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14 **Pro hac vice*

15 UNITED STATES DISTRICT COURT

16 DISTRICT OF ARIZONA

17 SCOT MUSSI; GINA SWOBODA, in her
18 capacity as Chair of the Republican Party
of Arizona; and STEVEN GAYNOR,

19 Plaintiffs,

20 v.

21 ADRIAN FONTES, in his official capacity
22 as Arizona Secretary of State,

23 Defendant.

No. CV-24-1310-PHX-DWL

**AMICUS BRIEF OF THE
DEMOCRATIC NATIONAL
COMMITTEE AND ARIZONA
DEMOCRATIC PARTY IN
SUPPORT OF DISMISSAL**

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INTRODUCTION

1
2 Plaintiffs have revealed that their objective in this litigation is less about bringing
3 serious claims regarding Arizona’s compliance with federal law than about using the
4 judicial system to erode public confidence in the 2024 elections. Most fundamentally, that
5 the purpose of this lawsuit is political stagecraft rather than legal merit is revealed by the
6 absence of a viable remedy for their claim. The National Voter Registration Act
7 (“NVRA”), 52 U.S.C. §§ 20501–20511, expressly prohibits States from implementing
8 systematic programs to cancel voter registrations within ninety days of a federal election,
9 *id.* § 20507(c)(2)(A), reflecting Congress’s intent to impose safeguards to avoid the
10 “selective purging of the voter rolls,” S. Rep. No. 103-5, at 3 (1993). Given this restriction,
11 Plaintiffs could not have obtained relief before Arizona’s July 30 primary election because
12 the NVRA required the State to suspend any voter-removal program no later than May
13 1—more than a month before Plaintiffs filed their complaint. And, to secure relief during
14 the one-week window between the July 30 primary and the ninety-day cutoff before the
15 November 5 general election—August 7—Plaintiffs would have needed to seek expedited
16 relief. They have not. Indeed, a Nevada district court dismissed a virtually identical
17 litigation, brought by the Republican National Committee (“RNC”) and the Trump
18 Campaign, for essentially these reasons. *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev.
19 June 20, 2024), ECF No. 96.

20 This lawsuit is no exception. Congress designed the NVRA to promote registration
21 and “protect[] registered voters from improper removal.” *Am. C.R. Union v. Phila. City*
22 *Comm’rs*, 872 F.3d 175, 179 (3d Cir. 2017). By using the NVRA as an instrument to
23 encourage the *deregistration* of otherwise-eligible electors, Plaintiffs have revealed that
24 their objective in this litigation is political theater rather than the vindication of federal
25 law.

1 Setting aside Plaintiffs’ questionable motives, their NVRA claim fails on the
2 merits. While protecting the integrity and accuracy of voter rolls is indeed within the scope
3 of the NVRA, so is ensuring that voters are not erroneously deregistered or otherwise
4 denied their right to access the franchise; as the Senate Report accompanying the
5 legislation explained, “one of the guiding principles” of the NVRA is “to ensure that once
6 registered, a voter remains on the rolls so long as he or she is eligible to vote in that
7 jurisdiction.” S. Rep. No. 103-6, at 19. Balancing these objectives, the NVRA mandates
8 that a State operate a “general program that makes *a reasonable effort*” to remove the
9 names of ineligible voters who have moved or died. 52 U.S.C. § 20507(a)(4) (emphasis
10 added). Arizona “objectively exceeds [this] standard[,]” administering a “robust list
11 maintenance program” to maintain the accuracy of the state’s voter rolls. Ariz. Sec’y of
12 State’s Mot. to Dismiss (“MTD”) 3–5, 12–15, ECF No. 20. Plaintiffs do not even allege,
13 and certainly cannot demonstrate, how Arizona’s list-maintenance program falls short of
14 the “reasonable effort” that the NVRA requires.

15 Plaintiffs’ data analysis is no more persuasive than their legal claim. In alleging
16 that “the number of people on the official voter registration rolls in Arizona is 20 or more
17 percentage points higher than the number actually eligible and registered in Arizona,”
18 Compl. ¶ 84, ECF No. 1, Plaintiffs rely on old population estimates compiled from survey
19 data collected over a multiyear period. The registration data to which they compare those
20 estimates are, by contrast, a snapshot taken at a specific moment in time. It is hardly a
21 surprise that such an apples-to-oranges approach would yield facial inconsistencies—or
22 that courts that have considered this methodology have soundly rejected it. *See, e.g.,*
23 *Bellitto v. Snipes*, 935 F.3d 1192, 1207–08 (11th Cir. 2019).

24 Ultimately, this lawsuit is designed not to address any real (much less substantial)
25 issue with Arizona’s voter-registration lists but rather to advance a political agenda
26 premised on distrust and suspicion as November approaches. When considered as part of

1 the Republican Party’s broader nationwide strategy, Plaintiffs’ objective becomes clear:
2 creating confusion and uncertainty to undermine the results of the November election and
3 prop up further post-election litigation. Indeed, former President Donald Trump is already
4 asserting interference with the 2024 general election, months before a single vote has been
5 cast or counted; influential conservatives have declared that there is “zero chance” of a
6 free and fair election in November; and the RNC and its allies have preemptively filed
7 lawsuits like this one around the country, challenging voter-registration maintenance
8 programs based on the same flawed interpretation of the NVRA and obviously erroneous
9 data analysis that Plaintiffs repeat here. Other courts have rejected these challenges. *See,*
10 *e.g., PILF v. Benson*, No. 21-cv-929, 2024 WL 1128565 (W.D. Mich. Mar. 1, 2024),
11 *appeal docketed*, No. 24-1255 (6th Cir.); *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev.
12 June 20, 2024), ECF No. 96. This Court should do the same.

13 ARGUMENT

14 **I. The Democratic National Committee and Arizona Democratic Party have a** 15 **strong interest in the outcome of this litigation and the fair administration of** 16 **Arizona’s elections.**

17 As the principal party committee of the Democratic Party, the Democratic National
18 Committee (“DNC”) has a strong interest in this litigation. The DNC supports the election
19 of Democrats to all levels of political office, from the school board to the Oval Office, by
20 mobilizing voters across the nation. To accomplish its mission of reducing barriers to
21 voting, the DNC works to ensure that qualified voters are not prevented from registering,
22 improperly removed from the voter rolls, or otherwise barred from accessing the franchise.

23 The DNC also brings a unique perspective to these proceedings based on its
24 experience combatting the efforts of Republican-aligned groups and candidates to
25 undermine public confidence in our elections. It participated in many of the sixty-plus
26 lawsuits filed in 2020 where litigants sought to cast doubt on the electoral system, nullify
the lawful votes of millions of Americans, and overturn the general-election results. That

1 experience allows the DNC to provide insight into the unspoken purpose of this lawsuit
2 and Plaintiffs’ attempt to cast a shadow over the 2024 election.

3 The Arizona Democratic Party (“ADP”) is a state party committee as defined by
4 52 U.S.C. § 30101. ADP’s purpose is to elect candidates of the Democratic Party to public
5 office throughout Arizona. To accomplish this purpose, the ADP engages in vitally
6 important activities, including supporting Democratic Party candidates, protecting the
7 legal rights of voters, and ensuring that all eligible voters have the meaningful ability to
8 cast ballots in Arizona. The ADP is the Democratic counterpart to the Republican Party
9 of Arizona—the chair of which is one of the Plaintiffs in this lawsuit. The DNC and ADP
10 thus have compelling reasons for seeking to assist the Court in interpreting and applying
11 the NVRA.

12 **II. Plaintiffs’ claims are premised on misunderstandings of federal law and a**
13 **flawed statistical methodology.**

14 Plaintiffs’ improper use of the NVRA to mount an untimely challenge to Arizona’s
15 election administration suffers from two fatal flaws: Their complaint ignores the proper
16 standard for judging a State’s list-maintenance program under that law and further relies
17 on fundamentally unsound statistical analysis.

18 **A. Arizona makes a reasonable effort to remove the names of ineligible**
19 **voters—and that is enough.**

20 Plaintiffs misapprehend the proper standard with which to assess a State’s
21 compliance with the NVRA. The statute requires each State to “conduct a general program
22 that makes a reasonable effort to remove the names of ineligible voters” who have died or
23 moved out of their voting jurisdiction. 52 U.S.C. § 20507(a)(4). The phrase “reasonable
24 effort” is telling: In enacting the NVRA, Congress gave each State considerable flexibility
25 to develop a general maintenance program that is reasonable given the circumstances of
26 its electoral system. The accompanying Senate Report explained that the NVRA “would
not require a specific mandatory procedure for verifying or confirming voter rolls” or

1 “mandate any specific time periods for when such list cleaning mechanisms must be
2 used.” S. Rep. No. 103-6, at 2, 20. Nor does the NVRA require certain results. *See Benson*,
3 2024 WL 1128565, at *11 (“[T]he NVRA requires only a ‘reasonable effort,’ not a perfect
4 effort.”). Instead, Congress intentionally left the details of a State’s “general program” to
5 its own discretion, recognizing that requiring more robust voter-purging processes would
6 “unnecessarily place[] additional burdens on the registration system because persons who
7 are legitimately registered must be processed all over again.” S. Rep. No. 103-6, at 17–
8 18. This flexibility reflects that the NVRA “counterpose[s] two general, sometimes
9 conflicting, mandates: To expand and simplify voter registration processes so that more
10 individuals register and participate in federal elections, while simultaneously ensuring that
11 voter lists include only eligible voters.” *League of Women Voters of Ariz. v. Reagan*, No.
12 CV-18-02620-PHX, 2018 WL 4467891, at *1 (D. Ariz. Sept. 18, 2018) (cleaned up).¹

13 Against the NVRA’s flexible standard, Plaintiffs’ complaint fails on its face. Even
14 setting aside their methodological shortcomings, *see infra* at 6–10, Plaintiffs have
15 identified *nothing* unreasonable about Arizona’s list-maintenance program, whether
16 specific procedural deficiencies or areas for improvement. *Cf. PILF v. Boockvar*, 495 F.
17 Supp. 3d 354, 359 (M.D. Pa. 2020) (denying preliminary relief in NVRA case where
18 plaintiff did “not allege that [challenged list-maintenance] program itself is deficient, nor
19 d[id] it point to a specific breakdown that ma[de] the program ‘unreasonable’”). This is

20 ¹ Congress later reaffirmed that the NVRA ensures flexibility and errs on the side
21 of preventing erroneous deregistration when it enacted the aptly named Help America
22 Vote Act of 2002 (“HAVA”), 52 U.S.C. §§ 20901–21145. HAVA reinforced the NVRA’s
23 mandate that States must “ensure that eligible voters are not removed in error from the
24 official list of [registered] voters” and directed that registered voters may only “be
25 removed from the computerized list” of voters only “in accordance with the provisions of
26 the [NVRA].” *Id.* §§ 21083(a)(4)(B), (a)(2)(A)(i). And HAVA made clear that, like the
NVRA, it “left to the discretion of the State” the “methods of complying with” federal
election-administration requirements. *Id.* § 21085; *see also* H.R. Rep. No. 107-329, at 35
(2001) (“The goal of the minimum standards is to improve our election system without
issuing dictates that would rob states of the ability to craft their own solutions.”).

1 not surprising: As Defendant Adrian Fontes’s motion to dismiss amply demonstrates,
2 Arizona conducts a robust program that readily satisfies the NVRA’s flexible standard.
3 *See* MTD 3–5, 12–15.

4 Instead, all Plaintiffs can point to is purported bloat in Arizona’s voter rolls. But,
5 at the time of the NVRA’s enactment, Congress was told that the statute’s built-in
6 safeguards (including the requirement that two federal election cycles pass before
7 nonresponsive voters are removed from the voter rolls, *see supra* n.1) might increase the
8 “risk[] of inflated voter rolls,” 139 Cong. Rec. 4,835, 4,850 (1993) (letter from former
9 Ohio Secretary of State Bob Taft)—meaning that there is nothing inherently unlawful or
10 surprising about Arizona’s voter rolls, even assuming the soundness of Plaintiffs’
11 statistical analysis. Indeed, Congress concluded—with justification—that any concerns
12 about fraud and registration maintenance would be adequately addressed by procedural
13 safeguards accompanying automatic voter registration and the prospect of “[f]ederal
14 criminal penalties.” S. Rep. No. 103-6, at 11–13. Nothing alleged in Plaintiffs’ complaint
15 gives any reason to doubt the wisdom of Congress’s judgment or the balance it struck in
16 crafting the NVRA. Plaintiffs’ fears of voter fraud stemming from alleged list-
17 maintenance deficiencies are wholly unsubstantiated.

18 **B. Plaintiffs’ statistical analysis is flawed to the point of implausibility.**

19 Plaintiffs’ claim of inflated voter rolls is premised on comparisons between
20 composite population estimates and snapshot registration rates years later—a
21 fundamentally flawed methodology that cannot give rise to any legitimate inference of
22 impropriety.

23 Critically, Plaintiffs’ figures for Arizona’s citizen voting-age population
24 (“CVAP”)—which is to say, the number of eligible voters—come from the U.S. Census
25 Bureau’s American Community Survey (“ACS”). *See* Compl. ¶¶ 76–77. But the ACS
26 merely provides an *estimate* of CVAP; unlike the decennial census, which “[c]ounts every

1 person living” in the territorial United States, the ACS is “[s]ent to a sample of addresses
2 (about 3.5 million),” *The Importance of the American Community Survey and the*
3 *Decennial Census*, U.S. Census Bureau, [https://www.census.gov/programs-surveys/acs/](https://www.census.gov/programs-surveys/acs/about/acs-and-census.html)
4 [about/acs-and-census.html](https://www.census.gov/programs-surveys/acs/about/acs-and-census.html) (last visited July 29, 2024)—far short of the total U.S.
5 population of more than 336 million, *see U.S. and World Population Clock*, U.S. Census
6 Bureau, <https://www.census.gov/popclock> (July 29, 2024). Importantly, “ACS estimates
7 reflect data that have been collected over a period of time rather than for a single point in
8 time.” *Understanding and Using American Community Survey Data*, U.S. Census Bureau
9 1 (Sept. 2020), [https://www.census.gov/content/dam/Census/library/publications/2020/](https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf)
10 [acs/acs_general_handbook_2020.pdf](https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf). And the 2022 ACS—one of the data sources on
11 which Plaintiffs rely, *see* Compl. ¶¶ 76–77—was even less reliable than usual because it
12 had a response rate of only 84.4% (the second lowest in over two decades), *see Response*
13 *Rates*, U.S. Census Bureau, [https://www.census.gov/acs/www/methodology/sample-size-](https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/response-rates)
14 [and-data-quality/response-rates](https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/response-rates) (last visited July 29, 2024).

15 By contrast, the number of registered voters reported by the State “purports to be
16 *actual* registration numbers,” not mere estimates. Compl. ¶ 79. Herein lies the problem:
17 Plaintiffs cannot reliably compare “artificially low” population estimates derived from the
18 ACS with the actual numbers of registered voters because this yields “artificially high”
19 voter “registration rate[s]”—and therefore “misleading” results. *Bellitto*, 935 F.3d at 1208.
20 Plaintiffs’ theory of erroneous registrations (and thus unlawfully lax list maintenance) is
21 founded on their back-of-the-envelope calculation that the voter-registration rate in
22 Arizona exceeds 90 percent, *see* Compl. ¶¶ 81–89, but this figure is methodologically
23 flawed and cannot carry the weight Plaintiffs place on it.

24 Moreover, the ACS estimates and actual voter-registration figures from the State
25 are mismatched chronologically: The State’s count of registered voters is a snapshot taken
26 at a single point in time, representing the number of registered voters at the moment a

1 report is generated, whereas both “[s]ingle-year and multiyear estimates from the ACS are
2 [] ‘period’ estimates derived from a sample collected over a period of time, as opposed to
3 ‘point-in-time’ estimates such as those from past decennial censuses.” *Am. Cmty. Survey*
4 *Data, supra*, at 13. Matching a recent snapshot of the number of registered voters with an
5 older CVAP estimate is far from the fair comparator that Plaintiffs suggest. Without
6 accounting for the incongruities at the heart of their data, Plaintiffs cannot plausibly allege
7 that the current number of registered voters in Arizona (or any of its constituent counties)
8 is significantly higher than the number of eligible voters or that the state’s voter-
9 registration rates exceed what might be expected.²

10 Fundamental methodological errors also pervade Plaintiffs’ analysis of deceased
11 voters. *See* Compl. ¶¶ 11–12, 91–93. Their conclusion that “approximately 20,000 to
12 35,000 registered voters who died [] were not removed from Arizona’s voter rolls,” *id.*
13 ¶ 91, is premised on the assumption that every one of the estimated 143,278 eligible
14 Arizona voters who passed away during the relevant time period was registered to vote,
15 *see id.* ¶ 12; *see also id.* Ex. 1 ¶¶ 59–69. This is an unreasonable presupposition, since
16 even Plaintiffs’ claimed “implausibly high” voter-registration estimates fall below 100
17 percent. *Id.* ¶¶ 7, &1. When, by contrast, Plaintiffs’ preferred voter-registration rate of 69.9
18 percent is applied to the estimated number of decedents, *see id.* ¶ 7, the purported 20,000-
19 to-35,000-voter surplus vanishes, as Plaintiffs acknowledge that “108,103 [deceased
20 voters] were removed from the voter rolls,” *id.* ¶ 12 (emphasis added).

21 No more compelling is Plaintiffs’ analysis of Maricopa County’s confirmation
22 notices using data from the Election Administration and Voting Survey (“EAVS”). *See id.*
23 ¶¶ 94–96. Plaintiffs claim that the 620,000 unaccounted-for notices, which “were sent to
24 voters in Maricopa County to determine if they still lived at the location where they were

25
26 ² Plaintiffs also rely on voter registration numbers that include inactive voters, as
the Secretary details in his brief. *See* MTD at 10–11, 15–17.

1 registered to vote,” represent “voters moving out of Arizona or voters who failed to
2 respond to confirmation notices” who are, in turn, “the 500,000 unaccounted-for
3 registered voters on Arizona’s voter rolls.” *Id.* ¶¶ 95–96. But Plaintiffs never elaborate or
4 explain the basis for their conclusion that these unaccounted-for notices necessarily went
5 to voters who moved or failed to respond. Instead, they offer only a “[b]are assertion[]”
6 that this is the case, which is not enough under federal pleading standards. *Ashcroft v.*
7 *Iqbal*, 556 U.S. 662, 681 (2009). Indeed, their conclusion here is not merely insufficient,
8 but implausible: Plaintiffs’ own expert notes that, according to the EAVS data, “Maricopa
9 County had 51,208 removals [] ‘because the registrant moved outside the jurisdiction’”
10 and “80,474 removals [] ‘because the registrant did not respond to confirmation letters.’”
11 Compl. Ex. 1, at 11 n.10. Given that the EAVS data expressly reported the numbers of
12 voters who moved or did not respond to notices, logic dictates that the 620,000
13 unaccounted-for notices do *not* fall into either category, contrary to Plaintiffs’ allegations.

14 Moreover, even if some or all of these 620,000 notices were sent to voters who
15 moved or did not respond, that alone would not indicate that these voters are wrongfully
16 on the voter rolls or that Arizona is delinquent in its obligation to remove them. The
17 NVRA, for instance, expressly prohibits removing a registered voter from the rolls just
18 because they change addresses “within the same registrar’s jurisdiction,” 52 U.S.C.
19 § 20507(f)—meaning it might be the case that some voters have changed addresses but
20 *cannot* (and should not) be removed from the voter rolls. The NVRA also prevents States
21 from removing voters suspected of moving until at least two federal general elections have
22 passed since the voters failed to respond to official notices. *Id.* § 20507(d)(1)(B).
23 Immediately deregistering voters who fail to respond to notices would not only be
24 unnecessary under the NVRA, but unlawful. In short, Maricopa County’s unaccounted-
25 for notices do not, without more, raise a plausible inference of noncompliance with the
26 NVRA or any other nefarious circumstance.

* * *

Whatever Plaintiffs’ issues with the administration of Arizona’s elections (manufactured or otherwise), they cannot ignore that, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plaintiffs’ complaint falls short of this hornbook threshold. Because they fail to allege any actual unreasonableness in Arizona’s list-maintenance procedures and employ a fundamentally flawed (and thus implausible) statistical methodology, they have not even so much as alleged “the mere possibility of misconduct,” *id.* at 679, let alone stated a viable claim for relief. Under these circumstances, dismissal is not only appropriate, but required.³

III. This lawsuit is yet another meritless challenge to the administration of Arizona’s elections—and part of a nationwide campaign to cast doubt on the 2024 election.

Over the past four years, Republican-affiliated individuals and organizations have brought a series of meritless challenges to list-maintenance programs and other election processes. Plaintiffs’ lawsuit is merely a continuation of these post-2020 efforts to sow public distrust in our elections—and the latest baseless challenge filed in Arizona.

Republican efforts to undermine public confidence in elections have been extensive and varied. After former President Trump lost the 2020 election, he and his allies filed more than sixty lawsuits challenging the results. *See, e.g., Results of Lawsuits Regarding*

³ As a final legal infirmity in their complaint, Plaintiffs ask the Court to “requir[e] the Secretary to fully comply with any existing procedures that Arizona has in place to ensure ineligible voters are identified and removed from the rolls,” Compl. at 19—relief that is barred by the Eleventh Amendment, which prohibits federal courts from “instruct[ing] state officials on how to conform their conduct to state law,” even when such claims are “masked under federal law,” *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 716 (D. Ariz. 2020) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984)).

1 *the 2020 Elections*, Campaign Legal Ctr., [https://campaignlegal.org/results-lawsuits-](https://campaignlegal.org/results-lawsuits-regarding-2020-elections)
2 regarding-2020-elections (last visited July 29, 2024). None of those cases succeeded in
3 overturning the vote, and all were roundly rejected by judges across the ideological
4 spectrum, who recognized that the “breathhtaking relief” of “tossing out millions of []
5 ballots would be drastic and unprecedented, disenfranchising a huge swath of the
6 electorate and upsetting all down-ballot races too.” *Trump for President v. Secretary of*
7 *Pa.*, 830 F. App’x 377, 382, 388 (3rd Cir. 2020). Republican efforts in 2020 included post-
8 election challenges filed in Arizona, including one that alleged that the election was
9 “riddled with fraud, illegality and statistical impossibility” and that was rejected because
10 the claims were “largely based on anonymous witnesses, hearsay, and irrelevant analysis
11 of unrelated elections.” *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 706, 721 (D. Ariz. 2020).

12 Even though the 2020 post-election challenges were no more successful in Arizona
13 than in the rest of the country, Republican candidates tried their hands again in 2022,
14 mounting a striking (and ongoing) series of lawsuits alleging that the state’s election
15 processes were flawed and seeking to overturn the results of various races—months and
16 even *years* after their Democratic opponents were sworn into office. *See, e.g., Lake v.*
17 *Hobbs*, No. 2 CA-CV 2023-0144, 2024 WL 2949331, at *11 (Ariz. Ct. App. June 11,
18 2024) (describing allegations that, among other things, county election officials failed to
19 properly conduct signature vilification, resulting in “illegal ballots”). Courts have
20 repeatedly rejected these 2022 challenges as well. *See id.*

21 Plaintiffs’ lawsuit echoes the same themes from these past cases. Undeterred by
22 their repeated courtroom losses in 2020 and 2022, Republican-affiliated groups and
23 individuals continue to assert baseless allegations of voter fraud, claims that do nothing to
24 protect the integrity of elections and instead only undermine voters’ confidence in election
25 outcomes. Former President Trump was already asserting interference with the 2024
26 general election more than a year ago, *see* Nick Mordowanec, *Trump Already Claiming*

1 *Interference in 2024 Election*, Newsweek (May 17, 2023), [https://](https://www.newsweek.com/trump-already-claiming-interference-2024-election-1800976)
2 www.newsweek.com/trump-already-claiming-interference-2024-election-1800976, and
3 the “right-wing Heritage Foundation” recently proclaimed the illegitimacy of the 2024
4 election, with its executive director asserting, “As things stand right now, there’s a zero
5 percent chance of a free and fair election,” Isaac Arnsdorf, *Trump Allies at Heritage*
6 *Declare 2024 Election Illegitimate in Advance*, Wash. Post (July 11, 2024), [https://](https://www.washingtonpost.com/politics/2024/07/11/heritage-foundation-election-war-game)
7 www.washingtonpost.com/politics/2024/07/11/heritage-foundation-election-war-game.
8 Meanwhile, the RNC has ranked “election integrity” as a key priority for its 2024
9 campaign, see *2024 GOP Platform: Make America Great Again!*, Am. Presidency Project
10 (July 8, 2024), [https://www.presidency.ucsb.edu/documents/2024-republican-party-](https://www.presidency.ucsb.edu/documents/2024-republican-party-platform)
11 [platform](https://www.presidency.ucsb.edu/documents/2024-republican-party-platform)—and has been open about its plans to use litigation to advance its goals in the
12 runup to this year’s general election. These efforts have been widely covered in the media,⁴
13 including a recent report in *The New York Times*, which noted that “Democrats, civil rights
14 lawyers and even some Republicans say that the threat is clear: Even if the cases fail, Mr.
15 Trump’s allies are building excuses to dispute the results, while trying to empower
16 thousands of local election officials to disrupt the process.” Jim Rutenberg & Nick
17 Corasaniti, *Unbowed by Jan. 6 Charges, Republicans Pursue Plans to Contest a Trump*
18 *Defeat*, N.Y. Times (July 13, 2024), [https://www.nytimes.com/2024/07/13/us/politics/](https://www.nytimes.com/2024/07/13/us/politics/republican-election-campaign-2024.html)
19 [republican-election-campaign-2024.html](https://www.nytimes.com/2024/07/13/us/politics/republican-election-campaign-2024.html). The *Times* report quoted prominent Republican
20 election lawyer Ben Ginsberg as warning, “The fundamental principle of the system—the

21 _____
22 ⁴ See, e.g., Ximena Bustillo, *As Trump Continues to Remake RNC in His Image,*
23 *New Memo Outlines What That Looks Like*, NPR (Mar. 15, 2024), [https://](https://www.npr.org/2024/03/15/1238765442/rnc-trump-republicans-whatley-lara-election-integrity-voter-fraud-early-voting)
24 [www.npr.org/2024/03/15/1238765442/rnc-trump-republicans-whatley-lara-election-](https://www.npr.org/2024/03/15/1238765442/rnc-trump-republicans-whatley-lara-election-integrity-voter-fraud-early-voting)
25 [integrity-voter-fraud-early-voting](https://www.npr.org/2024/03/15/1238765442/rnc-trump-republicans-whatley-lara-election-integrity-voter-fraud-early-voting); Nick Corasaniti et al., *G.O.P. Intensifies Scrutiny of*
26 *Voting: ‘We’re Keeping a Close Eye on You’*, N.Y. Times (Apr. 20, 2024), [https://](https://www.nytimes.com/2024/04/20/us/politics/trump-rnc-voting-election.html)
www.nytimes.com/2024/04/20/us/politics/trump-rnc-voting-election.html; Patrick
Marley et al., *With Push from Trump, Republicans Plan Blitz of Election-Related*
Lawsuits, Wash. Post (Mar. 22, 2024), [https://www.washingtonpost.com/politics/2024/](https://www.washingtonpost.com/politics/2024/03/22/republicans-election-lawsuits-rnc)
[03/22/republicans-election-lawsuits-rnc](https://www.washingtonpost.com/politics/2024/03/22/republicans-election-lawsuits-rnc).

1 rule of law, the finality of the results, the ability to challenge an election but then accept
2 the results if the challenges fail—is being stood on its head.” *Id.*

3 By creating and perpetuating the false narrative that America’s elections are replete
4 with fraud, and by vowing to put an end to it, the Republican Party has positioned itself
5 as the solution to a fictional problem of its own creation. Based on the former president’s
6 recent statements, the Republican strategy—of which this lawsuit is a part—is a clear
7 attempt to lay the groundwork for post-election litigation claiming that the 2024 election
8 was marred by fraud.

9 Republicans’ claims of fraud and electoral malfeasance are as unfounded today as
10 they were four years ago. Indeed, federal courts have recently rejected strikingly similar
11 (and equally baseless) challenges to list-maintenance practices in other states. For
12 example, a federal court in Michigan rejected a claim brought by the conservative Public
13 Interest Legal Foundation (“PILF”) that that state’s program to remove deceased voters
14 encouraged fraud or otherwise conflicted with the NVRA. *See Benson*, 2024 WL 1128565,
15 at *12 (“After conducting more than nine months of discovery into the many facets of
16 Michigan’s program for the removal of deceased registrants, PILF has identified no
17 genuine issue for trial regarding its claim that the program is not reasonable.”). That case,
18 like Plaintiffs’ claim here, was “based on [the] matching” of unwarrantedly compared lists
19 (there, matching “potentially deceased voters” on the voter rolls with publicly available
20 data like the Social Security Death Index). *Id.* at *9–11 (cleaned up). The Michigan court
21 recognized the substantial threat to voters posed by such lawsuits, noting that “purging
22 voters from the rolls requires voters to re-register and hinders participation in elections.”
23 *Id.* at *1 (quoting *Am. C.R. Union*, 872 F.3d at 178). Less than two weeks after PILF’s
24 lawsuit was dismissed, the RNC filed yet another case in the same court alleging, like
25 Plaintiffs here, that Michigan must be violating the NVRA because its voter-registration
26

1 rates are too high. *See generally* Complaint, *RNC v. Benson*, No. 1:24-cv-00262 (W.D.
2 Mich. Mar. 13, 2024), ECF No. 1.⁵

3 Five days after filing its Michigan suit, the RNC struck again, raising nearly
4 identical claims in Nevada. *See generally* Complaint for Declaratory & Injunctive Relief,
5 *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev. Mar. 18, 2024), ECF No. 1. As in its
6 Michigan suit, and like Plaintiffs' lawsuit here, the RNC alleged that Nevada is "failing
7 to make a reasonable effort to conduct appropriate list maintenance as required by the
8 NVRA" because "[a]t least five counties in Nevada have inordinately high voter
9 registration rates." *Id.* ¶¶ 3, 6. After a federal court dismissed the complaint without
10 prejudice for lack of standing, the RNC filed an amended complaint; while the new
11 complaint provides additional injury-related allegations, the merits of the lawsuit are
12 unchanged. *See generally* First Amended Complaint for Declaratory & Injunctive Relief,
13 *RNC v. Aguilar*, No. 2:24-cv-00518 (D. Nev. July 2, 2024), ECF No. 98.

14 This case and its analogues in Michigan and Nevada are merely the latest efforts in
15 the ongoing conservative attempt to use litigation to aggressively purge voter rolls. PILF
16 in particular has been unceasing in its baseless (and uniformly unsuccessful) attempts to
17 purge voters from the rolls.⁶ Another conservative organization, Judicial Watch, has filed

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19 ⁵ A motion to dismiss the RNC's complaint is fully briefed and pending before the
20 court.

21 ⁶ *See* Complaint for Declaratory Judgment & Injunctive Relief, *PILF v. Knapp*, No.
22 3:24-cv-01276 (D.S.C. Mar. 14, 2024), ECF No. 1 (case ongoing); Complaint for
23 Declaratory Judgment & Injunctive Relief, *PILF v. Bos. Elections Dep't*, No. 1:24-cv-
24 10521 (D. Mass. Feb. 29, 2024), ECF No. 1 (voluntary dismissal); Complaint for
25 Declaratory & Injunctive Relief, *PILF v. Dupuis*, No. 4:24-cv-00679 (N.D. Cal. Feb. 5,
26 2024), ECF No. 1 (case ongoing); Plaintiff's Complaint for Declaratory & Injunctive
Relief, *PILF v. Nago*, No. 1:23-cv-00389 (D. Haw. Sept. 21, 2023), ECF No. 1 (case
ongoing); Complaint for Declaratory & Injunctive Relief, *PILF v. Griswold*, No. 1:21-cv-
03384 (D. Colo. Dec. 16, 2021), ECF No. 1 (case ongoing); Complaint for Declaratory
Judgment & Injunctive Relief, *PILF v. Evans*, No. 1:21-cv-03180 (D.D.C. Dec. 6, 2021),
ECF No. 1 (stipulated dismissal); Complaint for Declaratory & Injunctive Relief, *PILF v.*
Winfrey, No. 2:19-cv-13638 (E.D. Mich. Dec. 10, 2019), ECF No. 1 (stipulated dismissal).

1 lawsuits in Illinois and California, as has a similar group in Maryland—all, like Plaintiffs
2 here, alleging NVRA violations premised on fundamental misunderstandings of the
3 underlying law and statistics. *See* Complaint for Declaratory & Injunctive Relief ¶ 24, *Jud.*
4 *Watch, Inc. v. Weber*, No. 2:24-cv-03750 (C.D. Cal. May 6, 2024), ECF No. 1 (alleging
5 presumptive violation of NVRA because, “[i]n Plaintiffs’ experience,” the number of
6 removals based on changed residency was “absurdly small” compared to census data);
7 Complaint ¶ 31, *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 1:24-cv-01867 (N.D.
8 Ill. Mar. 5, 2024), ECF No. 1 (same); Complaint for Declaratory & Injunctive Relief
9 ¶¶ 22–28, *Md. Election Integrity LLC v. Md. State Bd. of Elections*, No. 1:24-cv-00672
10 (D. Md. Mar. 6, 2024), ECF No. 1 (alleging that “[m]eticulous analysis of the official
11 Maryland State Voter Registration Database reveals a minimum of 79,392 current
12 apparent registration violations”).⁷

13 Plaintiffs’ claim here fits into this pattern of unsubstantiated election-related
14 lawsuits. They allege that Arizona’s election processes are flawed and raise concerns
15 about fraud. *See, e.g.*, Compl. ¶ 36 (“Retaining voter rolls bloated with ineligible voters
16 harms the electoral process, heightens the risk of electoral fraud, and undermines public
17 confidence in elections.”). But Plaintiffs, including the chair of the Republican Party of
18 Arizona, waited until June of a presidential election year to file their complaint. Given this
19 delay, they *cannot* obtain any systematic relief before the 2024 elections: Federal law
20 forbids cancelling voter registrations based on a potential change of residence within
21 ninety days of a federal election, *see* 52 U.S.C. § 20507(c)(2), and Arizona has upcoming
22 elections on July 30 and August 7. And to secure relief for the November general
23 election—during the narrow window between the July 30 election and August 7, the
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25 ⁷ The Maryland case was dismissed on standing grounds. *See Md. Election*
26 *Integrity, LLC v. Md. State Bd. of Elections*, No. SAG-24-00672, 2024 WL 2053773, at
*4 (D. Md. May 8, 2024), *appeal docketed*, No. 24-1449 (4th Cir. May 17, 2024).

1 ninety-day cutoff before November 5—Plaintiffs would have needed to seek expedited
2 relief. They have not. Accordingly, this litigation cannot deliver the relief Plaintiffs seek
3 before the November general election; its only practical effect is to reduce confidence in
4 the integrity of that election, sowing doubt that can later be reaped in potential post-
5 election litigation of the sort Arizona witnessed in 2020 and 2022.

6 In the end, the greatest threat to confidence in the security of our elections is not
7 fraud or voter-roll maintenance practices, but unfounded attacks on election integrity. The
8 recent “explosion of misinformation . . . disrupt[s] the democratic process” because it
9 “confuses and overwhelms voters.” Gabriel R. Sanchez & Keesha Middlemass,
10 *Misinformation Is Eroding the Public’s Confidence in Democracy*, Brookings Inst. (July
11 26, 2022), [https://www.brookings.edu/articles/inisinformation-is-eroding-the-publics-](https://www.brookings.edu/articles/inisinformation-is-eroding-the-publics-confidence-in-democracy)
12 [confidence-in-democracy](https://www.brookings.edu/articles/inisinformation-is-eroding-the-publics-confidence-in-democracy). Political-science literature confirms the danger these baseless
13 accusations pose to the public’s perception of election results. One recent peer-reviewed
14 study found that “unsubstantiated claims of voter fraud undermine the public’s confidence
15 in elections, particularly when the claims are politically congenial, and that these effects
16 cannot easily be ameliorated by fact-checks or counter-messaging.” Nicolas Berlinski et
17 al., *The Effects of Unsubstantiated Claims of Voter Fraud on Confidence in Elections*, 10
18 *J. Experimental Pol. Sci.* 34, 36 (2023). Another confirmed that “[p]erceived problems in
19 election administration, especially if these problems are highly advertised, exaggerated,
20 or, outright false, negatively affect voter confidence.” Mara Suttman-Lea & Thessalia
21 Merivaki, *The Impact of Voter Education on Voter Confidence: Evidence from the 2020*
22 *U.S. Presidential Election*, 22 *Election L.J.* 145, 147 (2023). And though one might expect
23 that strengthening election security would reduce distrust in elections, “public opinion is
24 only weakly responsive to changes in policy or outcomes,” making rhetorical changes by
25 well-known public figures “crucial.” Olivier Bergeron-Boutin et al., *Communicating with*
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1 *Voters to Build Trust in the U.S. Election System*, MIT Election Data & Science Lab 1, 4
2 (Oct. 2023), <https://electionlab.mit.edu/sites/default/files/2023-10/voter-trust.pdf>.

3 In other words, the spreading of misinformation about election integrity “has
4 lasting implications on voters’ trust in election outcomes.” Sanchez & Middlemass, *supra*.
5 Commentators have similarly agreed that unfounded attacks have a deleterious effect on
6 the public’s overall confidence in elections. For example, although proponents of
7 restrictive registration and voting laws “have traditionally argued that such laws are
8 needed to police rampant voter fraud—a claim most experts call unfounded—some are
9 now saying the perception of fraud, real or otherwise, is an equally serious problem, if not
10 worse.” Michael Wines, *One Rationale for Voter ID Debunked, G.O.P. Has Another*, N.Y.
11 Times (Mar. 23, 2017), [https://www.nytimes.com/2017/03/23/us/election-fraud-voter-](https://www.nytimes.com/2017/03/23/us/election-fraud-voter-ids.html)
12 [ids.html](https://www.nytimes.com/2017/03/23/us/election-fraud-voter-ids.html). Far from assuaging voters’ concerns about election integrity, baseless litigation
13 like this serves only to intensify those fears, damaging democracy—and, as recent
14 experience has demonstrated, the rule of law—in the process.

15 CONCLUSION

16 What is ultimately at stake here is not, as Plaintiffs would have this Court believe,
17 the integrity of Arizona’s forthcoming presidential election, but rather the public’s
18 confidence in that election. Following the lead of courts confronting similarly baseless
19 and pernicious cases across the country, this Court should dismiss Plaintiffs’ lawsuit.
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Dated: July 30, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2024, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

/s/ Indy Fitzgerald

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