residents.

3 3. “Applicant” means an individual who has submitted an application to  
4 register to vote in the State of Arizona.

5 4. “AVID Database” means the voter registration database, currently being  
6 developed for the state of Arizona and intended to replace the current Database. The  
7 AVID Database is projected to be operational sometime in 2019 or early 2020, but shall  
8 be operational no later than July 1, 2020 except as provided in subparagraph (a), below.

9 (a) The date of July 1, 2020, contemplated for the operational function of the  
10 AVID Database, is contingent on the vendor with whom the Secretary has contracted to  
11 develop AVID fulfilling its obligations to have AVID operational in 2019 or early 2020  
12 at the latest. Should the vendor be unable to meet this contingency, or should the  
13 implementation of the AVID Database otherwise be delayed, the Secretary shall notify  
14 the Court and the Parties to this Consent Decree, in writing, and shall indicate in writing  
15 the date by which the vendor believes that AVID will be operational. Plaintiffs retain the  
16 right to seek a remedy from the Court to enforce this agreement if the implementation of  
17 the AVID database is unduly delayed.

18 (b) The provisions in this consent decree that apply to the AVID database will  
19 also apply to any future voter registration system adopted by the Secretary of State’s  
20 office.

21 5. “County Recorder” means the County Recorder of each of Arizona’s  
22 fifteen counties, and includes all county election officials working in or in conjunction  
23 with their offices.

24 6. “Database” means the existing electronic storage system developed and  
25 administered by the Secretary that contains the official voter registration record for every  
26 voter in the state. *See* A.R.S. § 16-168(J).

27 7. “DES” means the Arizona Department of Economic Security, which is  
28 established pursuant to A.R.S. § 41-1952.

8. “Designated voter registration agencies” are agencies that are required to

1 provide voter registration services pursuant to the National Voter Registration Act.

2 9. “DHS” means the Arizona Department of Health Services, which is  
3 established pursuant to A.R.S. § 36-102.

4 10. “DPOC” means documentary proof of citizenship, and is limited to the  
5 forms of satisfactory evidence of citizenship listed in A.R.S. § 16-166(F).

6 11. “F-type License” means the designation that the MVD uses in its database  
7 to distinguish Arizona driver’s license holders who, at the time that their driver’s licenses  
8 were issued, were presumed by MVD to not be United States citizens.

9 12. “Fed Only Voter” means an individual who is registered to vote solely in  
10 Arizona elections for federal office.

11 13. “Federal Form” means the National Mail Voter Registration Form,  
12 provided by the U.S. Elections Assistance Commission and used to register to vote in  
13 elections for federal office, as well as the Federal Write-in Absentee Ballot and Federal  
14 Post Card Application as those terms are used in 52 U.S.C. §§ 20302 and 20303.

15 14. “Federal Office” means the office of President or Vice President; or of  
16 Senator or Representative in, or Delegate or Resident Commissioner to, the United States  
17 Congress. 52 U.S.C. § 20502(2).

18 15. “Full Ballot Voter” means an individual who is registered to vote in  
19 Arizona elections for federal, state, and local office.

20 16. “Guidance” means formal guidance on voter registration procedures that  
21 the Secretary of State will provide to the County Recorders pursuant to her role as chief  
22 election official responsible for prescribing uniform procedures for voting. *See* A.R.S. §  
23 16-142. The Secretary will provide Plaintiffs’ counsel with copies of her Guidance  
24 before it is sent to the County Recorders.

25 17. “MVD” means the Arizona Motor Vehicles Division.

26 18. “MVD database” means the electronic storage system developed and  
27 administered by the Arizona Motor Vehicle Department.

28 19. “MVD Proxy Table” means the MVD data provided to the Secretary of  
State that includes the nightly updates of MVD transactions that occurred in the past

1 twenty-four hours that MVD sends to the Secretary in batch form.

2 20. “Procedures Manual” means the State of Arizona Elections Procedures  
3 Manual, which provides the rules related to voting and the conduct of elections. A.R.S. §  
4 16-452. The Secretary is required to develop the Procedures Manual in conjunction with  
5 the fifteen County Recorders. *Id.* The Procedures Manual has the force of law. A.R.S. §  
6 16-452(C). The Procedures Manual, 2018 Edition, has been drafted by the Secretary and  
7 submitted to the Governor and Attorney General as required by law for their review. *Id.*

8 21. “Protected Voter Registration” means the program to ensure anonymity to  
9 survivors of stalking, domestic violence, and sexual assault through the Address  
10 Confidentiality Program provided by A.R.S. § 41-161, et seq., and certain other  
11 individuals pursuant to A.R.S. § 16-153.

12 22. “Secretary” means the Arizona Secretary of State and her office, as well as  
13 successors in office.

14 23. “State Form” means the options for voter registration created and provided  
15 by the State of Arizona and its agencies, including but not limited to the online  
16 registration available through Service Arizona, the paper application available on the  
17 Secretary of State’s website, the paper application available at all County Recorder  
18 offices, and the Protected Voter Registration process.

19 24. “State Office” means any elected statewide, county-wide, or municipal  
20 public office, other than a Federal Office, for which a voter registered in the State of  
21 Arizona is eligible to vote.

### 22 ORDER

23 Accordingly, the Parties having freely given their consent, and the terms of the  
24 Consent Decree being fair, reasonable, and consistent with the requirements of state and  
25 federal law,

26 **IT IS ORDERED** as follows:

- 27 1. The Joint Motion for Approval of Consent Judgment (Doc. 36) is **granted**.
- 28 2. **The Procedures Manual.** The Parties are aware that the draft Procedures  
Manual, 2018 Edition has been submitted by the Secretary to Arizona’s Governor

1 and Attorney General for their review as required by statute. *See* A.R.S. § 16-  
2 452(B). Within thirty days after entry of this Consent Decree, the Secretary shall  
3 revise the Procedures Manual to incorporate the terms of this Consent Decree  
4 (“Procedures Manual Revisions”) and send the Procedures Manual Revisions,  
5 together with the Secretary’s recommendation of approval, to the Governor and  
6 Attorney General for their review, *see* A.R.S. § 16-452(B), and also to Plaintiffs’  
7 counsel. If Plaintiffs determine that the Procedures Manual Revisions do not  
8 comply with this Consent Decree, Plaintiffs may seek review by this Court  
9 through the Court’s procedures for motions. If the Governor and Attorney General  
10 do not approve the Procedures Manual Revisions or request modifications, the  
11 Secretary will send the Attorney General and/or Governor’s rejections or  
12 proposed modifications to Plaintiffs’ counsel. If those rejections or proposed  
13 modifications are in any respect inconsistent with this Consent Decree, Plaintiffs  
14 may use any available legal remedies to secure compliance with this Consent  
15 Decree.

16 **2. State Form Applications Submitted Without DPOC.** Within thirty days  
17 after entry of this Consent Decree, the Secretary shall, in writing:

- 18 a. provide guidance to the County Recorders to accept State Form  
19 applications submitted without DPOC;
- 20 b. provide guidance to the County Recorders to enter all such  
21 applications in the Database (or, in the case of Maricopa County and  
22 Pima County, to enter all such applications in their county voter  
23 registration databases and transmit such entries to the Database);
- 24 c. provide guidance to the County Recorders to immediately register  
25 the applicants for federal elections, provided the applicant is  
26 otherwise qualified and the voter registration form is sufficiently  
27 complete; and
- 28 d. check all State Form applications submitted without DPOC against  
the MVD database Proxy Table, via the automated processes in the

1 Database, to determine whether the MVD has DPOC on file for the  
2 applicants. If DPOC is located, the Secretary shall promptly notify  
3 the applicable County Recorder via the automated processes in the  
4 Database that the State Form applicant has DPOC on file with the  
5 MVD and so must be made a Full Ballot Voter via the automated  
6 process in the Database.

7 i. if the Secretary's check performed by the automated  
8 processes in the Database against the MVD database Proxy  
9 Table indicates that a State Form applicant holds an F-Type  
10 License, the Secretary shall promptly notify the applicable  
11 County Recorder of that fact via the automated processes of  
12 the Database. The automated processes of the Database will  
13 also flag this issue so that the County Recorder will know to  
14 change that applicant's voter registration status to "not  
15 eligible." The Secretary shall provide guidance to the County  
16 Recorders that the County Recorders shall notify the  
17 applicant by U.S. Mail within ten business days after  
18 receiving notice via the automated process in the database,  
19 according to information on file with the MVD database, that  
20 the applicant holds an F-Type License indicating non-  
21 citizenship and so will not be registered to vote. The  
22 notification from the County Recorder shall also inform the  
23 applicant that the applicant can provide valid DPOC to the  
24 County Recorder in order to become a Full Ballot Voter. The  
25 notification will be accompanied by the form described in  
26 Paragraph 3 (the "DPOC Submission Form"). The applicant  
27 may submit DPOC to the County Recorder through the  
28 process described in Paragraph 3 to become a Full Ballot  
Voter.

1           ii.     if the Secretary’s check via the automated features of the  
2           Database determines that a State Form applicant does not  
3           hold an F-Type License, but also does not have DPOC on file  
4           with the MVD, the Secretary shall promptly notify the  
5           applicable County Recorder of that result via the automated  
6           processes of the Database. The County Recorder shall notify  
7           these applicants by U.S. Mail within ten business days after  
8           receiving notice from the Secretary that (1) the County  
9           Recorder does not have the requisite DPOC to process their  
10          application; (2) they must submit DPOC if they wish to be a  
11          Full Ballot Voter; and, (3) until such time as they submit  
12          DPOC, they will be a Fed Only Voter and so will only be  
13          eligible to vote in Federal elections. The notification shall be  
14          accompanied by the form described in Paragraph 3 (the  
15          “DPOC Submission Form”). The applicant may submit  
16          DPOC to the County Recorder through the process described  
17          in Paragraph 3 to become a Full Ballot Voter. Until and  
18          unless the applicant submits valid DPOC, the County  
19          Recorders shall cause those voter registration applicants to be  
20          made Fed Only Voters.

21           **3.     Provision of DPOC After the Submission of a State Form Application.**

22          Applicants who do not submit DPOC with their State Form application and do not have  
23          DPOC on file with MVD, and are notified by the applicable County Recorder that they  
24          will be Fed Only Voters unless and until they submit DPOC, may submit valid DPOC to  
25          become a Full Ballot Voter. To do so, they shall submit their DPOC to the County  
26          Recorder with a form provided to them by that official. This form (the “DPOC  
27          Submission Form”), which shall be developed by the Secretary and the County  
28          Recorders within thirty days after entry of this Consent Decree, shall contain sufficient  
          information to allow the County Recorder to link the voter registration applicant’s DPOC



1 with his or her State Form application already on file in the Database.

2 A. Applicants who submit their State Form application at least twenty-nine  
3 days before an election as required by statute, A.R.S. §§ 16-120(A), -134(C), and whose  
4 valid DPOC with the DPOC Submission Form is received by their County Recorder by 5  
5 p.m. local time on the Thursday before the election, will be made Full Ballot Voters by  
6 the County Recorder and may vote in the upcoming election as a Full Ballot Voter. The  
7 registrations of such applicants shall be deemed to have occurred on the date that they  
8 originally submitted their State Form application. If the County Recorder has already  
9 transmitted a Fed Only early ballot to that voter, the voter will have the option to vote  
10 either that Fed Only early ballot or else vote a provisional Full Ballot at the polling place  
11 or vote center and comply with the rules regarding provisional ballots.

12 B. Applicants who submit their State Form application at least twenty-nine  
13 days before an election, and whose valid DPOC is received by 5 p.m. local time on the  
14 Thursday before the election, but who do not submit the DPOC Submission Form, may  
15 be made Full Ballot Voters by the County Recorder if the County Recorder has sufficient  
16 information to link the voter registration applicant's DPOC with the applicant's State  
17 Form application already on file in the Database. If the County Recorder makes such an  
18 applicant a Full Ballot Voter, and if the County Recorder has already transmitted a Fed  
19 Only early ballot to that voter, the voter will have the option to vote either that Fed Only  
20 early ballot or else vote a provisional Full Ballot at the polling place or vote center and  
21 comply with the rules regarding provisional ballots.

22 C. Applicants who do not submit their State Form application at least twenty-  
23 nine days before an election as provided by statute, or whose valid DPOC is received by  
24 their County Recorder after 5 p.m. local time on the Thursday before the election, will  
25 not be made Full Ballot Voters for the upcoming election. The County Recorder shall  
26 make such applicants Full Ballot Voters within five business days after processing  
27 provisional ballots, and they shall be Full Ballot Voters for subsequent elections.

28 D. For all applicants who submit State Form applications without valid  
DPOC, but subsequently submit valid DPOC and do not submit the DPOC Submission



1 Form, the County Recorder may make the applicant a Full Ballot Voter if the County  
2 Recorder has sufficient information to link the voter registration applicant's DPOC with  
3 the applicant's State Form application already on file in the Database. If the County  
4 Recorder lacks sufficient information to link the DPOC to the voter's application in  
5 order to make the applicant a Full Ballot Voter, the County Recorder may follow up with  
6 the applicant to seek the missing information if the County Recorder has sufficient  
7 information to do so. Applicants who subsequently provide the missing information  
8 necessary to link their DPOC to their applications shall be made Full Ballot Voters by  
9 the County Recorder within ten business days.

10 **4. State Form Applications Submitted On or After January 1, 2017.** This  
11 Consent Decree will govern all voter registration applications submitted after entry of  
12 this Consent Decree, including applications submitted within thirty days after entry of  
13 this Consent Decree. However, within thirty days after entry of this Consent Decree, the  
14 Secretary shall also provide written guidance to all County Recorders except the  
15 Maricopa County Recorder that, pursuant to the Consent Decree, they may, at their  
16 discretion, implement the new procedures outlined in Paragraphs 2–3 of this Consent  
17 Decree for State Form applications dating back to January 1, 2017, provided that they  
18 have the capability to ensure that such applicants have not moved, become deceased, or  
19 otherwise subsequently already registered to vote. Any applicants whose applications  
20 were filed before entry of this Consent Decree who are newly registered as Fed Only or  
21 Full Ballot Voters as a result of that process will be given the proper notice of their new  
22 registration status by U.S. Mail.

23 Within ninety days of entry of this Consent Decree, the Maricopa County  
24 Recorder shall implement the new procedures outlined in Paragraphs 2–3 of this Consent  
25 Decree for State Form applications dating back to January 1, 2017. This process shall  
26 include: (1) entering all State Forms submitted without DPOC into the database and  
27 immediately registering those applicants for federal elections, (2) checking the  
28 applicants' status against the MVD database, and (3) sending the applicants notification  
of their new registration status.

1           5.     **Federal Form Applications.** Within thirty days after entry of this Consent  
2 Decree, the Secretary shall provide written guidance to the County Recorders to  
3 promptly register all applicants who submit their Federal Form application with valid  
4 DPOC as Full Ballot Voters and promptly register all applicants who submit their  
5 Federal Form application without valid DPOC as Fed Only Voters. From the date of the  
6 entry of the Consent Decree, the Secretary shall also cause all new Federal Form  
7 applications submitted without DPOC to be checked against the MVD Proxy Table  
8 promptly upon entry into the Database, via the automated processes in the Database, to  
9 determine whether the MVD has DPOC on file for such Federal Form applicants, and  
10 take the following steps:

11           a.     If this check determines that the MVD Proxy Table has DPOC on file for  
12 any Federal Form applicant, the Secretary shall promptly notify the applicable County  
13 Recorder via the automated process in the Database that the applicant has DPOC on file  
14 with MVD and so must be made a Full Ballot Voter via the automated process in the  
15 Database.

16           b.     If this check determines that the MVD Proxy Table has information  
17 indicating that any Federal Form applicant holds an F-Type License, the Secretary shall  
18 promptly notify the applicable County Recorder of that fact via the automated processes  
19 of the Database and flag this record for the County Recorder to change that applicant's  
20 voter registration status to "not eligible." The County Recorder shall notify the applicant  
21 by U.S. Mail within ten business days after receiving notice from the Secretary that,  
22 according to information on file with the MVD database, the applicant holds an F-Type  
23 License indicating non-citizenship and so will not be registered to vote. The County  
24 Recorder's notice shall also inform the applicant that, if this information is not correct,  
25 the applicant may provide valid DPOC in order to become a Full Ballot Voter. The  
26 notification will be accompanied by the DPOC Submission Form described in Paragraph  
27 3. The applicant may submit valid DPOC to the County Recorder through the process  
28 described in Paragraph 3 to become a Full Ballot Voter.

          c.     If this check determines for any applicant that the MVD database does not

1 have DPOC on file and also that the applicant does not hold an F-Type License, the  
2 Secretary shall promptly notify the applicable County Recorder of that result via the  
3 automated processes of the Database. The County Recorder shall notify these applicants  
4 by U.S. Mail within ten business days after receiving notice from the Secretary that (1)  
5 the County Recorder does not have the requisite DPOC to process their application; (2)  
6 they must submit valid DPOC if they wish to be a Full Ballot Voter; and, (3) until such  
7 time as they submit valid DPOC, they will be a Fed Only Voter and so will only be  
8 eligible to vote in Federal elections. The notification will be accompanied by the DPOC  
9 Submission Form described in Paragraph 3. The applicant may submit valid DPOC to  
10 the County Recorder through the process described in Paragraph 3 to become a Full  
11 Ballot Voter. Until and unless the applicant submits valid DPOC, the County Recorders  
12 shall cause those voter registration applicants to be made Fed Only Voters.

13 d. Federal Form applicants who subsequently submit valid DPOC shall be  
14 made Full Ballot Voters according to and in conformity with the process described in  
15 Paragraph 3.

16 **6. Registered Voters Who Move From One Arizona County to Another.**  
17 The AVID Database or another voter registration database similar to the AVID Database  
18 shall be operational as described, and according to the terms set forth, in the Definitions  
19 section of this consent decree. When the AVID Database is operational, the Secretary  
20 and County Recorders will be able to verify DPOC and append that information to  
21 applicants' voting records when those applicants change voter registration from one  
22 Arizona county to another. Consequently, once the AVID Database is operational and in  
23 use by the Secretary and the County Recorders, registered Full Ballot Voters will not be  
24 required to independently submit DPOC to their new County Recorder, so long as their  
25 DPOC is in the AVID Database.

26 **7. Application to Other Forms of Registration.** The procedures outlined  
27 above for processing voter registration applications submitted without valid DPOC will  
28 apply equally to all forms of voter registration, including voter registration through  
designated voter registration agencies, the Federal Post Card Application (FPCA), the

1 Federal Write-In Absentee Ballot, and the In-Person EZ Voter Registration system.

2 8. **Education of the Public.** The Secretary shall continue to make reasonable  
3 efforts to better educate the citizens of Arizona concerning their opportunities to register  
4 to vote, including opportunities presented by the Federal Form. The Secretary will  
5 provide Plaintiffs' counsel with a copy of the planned notice that she intends to place on  
6 her website. Within thirty days after the entry of this Consent Decree, the Secretary shall:

7 a. Update her website to explain that:

8 i. the State Form requires valid DPOC for state elections only;

9 ii. submission of a sufficiently complete State Form with valid DPOC will  
10 make the applicant a Full Ballot Voter;

11 iii. submission of a sufficiently complete State Form without DPOC will  
12 make the applicant a Fed Only Voter;

13 iv. the Federal Form does not require DPOC;

14 v. submission of the Federal Form without valid DPOC will make the  
15 applicant a Fed Only Voter; and

16 vi. submission of the Federal Form with valid DPOC will make the  
17 applicant a Full Ballot Voter.

18 b. Provide guidance to the County Recordors that they should provide the  
19 information required in this Section 8 on their websites;

20 c. Notify ADOT, DHS, AHCCCS, and DES of the changes in voter  
21 registration procedures outlined in this Consent Decree;

22 d. Within four months after the entry of this Consent Decree, the Secretary  
23 shall create a new State Form that explains that citizens who do not submit DPOC with  
24 their registration forms will be registered only for federal elections until the appropriate  
25 proof of citizenship is provided or acquired. The Secretary will provide notice to  
26 Plaintiffs' counsel regarding the form of the explanation described in the previous  
27 sentence. The Secretary will create the new State Form within three months if the  
28 Secretary determines that it is possible to do so. The Secretary shall provide guidance to  
the County Recordors and all State Offices that disseminate voter registration forms,

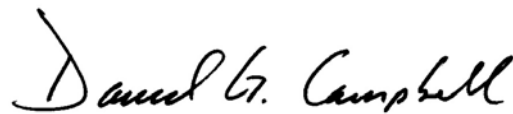
1 including designated voter registration agencies, that they should utilize the new State  
2 Form as soon as practicable. *See* A.R.S. § 16-352(C). Within thirty days after entry of  
3 the Consent Decree, the Secretary will provide written notice to the County Recorders  
4 that there will be changes made to the State Form within four months after the date the  
5 Consent Decree was entered.

6       10.    **Continuing Jurisdiction.** The Court shall retain jurisdiction over this  
7 action until December 31, 2020 to enter such further relief as may be necessary for the  
8 effectuation of the terms of this Consent Decree.

9       11.    **Attorneys' Fees and Costs.** The Parties will continue to confer regarding  
10 what amount, if any, the State Defendants should pay to Plaintiffs for their attorneys'  
11 fees and costs. If the Parties are unable to agree privately upon payment of fees and  
12 costs, Plaintiffs will file a motion for attorneys' fees and costs pursuant to 42 U.S.C. §  
13 1988 within forty-five days after entry of this consent decree.

14           The Clerk of Court is directed to terminate this action.

15           Dated this 18th day of June, 2018.

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David G. Campbell  
United States District Judge

**Section 20507 of Chapter 52 of the United States Code**  
**Requirements with respect to administration of voter registration**

**(a) In general**

In the administration of voter registration for elections for Federal office, each State shall--

**(1)** ensure that any eligible applicant is registered to vote in an election--

**(A)** in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

**(B)** in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

**(C)** in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

**(D)** in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

**(2)** require the appropriate State election official to send notice to each applicant of the disposition of the application;

**(3)** provide that the name of a registrant may not be removed from the official list of eligible voters except--

**(A)** at the request of the registrant;

**(B)** as provided by State law, by reason of criminal conviction or mental incapacity;

or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

**(b) Confirmation of voter registration**

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)<sup>1</sup>; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

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<sup>1</sup> Redesignated as 52 U.S.C.A. § 10301 et seq.

**(B)** has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

**(c) Voter removal programs**

**(1)** A State may meet the requirement of subsection (a)(4) by establishing a program under which--

**(A)** change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

**(B)** if it appears from information provided by the Postal Service that—

**(i)** a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

**(ii)** the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

**(2)(A)** A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

**(B)** Subparagraph (A) shall not be construed to preclude—

**(i)** the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

**(ii)** correction of registration records pursuant to this chapter.

**(d) Removal of names from voting rolls**

**(1)** A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--



(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

**(e) Procedure for voting following failure to return card**

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

**(2)(A)** A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

**(i)** shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

**(ii)(I)** shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

**(II)** shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

**(B)** If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

**(3)** If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

**(f) Change of voting address within a jurisdiction**

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

**(g) Conviction in Federal court**

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

**(h) Omitted**

**(i) Public disclosure of voter registration activities**

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose

of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

**(j) “Registrar's jurisdiction” defined**

For the purposes of this section, the term “registrar's jurisdiction” means--

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

**Section 16-120 of the Arizona Revised Statutes**  
**Eligibility to vote**

**A.** An elector shall not vote in an election called pursuant to the laws of this state unless the elector has been registered to vote as a resident within the boundaries or the proposed boundaries of the election district for which the election is being conducted and the registration has been received by the county recorder or the recorder's designee pursuant to § 16-134 before midnight of the twenty-ninth day preceding the date of the election.

**B.** If the twenty-ninth day preceding the date of the election falls on a Saturday, Sunday or other legal holiday, voter registrations that are received on the next business day immediately following the Saturday, Sunday or other legal holiday are deemed to have been timely received for purposes of voting in that election.

**Section 16-152 of the Arizona Revised Statutes  
Registration form**

A. The form used for the registration of electors shall contain:

1. The date the registrant signed the form.
2. The registrant's given name, middle name, if any, and surname.
3. The complete address of the registrant's actual place of residence, including street name and number, apartment or space number, city or town and zip code, or such description of the location of the residence that it can be readily ascertained or identified.
4. The registrant's complete mailing address, if different from the residence address, including post office address, city or town, zip code or other designation used by the registrant for receiving mail. The form shall also include a line for the registrant's e-mail address (optional to registrant).
5. The registrant's party preference. The two largest political parties that are entitled to continued representation on the ballot shall be listed on the form in the order determined by calculating which party has the highest number of registered voters at the close of registration for the most recent general election for governor, then the second highest. The form shall allow the registrant to circle, check or otherwise mark the party preference and shall include a blank line for other party preference options.
6. The registrant's telephone number, unless unlisted.
7. The registrant's state or country of birth.
8. The registrant's date of birth.
9. The registrant's occupation.
10. The registrant's Indian census number (optional to registrant).
11. The registrant's father's name or mother's maiden name.
12. One of the following identifiers for each registrant:
  - (a) The Arizona driver license number of the registrant or nonoperating identification license number of the registrant that is issued pursuant to § 28-3165.

(b) If the registrant does not have an Arizona driver license or nonoperating identification license, the last four digits of the registrant's social security number.

(c) If the registrant does not have an Arizona driver license or nonoperating identification license or a social security number and the registrant attests to that, a unique identifying number consisting of the registrant's unique identification number to be assigned by the secretary of state in the statewide electronic voter registration database.

13. A statement as to whether or not the registrant is currently registered in another state, county or precinct, and if so, the name, address, county and state of previous registration.

14. The question to the registrant "Are you a citizen of the United States of America?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".

15. The question to the registrant "Will you be eighteen years of age on or before election day?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".

16. A statement that the registrant has not been convicted of treason or a felony, or if so, that the registrant's civil rights have been restored.

17. A statement that the registrant is a resident of this state and of the county in which the registrant is registering.

18. A statement that executing a false registration is a class 6 felony.

19. The signature of the registrant.

20. If the registrant is unable to sign the form, a statement that the affidavit was completed according to the registrant's direction.

21. A statement that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

22. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

23. A statement that the applicant shall submit evidence of United States citizenship with the application and that the registrar shall reject the application if no evidence of citizenship is attached.

24. A statement that if the registrant permanently moves to another state after registering to vote in this state, the registrant's voter registration will be canceled.

**B.** A duplicate voter receipt shall be provided with the form that provides space for the name, street address and city of residence of the applicant, party preference and the date of signing. The voter receipt is evidence of valid registration for the purpose of casting a provisional ballot as prescribed in § 16-584, subsection B.

**C.** The state voter registration form shall be printed in a form prescribed by the secretary of state.

**D.** The county recorder may establish procedures to verify whether a registrant has successfully petitioned the court for an injunction against harassment pursuant to § 12-1809 or an order of protection pursuant to § 13-3602 and, if verified, to protect the registrant's residence address, telephone number or voting precinct number, if appropriate, from public disclosure.

**E.** Subsection A of this section does not apply to registrations received from the department of transportation pursuant to § 16-112.



**Section 16-166 of the Arizona Revised Statutes**  
**Verification of registration**

**A.** Except for the mailing of sample ballots, a county recorder who mails an item to any elector shall send the mailing by nonforwardable first class mail marked with the statement required by the postmaster to receive an address correction notification. If the item is returned undelivered, the county recorder shall send a follow-up notice to that elector within three weeks of receipt of the returned notice. The county recorder shall send the follow-up notice to the address that appears in the general county register or to the forwarding address provided by the United States postal service. The follow-up notice shall include an appropriate internet address for revising voter registration information or a registration form and the information prescribed by § 16-131, subsection C and shall state that if the elector does not complete and return a new registration form with current information to the county recorder or make changes to the elector's voter registration information that is maintained online within thirty-five days, the elector's registration status shall be changed from active to inactive.

**B.** If the elector provides the county recorder with a new registration form or otherwise revises the elector's information, the county recorder shall change the general register to reflect the changes indicated on the new registration. If the elector indicates a new residence address outside that county, the county recorder shall forward the voter registration form or revised information to the county recorder of the county in which the elector's address is located. If the elector provides a new residence address that is located outside this state, the county recorder shall cancel the elector's registration.

**C.** The county recorder shall maintain on the inactive voter list the names of electors who have been removed from the general register pursuant to subsection A or E of this section for a period of four years or through the date of the second general election for federal office following the date of the notice from the county recorder that is sent pursuant to subsection E of this section.

**D.** On notice that a government agency has changed the name of any street, route number, post office box number or other address designation, the county recorder shall revise the registration records and shall send a new verification of registration notice to the electors whose records were changed.

**E.** The county recorder on or before May 1 of each year preceding a state primary and general election or more frequently as the recorder deems necessary may use the change of address information supplied by the postal service through its licensees and the information provided by an electronic voter registration information center to identify registrants whose addresses may have changed. If it appears from information provided by the postal service or an electronic voter registration information center that a registrant has moved to a different residence address, the

county recorder shall send the registrant a notice of the change by forwardable mail and a postage prepaid preaddressed return form or an appropriate internet address for revising voter registration information by which the registrant may verify or correct the registration information. If the registrant fails to revise the information or return the form postmarked not later than thirty-five days after the mailing of the notice, the elector's registration status shall be changed from active to inactive. If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote. If the registrant does not vote in an election during the period after the date of the notice from the recorder through the date of the second general election for federal office following the date of that notice, the registrant's name shall be removed from the list of inactive voters. If the registrant has changed residence to a new county, the county recorder shall provide information on how the registrant can continue to be eligible to vote.

**F.** The county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship. Satisfactory evidence of citizenship shall include any of the following:

1. The number of the applicant's driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship.
2. A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the county recorder.
3. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the county recorder of the applicant's United States passport.
4. A presentation to the county recorder of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.
5. Other documents or methods of proof that are established pursuant to the immigration reform and control act of 1986.
6. The applicant's bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number.

**G.** Notwithstanding subsection F of this section, any person who is registered in this state on the effective date of this amendment to this section is deemed to have provided satisfactory evidence of citizenship and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.

**H.** For the purposes of this section, proof of voter registration from another state or county is not satisfactory evidence of citizenship.

**I.** A person who modifies voter registration records with a new residence ballot shall not be required to submit evidence of citizenship. After citizenship has been demonstrated to the county recorder, the person is not required to resubmit satisfactory evidence of citizenship in that county.

**J.** After a person has submitted satisfactory evidence of citizenship, the county recorder shall indicate this information in the person's permanent voter file. After two years the county recorder may destroy all documents that were submitted as evidence of citizenship.

**Section 16-461 of the Arizona Revised Statutes**  
**Sample primary election ballots; submission to party chairmen for examination; preparation, printing and distribution of ballot**

**A.** At least forty-five days before a primary election, the officer in charge of that election shall:

1. Prepare a proof of a sample ballot.
2. Submit the sample ballot proof of each party to the county chairman or in city or town primaries to the city or town chairman.
3. Mail a sample ballot proof to each candidate for whom a nomination paper and petitions have been filed.

**B.** Within two calendar days after receipt of the sample ballot, the county chairman of each political party and any candidate in that election who has submitted and confirmed an email address shall suggest to the election officer any change the chairman or candidate considers should be made in the chairman's or candidate's party ballot, and if on examination the election officer finds an error or omission on the ballot, the officer shall correct it. The election officer shall print and distribute the sample ballots as required by law, shall maintain a copy of each sample ballot and shall post a notice indicating that sample ballots are available on request. The official sample ballot shall be printed on colored paper or white paper with a different colored stripe for each party that is represented on that ballot. For voters who are not registered with a party that is entitled to continued representation on the ballot pursuant to § 16-804, the election officer may print and distribute the required sample ballots in an alternative format, including a reduced size format.

**C.** Not later than forty days before a primary election, the county chairman of a political party may request one sample primary election ballot of the chairman's party for each election precinct.

**D.** The board of supervisors shall have printed mailer-type sample ballots for a primary election and shall mail at least eleven days before the election one sample ballot of a political party to each household containing a registered voter of that political party unless that registered voter is on the active early voting list established pursuant to § 16-544. Each sample ballot shall contain the following statement: "This is a sample ballot and cannot be used as an official ballot under any circumstances". A certified claim shall be presented to the secretary of state by the board of supervisors for the actual cost of printing, labeling and postage of each sample ballot actually mailed, and the secretary of state shall direct payment of the authenticated claim from funds of the secretary of state's office.

**E.** For city and town elections, the governing body of a city or town may have printed mailer-type sample ballots for a primary election. If the city or town has printed such sample ballots, the city or town shall provide for the distribution of such ballots and shall bear the expense of printing and distributing such sample ballots.

**F.** The return address on the mailer-type sample ballots shall not contain the name of an appointed or elected public officer nor may the name of an appointed or elected public officer be used to indicate who produced the sample ballot.

**G.** The great seal of the state of Arizona shall be imprinted along with the words “official voting materials” on the mailing face of each sample ballot. In county, city or town elections the seal of such jurisdiction shall be substituted for the state seal.

**Section 16-541 of the Arizona Revised Statutes**  
**Early voting**

**A.** Any election called pursuant to the laws of this state shall provide for early voting, including voting by the use of an accessible vote by United States mail option for persons who are blind or have a visual impairment. Any qualified elector may vote by early ballot.

**B.** A qualified elector of a special district organized pursuant to title 48<sup>2</sup> shall be permitted to vote early in any special district mail ballot election as provided in article 8.1 of this chapter.<sup>3</sup>

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<sup>2</sup> Section 48-101 et seq.

<sup>3</sup> Section 16-558 et seq.

**Section 16-542 of the Arizona Revised Statutes**  
**Request for ballot; civil penalties; violation; classification**

**A.** Within ninety-three days before any election called pursuant to the laws of this state, an elector may make a verbal or signed request to the county recorder, or other officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an official early ballot. In addition to name and address, the requesting elector shall provide the date of birth and state or country of birth or other information that if compared to the voter registration information on file would confirm the identity of the elector. If the request indicates that the elector needs a primary election ballot and a general election ballot, the county recorder or other officer in charge of elections shall honor the request. For any partisan primary election, if the elector is not registered as a member of a political party that is entitled to continued representation on the ballot pursuant to § 16-804, the elector shall designate the ballot of only one of the political parties that is entitled to continued representation on the ballot and the elector may receive and vote the ballot of only that one political party, which also shall include any nonpartisan offices and ballot questions, or the elector shall designate the ballot for nonpartisan offices and ballot questions only and the elector may receive and vote the ballot that contains only nonpartisan offices and ballot questions. The county recorder or other officer in charge of elections shall process any request for an early ballot for a municipal election pursuant to this subsection. The county recorder may establish on-site early voting locations at the recorder's office, which shall be open and available for use beginning the same day that a county begins to send out the early ballots. The county recorder may also establish any other early voting locations in the county the recorder deems necessary. Any on-site early voting location or other early voting location shall require each elector to present identification as prescribed in § 16-579 before receiving a ballot. Notwithstanding § 16-579, subsection A, paragraph 2, at any on-site early voting location or other early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452.

**B.** Notwithstanding subsection A of this section, a request for an official early ballot from an absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act (P.L. 99-410; 52 United States Code section 20310) or a voter whose information is protected pursuant to § 16-153 that is received by the county recorder or other officer in charge of elections more than ninety-three days before the election is valid. If requested by the absent uniformed services or overseas voter, or a voter whose information is protected pursuant to § 16-153, the county recorder or other officer in charge of elections shall provide to the requesting voter early ballot materials through the next regularly scheduled general election for federal office immediately following receipt of the request unless a different period of

time, which does not exceed the next two regularly scheduled general elections for federal office, is designated by the voter.

**C.** The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector within five days after receipt of the official early ballots from the officer charged by law with the duty of preparing ballots pursuant to § 16-545, except that early ballot distribution shall not begin more than twenty-seven days before the election. If an early ballot request is received on or before the thirty-first day before the election, the early ballot shall be distributed not earlier than the twenty-seventh day before the election and not later than the twenty-fourth day before the election.

**D.** Only the elector may be in possession of that elector's unvoted early ballot. If a complete and correct request is made by the elector within twenty-seven days before the election, the mailing must be made within forty-eight hours after receipt of the request. Saturdays, Sundays and other legal holidays are excluded from the computation of the forty-eight-hour period prescribed by this subsection. If a complete and correct request is made by an absent uniformed services voter or an overseas voter before the election, the regular early ballot shall be transmitted by mail, by fax or by other electronic format approved by the secretary of state within twenty-four hours after the early ballots are delivered pursuant to § 16-545, subsection B, excluding Sundays.

**E.** In order to be complete and correct and to receive an early ballot by mail, an elector's request that an early ballot be mailed to the elector's residence or temporary address must include all of the information prescribed by subsection A of this section and must be received by the county recorder or other officer in charge of elections not later than 5:00 p.m. on the eleventh day preceding the election. An elector who appears personally not later than 7:00 p.m. on the Friday preceding the election at an on-site early voting location that is established by the county recorder or other officer in charge of elections shall be given a ballot after presenting identification as prescribed in § 16-579 and shall be allowed to vote at the on-site location. Notwithstanding § 16-579, subsection A, paragraph 2, at any on-site early voting location the county recorder or other officer in charge of elections may provide for a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452. If an elector's request to receive an early ballot is not complete and correct but complies with all other requirements of this section, the county recorder or other officer in charge of elections shall attempt to notify the elector of the deficiency of the request.

**F.** Unless an elector specifies that the address to which an early ballot is to be sent is a temporary address, the recorder may use the information from an early ballot request form to update voter registration records.



**G.** The county recorder or other officer in charge of early balloting shall provide an alphabetized list of all voters in the precinct who have requested and have been sent an early ballot to the election board of the precinct in which the voter is registered not later than the day before the election.

**H.** As a result of experiencing an emergency between 7:00 p.m. on the Friday preceding the election and 5:00 p.m. on the Monday preceding the election, qualified electors may request to vote in the manner prescribed by the board of supervisors of their respective county. Before voting pursuant to this subsection, an elector who experiences an emergency shall provide identification as prescribed in § 16-579 and shall sign a statement under penalty of perjury that states that the person is experiencing or experienced an emergency after 7:00 p.m. on the Friday immediately preceding the election and before 5:00 p.m. on the Monday immediately preceding the election that would prevent the person from voting at the polls. Signed statements received pursuant to this subsection are not subject to inspection pursuant to title 39, chapter 1, article 2.<sup>1</sup> For the purposes of this subsection, “emergency” means any unforeseen circumstances that would prevent the elector from voting at the polls.

**I.** Notwithstanding § 16-579, subsection A, paragraph 2, for any voting pursuant to subsection H of this section, the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to § 16-452.

**J.** A candidate, political committee or other organization may distribute early ballot request forms to voters. If the early ballot request forms include a printed address for return, the addressee shall be the political subdivision that will conduct the election. Failure to use the political subdivision as the return addressee is punishable by a civil penalty of up to three times the cost of the production and distribution of the request.

**K.** All original and completed early ballot request forms that are received by a candidate, political committee or other organization shall be submitted within six business days after receipt by a candidate, political committee or other organization or eleven days before the election day, whichever is earlier, to the political subdivision that will conduct the election. Any person, political committee or other organization that fails to submit a completed early ballot request form within the prescribed time is subject to a civil penalty of up to \$25 per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed early ballot request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony.

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<sup>1</sup> Section 39-121 et seq.

**L.** Except for a voter who is on the active early voting list prescribed by § 16-544, a voter who requests a onetime early ballot pursuant to this section or for an election conducted pursuant to § 16-409 or article 8.1 of this chapter,<sup>2</sup> a county recorder, city or town clerk or other election officer may not deliver or mail an early ballot to a person who has not requested an early ballot for that election. An election officer who knowingly violates this subsection is guilty of a class 5 felony.

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<sup>2</sup> Section 16-558 et seq.

**Section 16-544 of the Arizona Revised Statutes**  
**Active early voting list; civil penalty; violation; classification; definition**

**A.** Any voter may request to be included on a list of voters to receive an early ballot by mail for any election for which the county voter registration roll is used to prepare the election register. The county recorder of each county shall maintain the active early voting list as part of the voter registration roll.

**B.** In order to be included on the active early voting list, the voter shall make a written request specifically requesting that the voter's name be added to the active early voting list for all elections in which the applicant is eligible to vote. An early voter request form shall conform to requirements prescribed in the instructions and procedures manual issued pursuant to § 16-452. The application shall allow for the voter to provide the voter's name, residence address, mailing address in the voter's county of residence, date of birth and signature and shall state that the voter is attesting that the voter is a registered voter who is eligible to vote in the county of residence. The voter shall not list a mailing address that is outside of this state for the purpose of the active early voting list unless the voter is an absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act (P.L. 99-410; 52 United States Code § 20310). In lieu of the application, the applicant may submit a written request that contains the required information.

**C.** On receipt of a request to be included on the active early voting list, the county recorder or other officer in charge of elections shall compare the signature on the request form with the voter's signature on the voter's registration form and, if the request is from the voter, shall mark the voter's registration file as an active early ballot request.

**D.** Not less than ninety days before any polling place election scheduled in March or August, the county recorder or other officer in charge of elections shall mail to all voters who are eligible for the election and who are included on the active early voting list an election notice by nonforwardable mail that is marked with the statement required by the postmaster to receive an address correction notification. If an election is not formally called by a jurisdiction by the one hundred eightieth day before the election, the recorder or other officer in charge of elections is not required to send the election notice. The notice shall include the dates of the elections that are the subject of the notice, the dates that the voter's ballot is expected to be mailed and the address where the ballot will be mailed. If the upcoming election is a partisan open primary election and the voter is not registered as a member of one of the political parties that is recognized for purposes of that primary, the notice shall include information on the procedure for the voter to designate a political party ballot. The notice shall be delivered with return postage prepaid and shall also include a means for the voter to do any of the following:

1. Change the mailing address for the voter's ballot to another location in the voter's county of residence.
2. Update the voter's residence address in the voter's county of residence.
3. Request that the voter not be sent a ballot for the upcoming election or elections indicated on the notice.

**E.** If the notice that is mailed to the voter is returned undeliverable by the postal service, the county recorder or other officer in charge of elections shall take the necessary steps to contact the voter at the voter's new residence address in order to update that voter's address or to move the voter to inactive status as prescribed in § 16-166, subsection A. If a voter is moved to inactive status, the voter shall be removed from the active early voting list. If the voter is removed from the active early voting list, the voter shall only be added to the active early voting list again if the voter submits a new request pursuant to this section.

**F.** Not later than the first day of early voting, the county recorder or other officer in charge of elections shall mail an early ballot to all eligible voters included on the active early voting list in the same manner prescribed in § 16-542, subsection C. If the voter has not returned the notice or otherwise notified the election officer within forty-five days before the election that the voter does not wish to receive an early ballot by mail for the election or elections indicated, the ballot shall automatically be scheduled for mailing.

**G.** If a voter who is on the active early voting list is not registered as a member of a recognized political party and fails to notify the county recorder of the voter's choice for political party ballot within forty-five days before a partisan open primary election, the following apply:

1. The voter shall not automatically be sent a ballot for that partisan open primary election only and the voter's name shall remain on the active early voting list for future elections.
2. To receive an early ballot for the primary election, the voter shall submit the voter's choice for political party ballot to the county recorder.

**H.** After a voter has requested to be included on the active early voting list, the voter shall be sent an early ballot by mail automatically for any election at which a voter at that residence address is eligible to vote until any of the following occurs:

1. The voter requests in writing to be removed from the active early voting list.
2. The voter's registration or eligibility for registration is moved to inactive status or canceled as otherwise provided by law.

3. The notice sent by the county recorder or other officer in charge of elections is returned undeliverable and the county recorder or officer in charge of elections is unable to contact the voter to determine the voter's continued desire to remain on the list.

4. The voter fails to vote an early ballot in all elections for two consecutive election cycles. For the purposes of this paragraph, "election" means any regular primary or regular general election for which there was a federal race on the ballot or for which a city or town candidate primary or first election or city or town candidate second, general or runoff election was on the ballot. This paragraph does not apply to:

(a) A special taxing district that is authorized pursuant to § 16-191 to conduct its own elections.

(b) A special district mail ballot election that is conducted pursuant to article 8.1 of this chapter.

**I.** A voter may make a written request at any time to be removed from the active early voting list. The request shall include the voter's name, residence address, date of birth and signature. On receipt of a completed request to remove a voter from the active early voting list, the county recorder or other officer in charge of elections shall remove the voter's name from the list as soon as practicable.

**J.** An absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act (P.L. 99-410; 52 United States Code § 20310) is eligible to be placed on the active early voting list pursuant to this section.

**K.** A voter's failure to vote an early ballot once received does not constitute grounds to remove the voter from the active early voting list, except that a county recorder shall remove a voter from the active early voting list if both of the following apply:

1. The county recorder or other officer in charge of elections complies with subsection M of this section.

2. The voter fails to vote using an early ballot in all of the following elections for two consecutive election cycles:

(a) A regular primary and regular general election for which there was a federal race on the ballot.

(b) A city or town candidate primary or first election and a city or town candidate second, general or runoff election.

**L.** On or before January 15 of each odd-numbered year, the county recorder or other officer in charge of elections shall send a notice to each voter who is on the active early voting list and who did not vote an early ballot in all elections for two consecutive election cycles as prescribed by subsection K of this section. If the voter has provided the voter's telephone or mobile phone number or email address to the county recorder, the county recorder may additionally provide the notice to the voter by telephone call, text message or email. The notice shall inform the voter that if the voter wishes to remain on the active early voting list, the voter shall do both of the following with the notice received:

1. Confirm in writing the voter's desire to remain on the active early voting list.
2. Return the completed notice to the county recorder or other officer in charge of elections within ninety days after the notice is sent to the voter. The notice shall be signed by the voter and shall contain the voter's address and date of birth.

**M.** If a voter receives a notice as prescribed by subsection L of this section and the voter fails to respond within the ninety-day period, the county recorder or other officer in charge of elections shall remove the voter's name from the active early voting list.

**N.** A candidate, political committee or other organization may distribute active early voting list request forms to voters. If the active early voting list request forms include a printed address for return, that address shall be the political subdivision that will conduct the election. Failure to use the political subdivision as the return addressee is punishable by a civil penalty of up to three times the cost of the production and distribution of the active early voting list request.

**O.** All original and completed active early voting list request forms that are received by a candidate, political committee or other organization shall be submitted within six business days after receipt by a candidate or political committee or eleven days before the election day, whichever is earlier, to the political subdivision that will conduct the election. Any person, political committee or other organization that fails to submit a completed active early voting list request form within the prescribed time is subject to a civil penalty of up to \$25 per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed active early voting list request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony.

**P.** A person who receives an early ballot at an address at which another person formerly resided, without voting the ballot or signing the envelope, shall write "not at this address" on the envelope and place the mail piece in a United States postal service collection box or other mail receptacle. On receipt the county recorder or other officer in charge of elections shall proceed in the manner prescribed in subsection E of this section.

**Q.** When the county recorder receives confirmation from another county that a person registered has registered to vote in that other county, the county recorder shall remove that person from the active early voting list.

**R.** If the county recorder receives credible information that a person has registered to vote in a different county, the county recorder shall confirm the person's voter registration with that other county and, on confirmation, shall remove that person from the county's active early voting list pursuant to subsection Q of this section.

**S.** For the purposes of this section, "election cycle" means the two-year period beginning on January 1 in the year after a statewide general election or, for cities and towns, the two-year period beginning on the first day of the calendar quarter after the calendar quarter in which the city's or town's second, runoff or general election is scheduled and ending on the last day of the calendar quarter in which the city's or town's immediately following second, runoff or general election is scheduled, however that election is designated by the city or town.