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**Motion for admission pro hac vice forthcoming*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED et al.,

Plaintiffs,

v.

STEPHEN RICHER, in his official capacity as Maricopa County Recorder, et al.,

Defendants.

No. CV-24-02030-PHX-SMB

DEMOCRATIC NATIONAL COMMITTEE'S MOTION TO INTERVENE

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INTRODUCTION

Plaintiffs' lawsuit is little more than political theater, seemingly designed less to address any real (much less substantial) issues with Arizona's voter-registration lists than to upend the orderly administration of the upcoming presidential election. That their claims are without legal merit is underscored by the fact that the National Voter Registration Act ("NVRA"), 52 U.S.C. §§ 20501–20511, which Plaintiffs ostensibly seek to vindicate, expressly prohibits States from implementing systematic programs to cancel voter registrations within ninety days of a federal election, *see id.* § 20507(c)(2)(A). Plaintiffs filed their amended complaint weeks after the August 7 NVRA cutoff ahead of the November 5 general election. Consequently, their recently filed request for preliminary relief—which follows more than a month after they initiated this lawsuit, a delay that itself "undercut[s their] claim of irreparable harm," *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (en banc)—is foreclosed by federal law. Moreover, the Arizona statutes on which Plaintiffs rely give registered voters *thirty-five days* to provide satisfactory evidence of citizenship. *See* A.R.S. § 16-165(A)(10). Given that early voting begins on October 9, just 13 days from now, Plaintiffs' request for relief as to at least one of their claims comes too late under state law as well.

Plaintiffs, in short, belatedly challenged what they claim to be endemic "failures" in Arizona's list-maintenance procedures, waited more than a month, and then suddenly sought emergency relief that, state and federal law make clear, cannot be awarded. This perplexing strategy begs the question: Why?

A possible answer lies in the unfounded concern underlying Plaintiffs' suit: the phantom threat of noncitizen voting, which has been cited as a justification for voter-removal programs in other pre-election lawsuits nationwide. As a federal court recently noted, however, "non-citizens voting in Arizona is quite rare, and non-citizen voter fraud in Arizona is rarer still." *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024

WL 862406, at *16 (D. Ariz. Feb. 29, 2024). Plaintiffs' lawsuit nonetheless raises the specter of noncitizen voting, alleging that Defendants "have failed to take the actions required by law to ensure that foreign citizens are removed from their voters rolls." First Am. Compl. ("FAC") ¶ 8, ECF No. 12. But Plaintiffs' legal claims are no more compelling than the imagined threat animating them: Their causes of action are essentially a catalogue of proposed policy changes, a wish list of how they would *prefer* Arizona statutes be written and applied. If Plaintiffs have legitimate concerns about the scope of Defendants' obligations under state and federal law, then the proper recourse is the legislative process—not calling on a federal court to tell Arizona county officials how Arizona law should be changed. In the end, given the absence of merit, Plaintiffs' lawsuit can serve only to sow confusion, uncertainty, and concern as November 5 approaches.

Indeed, it is far too late in the election cycle for Plaintiffs to demand changes to county recorders' list-maintenance practices. The general election is not merely approaching, but upon us: By September 21, Arizona county officials were required to send mail ballots to military members and other U.S. citizens residing overseas, while the period for registering to vote ends on October 7—with early voting beginning on October 9, less than two weeks from now. *See* A.R.S. §§ 16-120(A), 16-542(C).

The Democratic National Committee ("DNC") is the national committee of the Democratic Party and seeks to intervene in this matter to ensure that there are no late-hour changes to the state's voting rules, that Arizona's elections are administered free from disruption and distraction, and that Arizona's Democratic voters can access the ballot box without harassment or impediment. The DNC has undeniable interests in these proceedings, as Plaintiffs' requested relief would serve to impede the orderly conduct of the state's elections (imposing new burdens on local officials at the same time they are trying to administer a high-turnout presidential contest) and threaten the franchise of the DNC's supporters and constituents—at least some of whom would likely be caught up in

the sort of last-minute, hastily organized dragnet that Plaintiffs seek. Because this motion is timely and the DNC cannot rely on the existing parties to safeguard its partisan interests in this litigation, the DNC satisfies the requirements for intervention as of right. At the very least, because the DNC regularly litigates voting- and election-related disputes in Arizona and can bring to these proceedings the unique perspectives of voters, candidates, and other non-government stakeholders, permissive intervention should be granted.[1]

BACKGROUND

I. Plaintiffs' Lawsuit

Arizona law requires that "any application for [voter] registration [] be accompanied by satisfactory evidence of citizenship"—*unless* an applicant uses "a form produced by the United States election assistance commission," in which case no documentary proof of citizenship ("DPOC") is required. A.R.S. § 16-121.01(C). This bifurcated system—a result of the U.S. Supreme Court's decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*, which concluded that "the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form," 570 U.S. 1, 15 (2013)—affects the elections in which different categories of Arizona voters are eligible to cast ballots. As Plaintiffs explain, voters who register without providing DPOC are designated "federal-only" voters and can cast ballots in elections for only federal (and not state or local) offices. FAC ¶¶ 58–61; *Mi Familia Vota v. Fontes*, 111 F.4th 976, 984–85 (9th Cir. 2024) (per curiam).

Plaintiffs' lawsuit alleges that Defendants, Arizona's county recorders, are failing to fulfill their statutory obligations to verify the citizenship of federal-only voters. In particular, Plaintiffs claim that, simply because federal law obliges the U.S. Department

[1] Consistent with Federal Rule of Civil Procedure 24(c), the DNC attaches a proposed answer as Exhibit 1. Additionally, given Plaintiffs' pending motion for preliminary relief, the DNC has also attached a proposed motion to dismiss and opposition to Plaintiffs' motion as Exhibit 3, which it would file if granted intervention.

of Homeland Security ("DHS") to "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual," 8 U.S.C. § 1373, Arizona's county recorders must submit citizenship-verification requests to DHS "for every Federal-Only Voter registered in [their] respective Counties who has registered since A.R.S. § 16-121.01(D) became effective," FAC 31; *see also id.* ¶¶ 164–76—even though that is not required by state law, and even though the DHS database on which Plaintiffs rely, the Person Centric Query Service, might "display inaccurate data due to inaccuracies in underlying source IT systems," *Privacy Impact Assessment for the Person Centric Query Service*, DHS 7 (Mar. 8, 2016), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-pcqs-march2016.pdf.

Plaintiffs next suggest that "[f]ailure to provide DPOC" is itself "information about lack of citizenship" that obligates Defendants to confirm the citizenship of federal-only voters under A.R.S. § 16-165(K). FAC ¶¶ 177–86. But that statute mandates consultation of available databases "to confirm information obtained that *requires* cancellation of registrations," A.R.S. § 16-165(K) (emphasis added)—and courts have repeatedly reaffirmed that the mere failure to provide DPOC does *not* require cancellation of voter registrations given Arizona's federal-only option.

Plaintiffs further claim that Defendants have failed to provide the Attorney General with information about federal-only voters as required by A.R.S. § 16-143(A), FAC ¶¶ 187–90, even though Plaintiffs' own filings demonstrate that Arizona's county recorders have complied with this statute.

Finally, Plaintiffs allege that Defendants "currently submit citizenship checks to DHS only for Federal-Only Voters who have provided an alien number or other DHS numeric identifier but not for other Federal-Only Voters" in violation of the NVRA's requirement that list-maintenance practices be uniform and nondiscriminatory. *Id.* ¶¶ 191–

99. This claim, however, rests on a misunderstanding of how the NVRA is applied, as confirmed by the recent *Mi Familia Vota* litigation.

II. The DNC

The DNC is the oldest continuing party committee in the United States, dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States, including in Arizona. Declaration of Jake Kenswil ("Kenswil Decl.") ¶ 3 (attached as Exhibit 2). The DNC is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. *Id.* ¶ 4. The DNC also represents millions of voters across the nation, including many in Arizona. *Id.*

The DNC's organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their ballots for Democratic candidates. *Id.* ¶ 3. To accomplish its mission, the DNC, among other things, makes expenditures for and contributions to Democratic candidates and provides active support through the development of programs benefiting candidates. *Id.* ¶ 7. The DNC works with individuals who affiliate and engage with it in Arizona, whom the DNC also considers to be members and constituents. These include all Democratic voters in the state, whom the DNC educates and works to ensure have access to the franchise. *Id.*

LEGAL STANDARD

To intervene as of right under Federal Rule of Civil Procedure 24(a)(2),

> (1) the motion must be timely; (2) the applicant must claim a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that

> interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc) (cleaned up). "In evaluating whether Rule 24(a)(2)'s requirements are met, [courts] normally follow practical and equitable considerations and construe the Rule broadly in favor of proposed intervenors . . . . because a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Id.* at 1179 (cleaned up).

Permissive intervention is appropriate where, "[o]n timely motion," an applicant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). Among other factors, "courts may consider . . . the nature and extent of the intervenors' interest, the legal position they seek to advance, and 'whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.'" *Ariz. All. for Retired Ams. v. Hobbs*, No. CV-22-01374-PHX-GMS, 2022 WL 4448320, at *2 (D. Ariz. Sept. 23, 2022) (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)).

ARGUMENT

I. The DNC is entitled to intervention as of right.

The DNC satisfies the requirements for intervention as of right: Its motion is timely, its interest in safeguarding the voting rights of its supporters would be impaired by Plaintiffs' requested relief, and Defendants cannot and will not adequately represent the DNC's partisan interests.

A. This motion is timely.

"To determine whether a motion for intervention as of right is timely," courts "focus on three primary factors: '(1) the stage of the proceeding at which an applicant

seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.'" *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835–36 (9th Cir. 2022) (quoting *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016)).

Here, the DNC's motion comes at the earliest stage of these proceedings, just three weeks after Plaintiffs filed their FAC, before the Court's Rule 16 conference on October 3, *see* ECF No. 7, and a little more than one week after Plaintiffs' request for preliminary relief, *see, e.g.*, *Coal. for Sonoran Desert Prot. v. Fed. Highway Admin.*, No. CV-22-00193-TUC-JCH, 2022 WL 17851836, at *1 (D. Ariz. Aug. 31, 2022) (intervention motion timely when filed within months of complaint and court had "not 'substantively—and substantially—engaged the issues in this case'" (quoting *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997))). And, because the DNC will abide by any scheduling or other orders adopted by the Court—indeed, it has filed a proposed opposition to Plaintiffs' motion for preliminary relief in advance of the deadline—there is no risk of prejudice or delay to Plaintiffs or anyone else. *See Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261, 266 (D. Ariz. 2020) (finding "no possible prejudice in allowing the State to intervene" where it "agreed to abide by the Court's briefing schedule").

B. The DNC has significant interests that might be impaired by the disposition of this litigation.

"[A] prospective intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). "It is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Id.* (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). Notably, "a would-be intervenor must show only that impairment of its substantial legal

interest is *possible* if intervention is denied. This burden is minimal." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (emphasis added) (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)); *see also Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) ("[H]aving found that appellants have a significant protectable interest, this court ha[s] little difficulty concluding that the disposition of the case may, as a practical matter, affect it." (cleaned up)).

The "list maintenance" Plaintiffs seek threatens to harass and disenfranchise Arizonans. Their requested relief would disrupt settled processes only weeks before the election, subject federal-only voters to a wholly new eligibility-verification process rife with potential error, and impose harmful effects on the DNC and its supporters in Arizona. This litigation therefore implicates several recognized interests that are at risk of impairment, including the DNC's interests in safeguarding its supporters' voting rights and its competitive prospects and avoiding the diversion of its limited organizational resources.

First, the DNC has an undeniable interest in safeguarding its supporters' and members' access to the ballot box, which is regularly found to be an interest sufficient for intervention. *See, e.g.*, *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (recognizing state party's "associational interest on behalf of its members" who might not be able to vote); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention to DNC based on "distinct interest in ensuring that voters of the Democratic Party can vote"); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention to Democratic organizations based on articulated interests of "asserting the rights of their members to vote safely" and "advancing their overall electoral prospects"); *cf. Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008)

(plurality opinion) (agreeing, in more demanding standing context, that political party could challenge law that imposed voting requirements on party's members).

Although Plaintiffs suggest that their aim is merely to "restore public trust in our State's electoral system" by ensuring that noncitizens are removed from the voter rolls, FAC ¶ 12, this characterization ignores a critical reality: Even legitimate efforts to remove ineligible voters from the rolls are not free from error or abuse. Indeed, Congress recognized as much when it enacted the NVRA, mandating the ninety-day pre-election cutoff to avoid "selective purging of the voter rolls," S. Rep. No. 103-6, at 3 (1993), which reflected the law's overall objective of "protect[ing] registered voters from improper removal," *Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 179 (3d Cir. 2017). The risks that Congress sought to mitigate are especially pronounced here, given that Plaintiffs are well past the NVRA's ninety-day cutoff; that they ask Defendants to implement new policies and procedures in the midst of the election calendar, while county officials are administering the runup to a high-turnout presidential contest; and that the federal database on which they place unwavering confidence—DHS's Person Centric Query Service, *see* FAC ¶ 128—may, by the department's own concession, "display inaccurate data due to inaccuracies in underlying source IT systems," *Privacy Impact Assessment*, *supra*. In short, the risk of error and even unintentional disenfranchisement is far from remote. And, because Plaintiffs' requested relief might serve to place new obstacles between eligible Democratic voters and the franchise—by subjecting them to unwarranted investigation and effectively requiring certain voters to provide DPOC, undermining established court rulings, *see infra* at 12–13—the DNC's associational interest would be impaired, and intervention as of right is warranted.

Second, if Plaintiffs succeed in this lawsuit, then the DNC would need to divert its limited resources away from its core work of persuading voters to support Democratic candidates, educating the electorate about the issues in this campaign, and implementing

get-out-the-vote efforts in the immediate run-up to November 5. Kenswil Decl. ¶¶ 13–14. Instead, some of these resources would need to be redirected toward helping Democratic voters navigate new bureaucratic hurdles and potentially disenfranchising list maintenance, *id.*—yet another cognizable ground for intervention, *see, e.g.*, *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (sufficient interests for intervention include political committee's need to "expend significant resources" based on new election law that "regulates the conduct of the Committees' volunteers and poll watchers").[2] Moreover, as the *Mi Familia Vota* court noted, citizenship-verification rules have the effect of chilling political participation from targeted populations. *See* 2024 WL 862406, at *22. Those risks are especially pronounced here given that registration cancellation under A.R.S. § 16-165(A)(10) includes "notif[ication to] the county attorney and attorney general for possible investigation." Plaintiffs' proposed dragnet would both chill potential Democratic voters from registering in the first place *and* discourage already registered voters from casting ballots in the upcoming election—and thus have the effect of frustrating the DNC's organizational mission of turning out Democratic voters and electing Democratic candidates, impairing yet another recognized interest. *See, e.g.*, *Issa*, 2020 WL 3074351, at *3 (granting intervention where "Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates" (quoting *Paher v. Cegavske*, No. 20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020))).[3]

[2] The *La Union del Pueblo Entero* court further noted that, "in a case involving 'a public interest question' that is 'brought by a public interest group'"—like *this* case—"the 'interest requirement may be judged by a more lenient standard.'" 29 F.4th at 305–06 (quoting *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014)).

[3] Advocacy organizations have been granted intervention in prior voter-purge lawsuits based on "an organizational interest in avoiding adverse reallocation of resources to protect the voting rights of their members, and an associational interest in protecting their members from unlawful removal from the voter rolls should Plaintiffs succeed in

Third, courts have regularly allowed intervention by political parties where the requested relief would negatively impact the parties' electoral prospects. *See, e.g.*, *Pavek v. Simon*, No. 19-cv-3000 (SRN/DTS), 2020 WL 3960252, at *3 (D. Minn. July 12, 2020) (granting intervention to Republican committees where challenged "Ballot Order statute's ordering requirements . . . typically benefitted Republican candidates"); *Teigen v. Wis. Elections Comm'n*, No. 2021CV000958, slip op. at 1–2 (Wis. Cir. Ct. Oct. 15, 2021) (granting intervention to DNC in challenge to drop boxes where plaintiffs' requested relief would interfere with DNC's mission of supporting election of Democratic candidates); *cf. Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (holding that election regulations that "make[] the competitive landscape worse for a candidate or that candidate's party" impose injuries that confer standing). Democratic supporters in Arizona include federal-only voters who will be negatively impacted by hasty, last-minute citizenship investigations likely to misidentify noncitizens and improperly remove eligible voters from the rolls. Kenswil Decl. ¶ 10. And, given that Plaintiffs' requested relief would immediately subject all federal-only voters to additional investigation by DHS and require that their names and applications be sent to the Attorney General, some Democratic voters would likely be chilled from participating in the political process as well. *Id.* ¶ 11; *cf. Mi Familia Vota*, 2024 WL 862406, at *27, *30–31 (crediting testimony that citizenship-confirmation and -investigation procedures "would deter Democratic supporters from registering to vote for fear of potentially subjecting themselves or a family member to scrutiny by law enforcement or prosecution" and that DNC has direct and representational standing to challenge these laws). This lawsuit therefore risks an electoral disadvantage for the DNC and distortion of the competitive landscape. Again, the risk is far from remote: The 2020

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obtaining their requested relief"—the same bases the DNC identifies here. *Jud. Watch, Inc. v. Ill. State Bd. of Elections*, No. 24 C 1867, 2024 WL 3454706, at *2–4 (N.D. Ill. July 18, 2024); *see also, e.g.*, *Bellitto v. Snipes*, No. 16-cv-61474-BLOOM/Valle, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 21, 2016) (similar).

presidential contest in Arizona was decided by a margin of less than 11,000 votes, *see State of Arizona Official Canvass: 2020 General Election*, Ariz. Sec'y of State (Nov. 24, 2020), http://apps.azsos.gov/election/2020/2020_general_state_canvass.pdf, and so *any* disruption to the Democratic Party's turnout efforts in the state could have make-or-break consequences.[4]

Fourth, the DNC was a plaintiff in a lawsuit challenging Arizona's citizenship-verification laws that was consolidated into the *Mi Familia Vota* litigation. *See Mi Familia Vota v. Hobbs*, No. 2:22-cv-00509-SRB, slip op. at 1–2 (D. Ariz. Aug. 24, 2022) (consolidating cases). As Proposed Intervenor-Defendants Voto Latino and One Arizona have noted, Plaintiffs' suit here essentially seeks a backdoor workaround to the *Mi Familia Vota* court's ruling that Arizona's federal-only voter need not provide DPOC to register. *See* Voto Latino & One Arizona's Reply in Supp. of Mot. to Intervene 1, 3, ECF No. 14 ("[T]he relief Plaintiffs seek would undermine the relief obtained [in *Mi Familia Vota*] by compelling defendants to conduct systematic removal programs that are certain to lead to the misidentification of eligible voters as ineligible, who Plaintiffs admit would then be removed from the rolls unless they 'provide DPOC.'" (quoting Pls.' Opp'n to Mot. to Intervene of Voto Latino & One Arizona 4, ECF No. 11)). The DNC's interest in safeguarding the results of its prior litigation—which Plaintiffs' lawsuit would, as a "practical" matter, "impair[]," *Wilderness Soc'y*, 630 F.3d at 1179 (cleaned up)—provides yet another basis for intervention, *cf., e.g.*, *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1258 (11th Cir. 2002) ("Because a final ruling in this case may adversely impact [putative intervenor's] ongoing lawsuit against the [defendant], we find that its interests could be impaired by the denial of intervention."); *Harris v. Pernsley*, 820 F.2d

[4] Notably, the Ninth Circuit has held that, even in the more demanding standing context, a party claiming competitive injury need not show that the challenged rule "has changed (or will imminently change) the actual outcome of a partisan election." *Mecinas*, 30 F.4th at 899.

592, 601 (3d Cir. 1987) ("Courts [] have found that an applicant has a sufficient interest to intervene when the action will have a significant *stare decisis* effect on the applicant's rights.").[5]

C. The DNC cannot rely on the existing parties to adequately represent its interests.

Neither Defendants nor anyone else in this litigation adequately represents the DNC's partisan interests. Courts "consider[] three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). Because the future course of litigation is difficult to predict, the test under this factor is whether representation "*may* be inadequate"—not whether it "will be, for certain, inadequate." *La Union del Pueblo*

[5] The DNC notes one further ground for intervention. Although Plaintiff Strong Communities Foundation of Arizona Incorporated purports to be a nonpartisan organization dedicated to civic engagement for "*all* Americans," FAC ¶¶ 13–18 (emphasis added); *see also About Us*, EZAZ.org, https://www.ezaz.org/about-us (last visited Sept. 26, 2024), the same cannot be said for Plaintiffs' counsel, the America First Legal Foundation ("America First"). America First's website describes its mission as "oppos[ing] the radical left's . . . anti-American crusade" and touts the leadership of "senior members of the Trump administration who were at the forefront of the America First movement," including "President Trump's former Senior Advisor, Acting Attorney General, and Budget Director." *The Mission*, Am. First Legal Found., https://aflegal.org/about (last visited Sept. 26, 2024). Given that this lawsuit has the backing of the Republican establishment, the DNC has a "mirror-image" interest in opposing it, which courts have further treated as a basis for intervention. *DNC v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (allowing Republican National Committee and state Republican committee to intervene because "they are uniquely qualified to represent the 'mirror-image' interests of the plaintiffs, as direct counterparts to the DNC" and state Democratic committee); *see also Ariz. Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR, 2020 WL 6559160, at *2 (D. Ariz. June 26, 2020) (granting intervention to Republican committees).

Entero, 29 F.4th at 307–08 (cleaned up); *accord Citizens for Balanced Use*, 647 F.3d at 898. This burden is "minimal." *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki*, 324 F.3d at 1086).

The DNC has rebutted any presumption of adequate representation that might arise here.[6] Defendants (and certainly Plaintiffs) do not share the DNC's partisan interests in its electoral prospects, organizational mission, and members' voting rights. Instead, Defendants' interests in this litigation are defined by their statutory duties to conduct elections and administer Arizona's voter-registration laws. As another court explained in granting intervention under analogous circumstances, "[w]hile Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election . . . and allocating their limited resources to inform voters about the election procedures." *Issa*, 2020 WL 3074351, at *3. The same reasoning applies here.

Consequently, Defendants are not capable of making the DNC's arguments relating to its unique partisan concerns. As the Fifth Circuit has observed, a party committee's "private interests are different in kind from the public interests of" a government agency or official because a political group "represent[s] its members to achieve favorable

[6] The Ninth Circuit has previously applied presumptions of adequate representation in certain circumstances, including where a putative intervenor "and an existing party have the same ultimate objective." *Arakaki*, 324 F.3d at 1086. In *Berger v. North Carolina State Conference of NAACP*, however, the U.S. Supreme Court cast doubt on the viability of this presumption, noting that "[w]here 'the absentee's interest is similar to, *but not identical with*, that of one of the parties,' that normally is not enough to trigger a presumption of adequate representation." 597 U.S. 179, 197 (2022) (emphasis added) (quoting 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1909 (3d ed. 2024)). The Ninth Circuit has since acknowledged that *Berger* "calls into question whether the application of such a presumption is appropriate." *Callahan v. Brookdale Senior Living Cmtys., Inc.*, 42 F.4th 1013, 1021 n.5 (9th Cir. 2022).

outcomes," whereas "[n]either the State nor its officials can vindicate such an interest while acting in good faith." *La Union del Pueblo Entero*, 29 F.4th at 309. Indeed, courts have routinely observed that "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [political party] merely because both entities occupy the same posture in the litigation." *Utah Ass'n of Cntys.*, 255 F.3d at 1255–56; *see also, e.g.*, *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (government defendants necessarily represented "the public interest" rather than proposed intervenors' "particular interest[s]" in protecting their resources and rights of their candidates and voters). Given these divergent interests, the DNC cannot rely on Defendants to represent its interests or make its arguments.

Moreover, the DNC is uniquely positioned to offer the perspective of candidates and voters who would be significantly harmed by Plaintiffs' proposed disruptions to Arizona's citizenship-verification regime. The DNC will thus bring to these proceedings a pragmatic, campaign-oriented viewpoint that Defendants, statutorily bound to follow Arizona law, cannot provide.

II. Alternatively, the DNC should be granted permissive intervention.

Under Rule 24(b), courts can allow permissive intervention by applicants who, "[o]n timely motion," demonstrate "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

As discussed above, *see supra* at 6–7, the DNC's motion is timely and, given that this litigation is at a relatively early stage and the DNC will proceed in accordance with any schedule the Court sets, intervention will not unduly delay these proceedings or prejudice the adjudication of the other parties' rights. As evidenced by its proposed answer

and proposed opposition to Plaintiffs' pending motion for preliminary relief, *see* Exs. 1, 3, the DNC raises common questions of law and fact—including whether Plaintiffs' requested relief is consistent with state and federal law and barred by equitable considerations. And, as to the other discretionary considerations that inform permissive intervention, *see Ariz. All. for Retired Ams.*, 2022 WL 4448320, at *2, the DNC's intervention would serve to fully and efficiently resolve the issues before the Court, especially since the DNC has regularly litigated election- and registration-related issues in Arizona state and federal courts and can "present[] arguments that are helpful to developing the legal inquiries in this suit," *id.* at *3.

Notably, "other courts have allowed political parties to intervene as defendants in similar lawsuits." *Id.* (granting intervention to Yuma County Republican Committee and citing *Arizona Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR, 2020 WL 6559160, at *1 (D. Ariz. June 26, 2020), and *Mi Familia Vota v. Hobbs*, No. CV-21-01423-PHX-DWL, 2021 WL 5217875, at *2 (D. Ariz. Oct. 4, 2021), in which Republican committees and campaign were granted intervention); *see also, e.g.*, *Republican Nat'l Comm. v. Fontes*, No. CV 2024-050553, slip op. at 2 (Ariz. Super. Ct. Feb. 26, 2024) (granting DNC's and state party's motion to intervene in lawsuit challenging Arizona's Elections Procedures Manual); *DNC v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting political committees' motions to intervene in litigation challenging application and enforcement of absentee-voting laws); *Thomas v. Andino*, 335 F.R.D. 364, 371 (D.S.C. 2020) (similar). Additionally, advocacy organizations have been granted permissive intervention in voter-purge lawsuits where they "seek to intervene for the purpose of challenging . . . claims with a view toward ensuring that no unreasonable measures are adopted that could pose an elevated risk of removal of legitimate registrations." *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799 (E.D. Mich. 2020); *see also, e.g.*, *Republican Nat'l Comm. v. Aguilar*, No.

2:24-cv-00518-CDS-MDC, 2024 WL 3409860, at *3 (D. Nev. July 12, 2024) (granting permissive intervention where "the expressed mission of the Proposed Intervenors is to ensure that voters are retained on or restored to the rolls" and noting that, because "the point of the NVRA was to increase, not decrease, the electoral participation of our citizenry, . . . Proposed Intervenors' participation in this suit will contribute to the just and equitable resolution of the issues" (cleaned up)). This case warrants the same result.

CONCLUSION

For these reasons, the DNC respectfully requests that the Court grant it intervention as of right or, alternatively, permissive intervention.

Dated: September 26, 2024

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**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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:

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**Motion for admission pro hac vice forthcoming*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED et al., Plaintiffs, v. STEPHEN RICHER, in his official capacity as Maricopa County Recorder, et al., Defendants.	No. CV-24-02030-PHX-SMB **[PROPOSED] ANSWER TO FIRST AMENDED COMPLAINT**

Proposed Intervenor-Defendant Democratic National Committee (the "DNC") answers Plaintiffs' First Amended Complaint as follows:

INTRODUCTION

1. Admitted. Footnotes one and two contain legal conclusions to which no response is required and the cited statutes speak for themselves.

2. Proposed Intervenor admits that the Rasmussen Report contains the quoted text. Proposed Intervenor otherwise denies the remaining allegations in Paragraph 2.

3. Proposed Intervenor admits that the Rasmussen Report contains the quoted text. Proposed Intervenor otherwise denies the remaining allegations in Paragraph 3.

4. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 4 and therefore denies them.

5. Proposed Intervenor admits that the cited legislation was passed in 2022. Proposed Intervenor otherwise denies the remaining allegations in Paragraph 5.

6. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 6 and therefore denies them.

7. Paragraph 7 accurately quotes the cited statutes. To the extent a response is required, Proposed Intervenor otherwise denies the allegations.

8. Denied.

9. Denied.

10. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 10 and therefore denies them.

11. Proposed Intervenor admits that the Rasmussen Report contains the quoted text. Proposed Intervenor otherwise denies the remaining allegations in Paragraph 11.

12. Denied.

PARTIES

13. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 13 and therefore denies them.

14. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 14 and therefore denies them.

15. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 15 and therefore denies them.

16. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 16 and therefore denies them.

17. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations regarding EZAZ.org's membership in Paragraph 17 and therefore denies them. Proposed Intervenor specifically denies the remaining allegations in Paragraph 17.

18. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 18 and therefore denies them.

19. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 19 and therefore denies them.

20. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 20 and therefore denies them.

21. Proposed Intervenor admits that Recorder Richer is the Maricopa County Recorder and that he is sued in his official capacity. The remainder of Paragraph 21 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

22. Proposed Intervenor admits that Maricopa County is a political subdivision of the State of Arizona and that Recorder Richer is an officer of the county. The remainder of Paragraph 22 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

23. Proposed Intervenor admits that Recorder Noble is the Apache County Recorder and that he is sued in his official capacity. The remainder of Paragraph 23 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

24. Proposed Intervenor admits that Apache County is a political subdivision of the State of Arizona and that Recorder Noble is an officer of the county. The remainder of Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

25. Proposed Intervenor admits that Recorder Stevens is the Cochise County Recorder and that he is sued in his official capacity. The remainder of Paragraph 25 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

26. Proposed Intervenor admits that Cochise County is a political subdivision of the State of Arizona and that Recorder Stevens is an officer of the county. The remainder of Paragraph 26 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

27. Proposed Intervenor admits that Recorder Hansen is the Coconino County Recorder and that she is sued in her official capacity. The remainder of Paragraph 27 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

28. Proposed Intervenor admits that Coconino County is a political subdivision of the State of Arizona and that Recorder Hansen is an officer of the county. The remainder of Paragraph 28 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

29. Proposed Intervenor admits that Recorder Bingham is the Gila County Recorder and that she is sued in her official capacity. The remainder of Paragraph 29 states

legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

30. Proposed Intervenor admits that Gila County is a political subdivision of the State of Arizona and that Recorder Bingham is an officer of the county. The remainder of Paragraph 30 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

31. Proposed Intervenor admits that Recorder Merriman is the Graham County Recorder and that she is sued in her official capacity. The remainder of Paragraph 31 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

32. Proposed Intervenor admits that Graham County is a political subdivision of the State of Arizona and that Recorder Merriman is an officer of the county. The remainder of Paragraph 32 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

33. Proposed Intervenor admits that Recorder Melheiro is the Greenlee County Recorder and that she is sued in her official capacity. The remainder of Paragraph 33 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

34. Proposed Intervenor admits that Greenlee County is a political subdivision of the State of Arizona and that Recorder Melheiro is an officer of the county. The remainder of Paragraph 34 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

35. Proposed Intervenor admits that Recorder Garcia is the La Paz County Recorder and that he is sued in his official capacity. The remainder of Paragraph 35 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

36. Proposed Intervenor admits that La Paz County is a political subdivision of the State of Arizona and that Recorder Garcia is an officer of the county. The remainder of Paragraph 36 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

37. Proposed Intervenor admits that Recorder Durst is the Mohave County Recorder and that she is sued in her official capacity. The remainder of Paragraph 37 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

38. Proposed Intervenor admits that Mohave County is a political subdivision of the State of Arizona and that Recorder Durst is an officer of the county. The remainder of Paragraph 38 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

39. Proposed Intervenor admits that Recorder Sample is the Navajo County Recorder and that he is sued in his official capacity. The remainder of Paragraph 39 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

40. Proposed Intervenor admits that Navajo County is a political subdivision of the State of Arizona and that Recorder Sample is an officer of the county. The remainder of Paragraph 40 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

41. Proposed Intervenor admits that Recorder Cázares-Kelly is the Pima County Recorder and that she is sued in her official capacity. The remainder of Paragraph 41 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

42. Proposed Intervenor admits that Pima County is a political subdivision of the State of Arizona and that Recorder Cázares-Kelly is an officer of the county. The

remainder of Paragraph 42 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

43. Proposed Intervenor admits that Recorder Lewis is the Pinal County Recorder and that she is sued in her official capacity. The remainder of Paragraph 43 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

44. Proposed Intervenor admits that Pinal County is a political subdivision of the State of Arizona and that Recorder Lewis is an officer of the county. The remainder of Paragraph 44 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

45. Proposed Intervenor admits that Recorder Moreno is the Santa Cruz County Recorder and that she is sued in her official capacity. The remainder of Paragraph 45 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

46. Proposed Intervenor admits that Santa Cruz County is a political subdivision of the State of Arizona and that Recorder Moreno is an officer of the county. The remainder of Paragraph 46 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

47. Proposed Intervenor admits that Recorder Burchill is the Yavapai County Recorder and that she is sued in her official capacity. The remainder of Paragraph 47 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

48. Proposed Intervenor admits that Yavapai County is a political subdivision of the State of Arizona and that Recorder Burchill is an officer of the county. The remainder of Paragraph 48 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

49. Proposed Intervenor admits that Recorder Colwell is the Yuma County Recorder and that he is sued in his official capacity. The remainder of Paragraph 49 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

50. Proposed Intervenor admits that Yuma County is a political subdivision of the State of Arizona and that Recorder Colwell is an officer of the county. The remainder of Paragraph 50 states legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

JURISDICTION AND VENUE

51. Proposed Intervenor admits that this Court has federal subject matter jurisdiction over cases alleging violations of the National Voter Registration Act (the "NVRA"). Proposed Intervenor otherwise denies the allegations.

52. Proposed Intervenor denies that Plaintiffs' claims under the NVRA are "proper."

53. Proposed Intervenor denies that any relief is warranted under the cited statutes. Paragraph 53 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

54. Proposed Intervenor denies that this Court has supplemental jurisdiction over Plaintiffs' state law claims including for the reasons set forth in *Pennhurst State Sch. v. Halderman*, 465 U.S. 89 (1984).

55. Proposed Intervenor denies that this Court has supplemental jurisdiction over Plaintiffs' state law claims including for the reasons set forth in *Pennhurst State Sch. v. Halderman*, 465 U.S. 89 (1984). Proposed Intervenor otherwise denies the allegations.

56. Proposed Intervenor admits that, to the extent the Court has subject-matter jurisdiction, venue is proper in the District of Arizona and this Court has personal jurisdiction over the Defendants. Proposed Intervenor otherwise denies the allegations.

GENERAL ALLEGATIONS

57. Denied.

58. Paragraph 58 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations. Proposed Intervenor admits that the U.S. Supreme Court has held that the State may not impose a documentary proof of citizenship requirement on voters who register using the federal voter registration form.

59. Paragraph 59 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations. Proposed Intervenor admits that the cited case contains the quoted text and denies the remaining allegations.

60. Paragraph 60 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that Arizona requires voters to provide documentary proof of citizenship to register to vote in state and local elections and denies the remaining allegations.

61. Proposed Intervenor admits that Arizona has a bifurcated system of voter registration. The remaining allegations in Paragraph 61 contain legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the remaining allegations.

62. Proposed Intervenor admits that the cited document states that there were 35,273 "Federal Only Registrants as of April 1, 2024 (Active and Inactive Voters)." Proposed Intervenor otherwise lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 62 and therefore denies them.

63. Proposed Intervenor admits that the cited document states that there were 42,301 "Federal Only Registrants as of April 1, 2024 (Active and Inactive Voters)."

Proposed Intervenor otherwise lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 63 and therefore denies them.

64. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 64 and therefore denies them.

65. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 65 and therefore denies them.

66. The Maricopa County reports speak for themselves. To the extent a response is required, Proposed Intervenor admits that the cited document states that: "In accordance with A.R.S. § 16-161(B), as of July 1, 2024 the number of persons who registered to vote in Maricopa County using the federal or state voter registration form and who have not provided valid proof of citizenship to the Maricopa County Recorder's Office is 26,108." And "[i]n accordance with A.R.S. § 16-161(B), as of April 1, 2024 the number of persons who registered to vote in Maricopa County using the federal or state voter registration form and who have not provided valid proof of citizenship to the Maricopa County Recorder's Office is 21,595." Proposed Intervenor otherwise lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 66 and therefore denies them.

67. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 67 and therefore denies them.

68. Paragraph 68 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited case contains the quoted text and denies the remaining allegations.

69. Paragraph 69 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

70. Proposed Intervenor admits that the Legislature enacted and Governor Ducey signed H.B. 2492 and H.B. 2243 in 2022. The remaining allegations in Paragraph

70 contain legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the remaining allegations.

71. Paragraph 71 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

72. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 72 and therefore denies them.

73. Paragraph 73 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

74. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 74 and therefore denies them.

75. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 75 and therefore denies them.

76. Paragraph 76 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

77. Paragraph 77 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

78. Paragraph 78 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

79. Paragraph 79 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

80. Paragraph 80 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

81. Paragraph 81 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

82. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 82 and therefore denies them.

83. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 83 and therefore denies them.

84. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 84 and therefore denies them.

85. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 85 and therefore denies them.

86. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 86 and therefore denies them.

87. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 87 and therefore denies them.

88. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 88 and therefore denies them.

89. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 89 and therefore denies them.

90. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 90 and therefore denies them.

91. Admitted.

92. Proposed Intervenor admits that the quoted text appears in the statute. Proposed Intervenor otherwise denies the allegations in Paragraph 92.

93. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

94. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

95. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 95 and therefore denies them.

96. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations and therefore denies them.

97. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

98. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

99. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

100. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

101. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 101 and therefore denies them.

102. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 102 and therefore denies them.

103. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

104. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 104 and therefore denies them.

105. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 105. To the extent a response is required, Proposed Intervenor denies the allegations.

106. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

107. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 107 and therefore denies them.

108. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

109. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 109 and therefore denies them.

110. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 110 and therefore denies them.

111. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 111 and therefore denies them.

112. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 112 and therefore denies them.

113. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 113 and therefore denies them.

114. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 114 and therefore denies them.

115. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 115 and therefore denies them.

116. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 116 and therefore denies them.

117. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 117 and therefore denies them.

118. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

119. Paragraph 119 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

120. Paragraph 120 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited statute contains the quoted text and otherwise denies the remaining allegations.

121. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 121 and therefore denies them.

122. Proposed Intervenor admits that the cited document contains the quoted text and denies the remaining allegations.

123. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

124. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 124 and therefore denies them.

125. Proposed Intervenor admits that the cited document contains the quoted text and denies the remaining allegations.

126. Paragraph 126 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

127. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 127 and therefore denies them.

128. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 128 and therefore denies them.

129. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 129 and therefore denies them.

130. Proposed Intervenor denies the allegations in Paragraph 130.

131. Proposed Intervenor denies the allegations in Paragraph 131.

132. Proposed Intervenor denies the allegations in Paragraph 132.

133. Proposed Intervenor denies the allegations in Paragraph 133.

134. Proposed Intervenor denies the allegations in Paragraph 134.

135. Paragraph 135 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor admits that the cited document contains the quoted text and denies the remaining allegations.

136. Proposed Intervenor admits that the cited document contains the quoted text and denies the remaining allegations.

137. Proposed Intervenor admits that the statutory provision was enacted. Proposed Intervenor otherwise denies the allegations.

138. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 138 and therefore denies them.

139. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 139 and therefore denies them.

140. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 140 and therefore denies them.

141. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 141 and therefore denies them.

142. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 142 and therefore denies them.

143. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 143 and therefore denies them.

144. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 144 and therefore denies them.

145. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 145 and therefore denies them.

146. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 146 and therefore denies them.

147. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 147 and therefore denies them.

148. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 148 and therefore denies them.

149. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

150. Proposed Intervenor admits that the cited judicial decision contains the quoted text and denies the remaining allegations.

151. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 151 and therefore denies them.

152. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 152 and therefore denies them.

153. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 153 and therefore denies them.

154. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 154 and therefore denies them.

155. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 155 and therefore denies them.

156. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 156 and therefore denies them.

157. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 157 and therefore denies them.

158. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 158 and therefore denies them.

159. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 159 and therefore denies them.

160. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 160 and therefore denies them.

161. Paragraph 161 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

162. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 162 and therefore denies them.

163. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 163 and therefore denies them.

COUNT I
Failure to Use "All Available Resources" for Voter List Maintenance of Federal-Only Voters
Special Action, Declaratory, and Injunctive Relief
A.R.S. §§ 16-121.01(D), 12-1801, 12-1831, 12-1832, 12-2021, Ariz. R. Civ. P. 65, RPSA 3, and 28 U.S.C. § 1651

164. Proposed Intervenor incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

165. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

166. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

167. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 167 and therefore denies them.

168. Denied.

169. Denied.

COUNT II
Failure to Consult Accessible Databases for Voter List Maintenance of Federal-Only Voters
(Special Action, Declaratory, and Injunctive Relief)
A.R.S. §§ 16-121.01(D)(5), 12-1801, 12-1831, 12-1832, 12-2021, Ariz. R. Civ. P. 65, RPSA 3, and 28 U.S.C. § 1651)

170. Proposed Intervenor incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

171. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

172. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations. Proposed Intervenor otherwise denies the allegations.

173. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 173 and therefore denies them.

174. Denied.

175. Denied.

176. Denied.

COUNT III
Failure to Conduct Regular Voter List Maintenance of Federal-Only Voters Using Accessible Databases (Special Action, Declaratory, and Injunctive Relief) A.R.S. §§ 16-165(K), 12-1801, 12-1831, 12-1832, 12-2021, Ariz. R. Civ. P. 65, RPSA 3, and 28 U.S.C. § 1651)

177. Proposed Intervenor incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

178. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

179. Paragraph 179 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

180. Paragraph 180 contains legal conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

181. Paragraph 181 contains legal conclusions to which no response is required. Further, Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations. To the extent a response is required, Proposed Intervenor denies the allegations.

182. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations. Proposed Intervenor otherwise denies the allegations.

183. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 183 and therefore denies them.

184. Denied.

185. Denied.

186. Denied.

COUNT IV
Failure to Send Information About Federal-Only Voters to the Attorney General
(Special Action, Declaratory, and Injunctive Relief)
A.R.S. §§ 16-143, 12-1801, 12-1831, 12-1832, 12-2021, Ariz. R. Civ. P. 65, RPSA 3, and 28 U.S.C. § 1651)

187. Proposed Intervenor incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

188. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations.

189. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 189 and therefore denies them.

190. Denied.

COUNT V
Voter List Maintenance Procedures that Are Discriminatory or Not Uniform
(52 U.S.C. §§ 20507(b)(1) and 20510(b), and 28 U.S.C. § 1651)

191. Proposed Intervenor incorporates by reference each of its preceding admissions, denials, and statements as if fully set forth herein.

192. Proposed Intervenor admits that the cited statute contains the quoted text and denies the remaining allegations in Paragraph 192.

193. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 193 and therefore denies them.

194. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 194 and therefore denies them.

195. Admitted.

196. Proposed Intervenor lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 196 and therefore denies them.

197. Denied.

198. Denied.

199. Denied.

PRAYER FOR RELIEF

Proposed Intervenor denies that Plaintiffs are entitled to any relief.

GENERAL DENIAL

Proposed Intervenor denies every allegation in Plaintiffs' Complaint that is not expressly admitted.

AFFIRMATIVE DEFENSES

1. Plaintiffs' claims are barred because Plaintiffs lack Article III standing.

2. This Court lacks subject matter jurisdiction over certain Defendants.

3. Plaintiffs' claims are barred in whole or in part for failure to state a claim upon which relief can be granted.

4. Plaintiffs' claims are barred because they seek relief inconsistent with federal and state law including the National Voter Registration Act, the U.S. Constitution, and the Arizona Constitution.

5. Plaintiffs' claims are barred by laches and other equitable defenses, including the *Purcell* doctrine.

WHEREFORE, having fully answered Plaintiffs' Complaint, Proposed Intervenor prays for judgment as follows:

A. That the Court dismiss Plaintiffs' Complaint;

B. That judgment be entered in favor of Proposed Intervenor and Defendants and against Plaintiffs on Plaintiffs' Complaint and that Plaintiffs take nothing thereby;

C. That Proposed Intervenor be awarded reasonable attorneys' fees and costs under any applicable statute or equitable doctrine; and

D. For such other and further relief as the Court deems appropriate.

Dated: September 26, 2024

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By: */s/ Alexis E. Danneman*
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Attorneys for the Democratic National Committee

**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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 LaFever

Exhibit 2

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED et al., Plaintiffs, v. STEPHEN RICHER, in his official capacity as Maricopa County Recorder, et al., Defendants.	No. CV-24-02030-PHX-SMB DECLARATION OF JAKE KENSWILIN SUPPORT OF DEMOCRATIC NATIONAL COMMITTEE'S MOTION TO INTERVENE

I, Jake Kenswil, hereby declare and state as follows:

1. I am over the age of 18, am competent to testify, and declare the following facts based on my own personal knowledge.

2. I make this declaration in support of the motion to intervene filed by the Democratic National Committee ("DNC").

3. I am employed by the DNC, the oldest continuing party committee in the United States and the Democratic Party's national committee as defined by 52 U.S.C. § 30101(14). The DNC's organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats but also to cast their ballots for Democratic candidates.

4. The DNC represents a diverse group of Democrats, including elected officials, candidates, constituents, and voters. It is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. DNC also represents millions of voters across the nation, including many in Arizona.

5. I currently hold the title of Director of Civic Engagement and Voter Protection. I have been in this role since June of this year. Before that, I was the Deputy

Director for Civic Engagement and Voter Protection, starting in July of 2021. I oversee all DNC voter-protection activities, including our national hotline and guidance of our state programs. I also oversee voter information and education for the DNC, including information on IWillVote.com and that which goes out via other departments (digital, organizing, etc.) to support various efforts such as voter registration and get out the vote.

6. In recent election cycles, the DNC has spent millions of dollars and invested significant staff and volunteer time to persuade and mobilize voters to support Democratic candidates across the country, and it will continue to do so in future elections, including in 2024 to support Democratic candidates in Arizona.

7. The DNC accomplishes its mission by making expenditures for and contributions to Democratic candidates and provides active support through the development of programs benefiting candidates. It also works with individuals who affiliate and engage with it in Arizona, whom the DNC also considers to be members and constituents. These include all Democratic voters in the state, whom the DNC educates and works to ensure have access to the franchise.

8. The DNC invests funds in relevant activities in states where it anticipates there will be close races, like Arizona. These activities include contacting voters whose ballots have been rejected and helping them perform whatever tasks are necessary to ensure that their ballots are ultimately counted, to the extent legally

permissible. These activities require DNC to devote substantial personnel time and money to track data from counties, contact voters, and assist them in completing the curing process, which varies in each state.

9. I am aware of the above-captioned lawsuit currently pending before this Court. The declaratory and injunctive relief Plaintiffs request includes, among other things, a requirement that Arizona's county recorders submit federal-only voters for citizenship verification through the U.S. Department of Homeland Security ("DHS") and provide their names and applications to the Arizona Attorney General.

10. Democratic supporters in Arizona include federal-only voters who will be negatively impacted by Plaintiffs' requested relief, which would impose hasty, last-minute citizenship investigations likely to misidentify noncitizens and improperly remove eligible voters from the rolls.

11. Plaintiffs' requested relief would immediately subject all federal-only voters to additional investigation by DHS and require that their names and applications be sent to the Attorney General. Such unwarranted scrutiny is likely to chill some potential federal-only voters from participating in the political process.

12. If these voters do not cast ballots, whether by choice or because of misidentification or other erroneous citizenship-verification procedures, then

Democratic candidates up and down the ballots will lose critical votes in a key swing state where federal elections are often decided by slim margins.

13. Moreover, if Plaintiffs receive their requested relief, then the DNC would have to divert time and resources away its core work of persuading voters to support Democratic candidates, educating the electorate about the issues in this campaign, and implementing get-out-the-vote efforts in the immediate run-up to November 5. Instead, some of these limited resources would need to be redirected toward additional efforts to assist and educate federal-only voters about new citizenship-verification and DPOC requirements. In particular, given that Arizona's October 7 registration deadline is fast approaching, the DNC had planned to shift money and resources away from its earlier focus on registering new voters. If, however, the registrations of existing voters are called into question, modified, or cancelled, then resources will need to be shifted *back* to voter-registration efforts—at the cost of the DNC's other planned election-eve activities.

14. Additional resources would also be needed to support Democratic candidates who would lose the votes of federal-only voters who are either erroneously removed from the voter rolls or chilled from participating in the political process. Fewer resources would consequently be available for the other efforts needed to win elections. The DNC's ability to invest in voter education and

otherwise prepare for upcoming elections would be reduced, adversely affecting the DNC's turnout efforts on behalf of Democratic candidates.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of September, 2024.

By: _____
Jake Kenswil

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Attorneys for the Democratic National Committee

**Motion for admission pro hac vice forthcoming*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED et al.,

Plaintiffs,

v.

STEPHEN RICHER, in his official capacity as Maricopa County Recorder, et al.,

Defendants.

No. CV-24-02030-PHX-SMB

DEMOCRATIC NATIONAL COMMITTEE'S [PROPOSED] MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs seek disruptive, eleventh-hour relief that is foreclosed by caselaw, federal statute, basic principles of equity, and at least two amendments to the U.S. Constitution. Their claims cannot succeed on the merits, as they fundamentally misunderstand what state and federal law require in the verification of voter eligibility and the protection against noncitizen voting. And they ignore that, while federal law prohibits systematic voter-removal programs of the sort Plaintiffs seek to initiate, it allows individualized deregistration of a voter who is confirmed to be a noncitizen—if, indeed, Plaintiffs produce any actual proof that noncitizens are on Arizona's voter rolls.

Because neither the law nor the equities support Plaintiffs' request for the extraordinary remedy of immediate relief, their motion for a temporary restraining order and preliminary injunction should be denied. And, because their causes of action fail as a matter of law, their amended complaint should be dismissed with prejudice.

LEGAL STANDARDS

A plaintiff's lack of standing can be challenged in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). *Meland v. Weber*, 2 F.4th 838, 843 (9th Cir. 2021). "[E]ach element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof[.]" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). Additionally, dismissal under Rule 12(b)(6) is "proper [] where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (cleaned up).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

I. Plaintiffs cannot rely on the widely rejected vote-dilution theory of standing.

"To establish standing, . . . a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

Here, to satisfy Article III, Plaintiffs claim an injury that, in recent years, has been widely scrutinized—and universally rejected—by courts: vote dilution. *See* Pls.' Mot. for TRO & Prelim. Inj. ("Mot.") 16, ECF No. 16 ("[E]very vote cast by a foreign citizen dilutes the votes of eligible voters."). As one federal court has observed, "[d]istrict courts across the country have consistently dismissed complaints premised on the theory of unconstitutional vote dilution." *Soudelier v. Dep't of State*, Civ. No. 22-2436, 2022 WL 17283008, at *3 (E.D. La. Nov. 29, 2022) (citing cases), *aff'd*, No. 22-30809, 2023 WL 7870601 (5th Cir. Nov. 15, 2023); *see also, e.g.*, *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711–12 (D. Ariz. 2020) (similar). This near unanimity is no surprise given the U.S. Supreme Court's repeated admonition that a voter's claim "that the law . . . has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" insufficient for standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam). Simply put, Plaintiffs' vote-dilution theory of standing is a nonstarter.

Ms. Cahill's other purported basis for standing is plainly insufficient as well. She proposes some form of equal-protection injury, suggesting that, "as a naturalized citizen with an alien number, she is subject to citizenship verifications through SAVE," whereas "registered voters who are natural-born citizens or who are unlawfully present foreign citizens lacking an alien number are not." Mot. 16. But Plaintiffs do not and cannot explain how this purportedly differential treatment actually *injures* Ms. Cahill. For purposes of standing, "[a]n injury in fact must be 'concrete,' meaning that it must be real and not

abstract. The injury also must be particularized; the injury must affect 'the plaintiff in a personal and individual way' and not be a generalized grievance." *All. for Hippocratic Med.*, 602 U.S. at 381 (citation omitted) (quoting *Lujan*, 504 U.S. at 560 n.1). Ms. Cahill's alleged injury is anything but personal and individual; she fails to identify how differing levels of citizenship scrutiny impose concrete harm on *her* (for example, by making it harder for her to register or cast a ballot). Indeed, her reliance on the uniformity and nondiscrimination requirement of the National Voter Registration Act ("NVRA"), 52 U.S.C. §§ 20501–20511, *see* Mot. 16, confirms that her standing injury is nothing more than a generalized "grievance about government—claiming only harm to [her] and every citizen's interest in proper application of the Constitution and laws"—which does not satisfy Article III, *Lance*, 549 U.S. at 439 (quoting *Lujan*, 504 U.S. at 573–74).

Because Ms. Cahill does not have standing, she cannot seek preliminary relief, *see Lopez v. Candaele*, 630 F.3d 775, 794 (9th Cir. 2010), and should be dismissed from this lawsuit, *see, e.g.*, *Stephen C. ex rel. Frank C. v. Bureau of Indian Educ.*, No. CV-17-08004-PCT-SPL, 2018 WL 1871457, at *2–3 (D. Ariz. Mar. 29, 2018).[1]

II. Plaintiffs' claims fail as a matter of law.

Plaintiffs' five causes of action are premised on fundamental and fatal misunderstandings of Arizona law, federal law, or both. Because they have failed to state claims on which relief can be granted, dismissal of their amended complaint is required.

A. Plaintiffs' state claims are based on misinterpretations of Arizona law.

Plaintiffs bring four claims under state law. The first three allege that, because Defendants *can* send citizenship-check requests to the U.S. Department of Homeland

[1] Additionally, given that EZAZ.org claims "representational standing on behalf of its members on the same essential grounds as Ms. Cahill," Mot. 17, and she in turn does *not* have standing, representational standing is not available to EZAZ.org, since it is a sine qua non of the doctrine that an organization's "members would otherwise have standing to sue *in their own right*." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) (emphasis added).

Security ("DHS") pursuant to 8 U.S.C. §§ 1373 and 1644, Arizona law *requires* that they do so. The fourth alleges that Defendants failed to "make available" a list of all federal-only voters to the Arizona Attorney General on or before October 31, 2022. *See* A.R.S. § 16-143. None of the four claims has merit: The first three are unsupported by the law, and the fourth is disproved by Plaintiffs' own filings.

A.R.S. § 16-121.01(D). Plaintiffs' first two claims are premised on the assertion that A.R.S. § 16-121.01(D) obligates Defendants to verify the citizenship of new federal-only voters through DHS's Person Centric Query Service (the "PCQS"). *See* First Amended Complaint ("FAC") ¶¶ 164–76, ECF No. 12. Plaintiffs, however, interpret the statutory requirements too broadly.

First, section 16-121.01(D) requires that "[w]ithin ten days after receiving an application for registration," county recorders "use all available resources to verify the citizenship status of the applicant." Plaintiffs argue that a "1373/1644 Request" through the PCQS "is an 'available' resource." *Id.* ¶ 166. But Plaintiffs' expansive interpretation of "all available resources," which would mandate that county recorders consult a theoretically endless universe of resources—not only the PCQS but, by Plaintiffs' logic, *every* government database, private social-media accounts, and even applicants' friends and families—would lead to absurd results. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."). Moreover, "[a]n excerpted clause in a statute cannot be interpreted without reference to the statute as a whole." *Westwood Apex v. Contreras*, 644 F.3d 799, 804 (9th Cir. 2011). Here, the statute provides further guidance: that recorders "*at a minimum* shall compare the information available on the application for registration with" an enumerated list of databases. A.R.S. § 16-121.01(D) (emphasis added). By its plain language, the "minimum" is what the law *requires*; if it required more than that, then the "minimum"

would be surplusage. *See Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) ("[W]e construe statutes, where possible, so as to avoid rendering superfluous any parts thereof."). Finally, the statute qualifies the databases to be consulted as those to which "*the county has access*." A.R.S. § 16-121.01(D) (emphasis added). This qualifier makes sense: The statute requires citizenship verification "[w]ithin ten days after receiving an application for registration," a tight turnaround that might not be feasible if county recorders had to rely on other government entities. By Plaintiffs' own description, however, Defendants do *not* have access to the PCQS; the system instead requires that requests be submitted through DHS. *See, e.g.*, FAC ¶¶ 127–28 ("*DHS* has the capability to verify an individual's citizenship status . . . . DHS maintains the [PCQS] database that allows *agency employees* to look up individuals[.]" (emphases added)). As such, *DHS* has access to the PCQS—not Arizona's county recorders.

In short, the statute cannot be read to require Defendants to go to impossible lengths to verify citizenship—let alone in the "ten days" required for them to take action. A.R.S. § 16-121.01(D). If Plaintiffs want to increase county recorders' minimum citizenship-verification obligations, then the proper recourse is the legislative process, not a lawsuit.

Second, Plaintiffs rely on the statute's catchall provision, *see id.* § 16-121.01(D)(5), to conclude that Defendants must submit federal-only voters to additional DHS databases, *see* FAC ¶ 165. But subsection (5) requires only that election officials consult "[a]ny other state, city, town, county or federal database and any other database *relating to voter registration* to which the county recorder or officer in charge of elections has access." A.R.S. § 16.121.01(D)(5) (emphasis added). The PCQS, by contrast, is *not* "relat[ed] to voter registration." As a DHS report linked in Plaintiffs' amended complaint explains, the PCQS "allow[s] DHS employees and certain external federal agency employees, such as Department of State [] Consular Officers, to obtain a consolidated read only view of an immigrant's past interactions with the U.S. Government as he or she passed through the

U.S. immigration system." *Privacy Impact Assessment Update for the Person Centric Query Service*, DHS 1 (Apr. 6, 2018), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-pcqsupdate-april2018.pdf. Because the PCQS has nothing to do with voter registration, Defendants are not required to utilize it (or any other new database Plaintiffs point to) under A.R.S. § 16-121.01(D).[2]

A.R.S. § 16-165(K). Plaintiffs' attempt to subject existing voters to additional scrutiny, *see* FAC ¶¶ 177–86, also fails. The statute they cite requires only that county recorders review databases to "*confirm* information obtained that requires cancellation of registrations," A.R.S. § 16-165(K) (emphasis added); it does not authorize, much less require, that Defendants use federal databases to *initiate* citizenship investigations. Moreover, the statute limits what must be confirmed to information that would *require* cancellation. Contrary to Plaintiffs' repeated assertions, declining to provide documentary proof of citizenship ("DPOC") would not require cancellation of a registration. To the contrary, courts have repeatedly reaffirmed that Arizonans can be registered as federal-only voters if they register without providing DPOC. *See, e.g.*, *Mi Familia Vota v. Fontes*, 111 F.4th 976, 984–85 (9th Cir. 2024) (per curiam). Put differently, the only conclusive information to be gleaned from the fact that a voter did not provide DPOC is that *the voter did not provide DPOC*. Nothing else can be inferred—especially not that a registration "requires cancellation," which is the plain limit of A.R.S. § 16-165(K).

A.R.S. § 16-143(A). Plaintiffs' fourth claim, which alleges that Defendants have failed to submit required information to the Attorney General, *see* FAC ¶¶ 187–90, is disproved by Plaintiffs' own filings. Their motion for preliminary relief includes a letter sent to them by the Pima County Recorder on July 26, 2024, informing them that "the 15

[2] The DHS report further indicates that the PCQS is not actually a "database," as A.R.S. § 16-121.01(D)(5) specifies. Instead, it merely displays "a consolidated read-only view" of information contained in *other* federal systems, data sets, and databases. *Privacy Impact Assessment Update*, *supra*, at 1 & n.1

recorders in the state of Arizona agreed in 2022 that the report [in question] would come from the Secretary of State. In October 2022, the Secretary of State sent the Attorney General a list of all Federal Only voters . . . . The Attorney General found no non-citizen voters registered." Mot. Ex. G, at 1. This letter demonstrates that Defendants did what they were supposed to do: "make available to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship." A.R.S. § 16-143(A). Because nothing in A.R.S. § 16-143(A) prohibits the county recorders and Secretary of State from collaborating on the required list, Defendants have complied with the statute, and Plaintiffs' fourth claim fails.

B. Plaintiffs' federal claim is based on a misinterpretation of the NVRA.

Plaintiffs' NVRA claim proceeds as follows: Because (1) Arizona law requires Defendants to verify the citizenship status of federal-only voters using, among other resources, the SAVE system, *see* A.R.S. § 16-121.01(D)(3), and (2) SAVE requires an alien number or other numeric identifier, which not all federal-only voters have or might provide, this practice is not "uniform" and "nondiscriminatory," 52 U.S.C. § 20507(b)(1), since only *some* federal-only voters will be subjected to SAVE verification, *see* FAC ¶¶ 191–99; Mot. 19–21. Neither this claim nor Plaintiffs' requested relief can succeed.

To begin, Arizona's use of the SAVE system is neither discriminatory nor nonuniform as those terms are used in the NVRA. As the court explained in *Mi Familia Vota v. Fontes*, a practice "does not violate . . . the NVRA [where] the 'trigger' for county recorders to investigate the citizenship status of applicants is uniform and nondiscriminatory." No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *42 (D. Ariz. Feb. 29, 2024) (quoting *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 776 (2018)), *appeal docketed*, No. 24-3188 (9th Cir. May 17, 2024). There, the uniform, nondiscriminatory trigger at issue was a "voter [] not submit[ting] DPOC proving her citizenship," *id.*; here, the trigger is a federal-only voter providing a SAVE-compliant

numeric indicator (since the Arizona statute only requires SAVE verification "if practicable"), A.R.S. § 16-121.01(D)(3). The *Mi Familia Vota* court contrasted the NVRA-compliant practice with a separate trigger that *did* violate the uniformity and nondiscrimination provision: a list-maintenance procedure that required county recorders to "only [] conduct SAVE checks on naturalized citizens who county recorders have 'reason to believe' are non-citizens," which the court found unlawfully discriminatory because "[n]aturalized citizens will always be at risk of county recorders' subjective decision to further investigate these voters' citizenship status." 2024 WL 862406, at *38, *41. Absent a similarly subjective and discriminatory trigger, the SAVE verification procedure does not violate the NVRA.

Moreover—and revealingly—Plaintiffs' proposed remedy for the alleged NVRA violation is *not* to enjoin the unlawful practice, but instead to ratchet up the burden by subjecting *all* federal-only voters to DHS scrutiny. *See* FAC ¶¶ 194–96; Mot. 20. Plaintiffs casually seek to turn basic principles of jurisprudence and federalism on their head, since "an injunction preventing [] enforcement" of an unlawful statute "is the traditional remedy for proven violations of legal rights likely to work irreparable injury in the future." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 652 (2020) (Gorsuch, J., concurring in the judgment in part and dissenting in part). Plaintiffs instead call on the Court to legislate from the bench and enact new list-maintenance obligations for Arizona's county recorders and new burdens for federal-only voters—something this Court cannot and should not do. *See Califano v. Westcott*, 443 U.S. 76, 92 (1979) (proposed remedy that would cure discriminatory practice by disadvantaging additional individuals "would involve a restructuring of the [law] that a court should not undertake lightly").

III. Plaintiffs' request for immediate relief is barred as a matter of law.

Even setting aside the legal shortcomings of Plaintiffs' claims, the relief they seek through their pending motion is foreclosed by federal law and the U.S. Constitution.

A. Under the NVRA, Arizona cannot undertake systematic efforts to remove voters from the rolls this close to an election.

Plaintiffs ask the Court to order a "systematic cancellation of registrations within 90 days of an election," which is plainly prohibited by Section 8 of the NVRA. *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1092–93 (D. Ariz. 2023); *see also* 52 U.S.C. § 20507(c)(2)(A). Because Plaintiffs' motion follows more than a month after the ninety-day cutoff before the November election, the voter-removal relief they seek—"submitting a list of their Federal-Only Voters to [DHS] to verify the citizenship and immigration status of these registrants," Mot. 2—cannot be granted.

Plaintiffs have suggested that this relief does not violate the NVRA because it is not "any kind of automated purge of voter registrations." Pls.' Opp'n to Mot. to Intervene of Voto Latino & One Arizona 4, ECF No. 11. But caselaw from this and other courts confirms that Plaintiffs read Section 8 too narrowly. It is not only automated purges that are prohibited after the ninety-day cutoff, but "*any* program" that "*systematically remove[s]*" voters from the rolls. 52 U.S.C. § 20507(c)(2)(A) (emphases added). "[T]he phrase 'any program' suggests that the 90 Day Provision has a broad meaning. Read naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'" *Mi Familia Vota*, 691 F. Supp. 3d at 1093 (cleaned up) (quoting *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014)). As the Eleventh Circuit has concluded, Section 8 applies even to the "use[of] a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices," *Arcia*, 772 F.3d at 1344—precisely what Plaintiffs seek here.

It is, in other words, irrelevant that the program Plaintiffs seek would not automatically remove voters and would instead require additional, individualized follow-up inquiry; that was also the case in *Arcia*, and the court emphasized that a "program [that] did not rely upon individualized information or investigation to determine which names

from the voter registry to remove" and instead "used a mass computerized data-matching process" was an impermissibly "systematic" program for NVRA purposes. *Id.*

Nor does it matter that Plaintiffs seek only to remove supposedly ineligible voters from the rolls. To prevent "selective purging of the voter rolls," S. Rep. No. 103-6, at 3 (1993), and because "[e]ligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote," *Arcia*, 772 F.3d at 1346, the NVRA's cutoff is broadly designed to prohibit *any* systematic removal programs ahead of an election, even those with ostensibly defensible aims, *see id.* at 1345 ("Noticeably absent from the list of exceptions to the 90 Day Provision is any exception for removal of non-citizens."); *Mi Familia Vota*, 691 F. Supp. 3d at 1093 (rejecting argument that "the 90-day Provision does not apply to removing noncitizens who were not properly registered in the first place" (cleaned up)).

Notably, this prohibition on *systematic* removal programs does not preclude the State from removing known noncitizen voters from the rolls; as the Eleventh Circuit explained, "the 90 Day Provision permits removals based on *individualized* information at any time." *Arcia*, 772 F.3d at 1346 (emphasis added). But here, Plaintiffs have not even alleged, much less proved, that any individual federal-only voters are actually noncitizens. *Cf. Richer v. Fontes*, No. CV-24-0221-SA, slip op. at 6 (Ariz. Sept. 20, 2024), https://www.azcourts.gov/Portals/201/ASC-CV240221%20-%209-20-2024%20-%20FILED%20-%20DECISION%20ORDER.pdf (modification of voter registrations not appropriate where "parties do not suggest that they believe the Affected Voters are actually not United States citizens"); Brief of Arizona Republican Party as Amicus Curiae in Support of Respondent at 1–3, *Richer v. Fontes*, No. CV-24-0221-SA (Ariz. Sept. 18, 2024), https://www.azcourts.gov/Portals/201/2024_09_18_05270831-0-0000-BriefOfArizonaRepublicanPartyA.PDF (acknowledging expansive reach of Section 8 and noting that "the NVRA prohibits voter list maintenance" within ninety days of election).

B. This Court cannot grant Plaintiffs' requested relief consistent with the Eleventh and Fourteenth Amendments.

Moreover, Plaintiffs' requested relief must be denied due to the interplay of the Eleventh and Fourteenth Amendments to the U.S. Constitution.

The Eleventh Amendment 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*, 506 F. Supp. 3d at 716 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984)). Here, although Plaintiffs repeatedly reference federal law and federal databases, four of their five causes of action—and *all* of the relief they seek in their motion—are solely concerned with what *Arizona* law requires of *Arizona* officials. *See* FAC 31–32; Mot. 2, 26.[3] Moreover, although generally "the Eleventh Amendment does not apply to counties and similar municipal corporations," *Pennhurst*, 465 U.S. at 123 n.34 (cleaned up), courts have found that "county and local officials can still be treated as state officials for Eleventh Amendment purposes when carrying out non-discretionary duties subject to state policy control," *Cassell v. Snyders*, 990 F.3d 539, 552 (7th Cir. 2021); *see also Brotherton v. Cleveland*, 173 F.3d 552, 566 (6th Cir. 1999) ("Where county officials are sued simply for complying with state mandates that afford no discretion, they act as an arm of the State.").

Accordingly, because the voter-registration obligations of Arizona's county recorders are set by state law and nondiscretionary (as, indeed, Plaintiffs' amended

[3] Plaintiffs attempt to tie their requested relief to the NVRA claim by characterizing it as a "requir[ement that] the Defendants [] conduct uniform and nondiscriminatory voter list maintenance." Mot. 2; *see also* FAC ¶¶ 191–99. But, as discussed above, *see supra* at 7–8, a mandatory injunction imposing new citizenship-verification requirements on county recorders is not a cognizable remedy for the violation of federal law they allege, and so this relief cannot be sought as a remedy for Plaintiffs' (legally unfounded) NVRA claim. And, at any rate, Plaintiffs' claim regarding submission of information to the Attorney General, *see* FAC ¶¶ 187–90, has no grounding whatsoever in federal law.

complaint underscores), a federal court cannot order Defendants to comply with the requirements of Arizona's election statutes under these circumstances.

Notably, Eleventh Amendment immunity might not extend to the Maricopa County Defendants, as the Ninth Circuit has held that a defendant's removal of an action to federal court "affirmatively invokes federal judicial authority and therefore waives Eleventh Amendment immunity from subsequent exercise of that judicial authority." *Embury v. King*, 361 F.3d 562, 566 (9th Cir. 2004). The *Fourteenth* Amendment, however, precludes the Court from ordering Maricopa County to perform list-maintenance and voter-removal programs distinct from those undertaken by Arizona's other fourteen counties. Courts have recognized that a "lack of statewide standards [that] results in a system that deprives citizens of the right to vote based on where they live" offends constitutional guarantees of equal protection. *Ne. Ohio Coal. for Homeless v. Husted*, 837 F.3d 612, 635 (6th Cir. 2016); *see also, e.g.*, *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Subjecting *some* but not *all* of Arizona's federal-only voters to potentially disenfranchising scrutiny would risk precisely the sort of arbitrary and disparate treatment that the Fourteenth Amendment abhors—especially where the franchise is concerned.

Taken together, the Eleventh and Fourteenth Amendments foreclose Plaintiffs' requested relief. Because "[n]either courts nor states are exempt from the requirements of the constitution" and judges do not "have the power to impose unconstitutional remedies," *Johnson v. Mortham*, 915 F. Supp. 1529, 1558 (N.D. Fla. 1995) (three-judge court), Plaintiffs' motion must be denied.

IV. Plaintiffs are not otherwise entitled to preliminary relief.

Plaintiffs ask the Court to "issue a temporary restraining order and preliminary injunction requiring the Defendants to submit 1373/1644 Requests to DHS and to 'make

available' and 'provide' to the Arizona Attorney General the information about Federal-Only Voters required by A.R.S. § 16-143," Mot. 26—thus "seek[ing] to alter the status quo ante" through a "mandatory injunction," *Am. Freedom Def. Initiative v. King County*, 796 F.3d 1165, 1173 (9th Cir. 2015) (cleaned up). "Mandatory injunctions," however, are "particularly disfavored" and "not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (cleaned up).

As discussed below, Plaintiffs fail to satisfy even the lower bar for a prohibitory injunction: They cannot succeed on the merits and the equities militate strongly against preliminary relief. Plaintiffs therefore cannot possibly satisfy the higher burden of securing a mandatory injunction.

A. Plaintiffs cannot succeed on the merits.

Because Plaintiffs' claims fail as a matter of law, *see supra* at 3–8, they are not entitled to preliminary relief, *see Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 913 (9th Cir. 1995).

B. The equities foreclose immediate relief.

Even if Plaintiffs could show a likelihood of success on the merits, their claims are barred by laches, the *Purcell* doctrine, and other equitable considerations.

1. The *Purcell* doctrine forecloses late-hour, disruptive changes to election rules.

The U.S. Supreme Court has repeatedly recognized that courts generally should not alter election rules "in the period close to an election," *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). This is because "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also, e.g.*, *Richer*, slip op. at 6–7 (applying *Purcell* to reject late-hour request for modification of voter registrations).

Here, the risks of disruption, hardship, and even disenfranchisement are indefensibly and unacceptably high. Plaintiffs' belatedly sought relief would force Arizona election officials to divert their attention from the final stages of preparation for a high-interest presidential election, one for which early voting is set to begin on October 9—just 13 days away. *See Elections Calendar & Upcoming Events*, Ariz. Sec'y of State, https://azsos.gov/elections/voters/elections-calendar-upcoming-events (last visited Sept. 26, 2024). In addition to the enormous logistical and administrative hurdles Defendants and their staffs must already clear as November 5 approaches, Plaintiffs would require an entirely new system of citizenship checks for *42,301* registered voters—all of whom have, of course, attested to their citizenship—and for all future registrants as well. As Justice Kavanaugh noted four years ago, "running a statewide election is a complicated endeavor" involving a "massive coordinated effort" by "state and local officials and volunteers," which means that "[w]hen an election is close at hand, the rules of the road should be clear and settled." *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 31, 34–35 (2020) (Kavanaugh, J., concurring) (upholding stay of district court decision that changed state election rules "too close to an election"). Plaintiffs cannot hastily write new rules for Arizona's county election officials less than two months before election day.

For Arizona voters, Plaintiffs' lawsuit would impose late-hour harassment and disenfranchisement. Their requested relief would immediately subject all federal-only voters to additional investigation by DHS and require that their names and applications be sent to the Attorney General—unwarranted scrutiny that, the *Mi Familia Vota* court noted, "deter[s potential registrants] from registering to vote for fear of potentially subjecting themselves or a family member to scrutiny by law enforcement or prosecution." 2024 WL 862406, at *27. Moreover, given that Plaintiffs ask Defendants to implement new policies and procedures in the midst of the election calendar and that the PCQS may, by the department's own concession, "display inaccurate data due to inaccuracies in underlying

source IT systems," *Privacy Impact Assessment for the Person Centric Query Service*, DHS 7 (Mar. 8, 2016), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-pcqs-march2016.pdf, the risk of mismatch, accidental cancellation, or other error is unacceptably high. This further implicates *Purcell*, as the Arizona Supreme Court recently recognized: The court refused to change the registrations of thousands of voters affected by a clerical error "where there is so little time remaining before the beginning of the 2024 General Election." *Richer*, slip op. at 6–7; *see also* Brief of Arizona Republican Party, *supra*, at 10 (arguing for application of *Purcell* where last-minute changes to voter registrations "would gravely and wantonly undermine [] confidence" in elections).

The U.S. Supreme Court and other appellate courts have regularly barred disruptive changes to voting and election procedures proposed, as here, too close to elections. *See, e.g.*, *Robinson v. Callais*, 144 S. Ct. 1171, 1171 (2024) (citing *Purcell* and granting stay in redistricting case six months before general election); *Merrill*, 142 S. Ct. at 880 (similar); *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (applying *Purcell* to stay injunction issued less than four months before election that "implicates voter registration—which is currently underway—and purports to require the state to take action now"); *Thompson v. DeWine*, 959 F.3d 804, 813 (6th Cir. 2020) (per curiam) (applying *Purcell* where election was "months away" and other "interim deadlines" were imminent). As of the filing of this brief, election day is a mere five weeks away; ballots have already been mailed to UOCAVA voters; the last day to register in Arizona—October 7—is less than two weeks away; early voting begins in two weeks; and election officials are advised to print the poll lists—the lists of eligible voters—on October 11, less than three weeks from now. *Elections Calendar*, *supra*. Under these circumstances, and given that Plaintiffs seek to impose a new, extra-statutory citizenship-verification process that would burden election officials and discourage political participation across the state, "a due regard for the public interest in orderly

elections support[s] the [] Court's discretionary decision to deny a preliminary injunction." *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (per curiam).

2. Plaintiffs have not established any risk of imminent injury.

Plaintiffs' five-week delay in bringing their motion for a temporary restraining order and preliminary injunction alone suggests that they are not at risk of irreparable harm. *See, e.g.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (en banc) (delay in seeking preliminary relief "undercut [] claim of irreparable harm"). This is especially true given that Arizona is now past the ninety-day NVRA cutoff. *See supra* at 8–10.

In any event, Plaintiffs have further failed to demonstrate a risk of irreparable injury. They claim harm through vote dilution and the expenditure of resources, suggesting that they have "plausibly demonstrated the likelihood that their constitutional rights will be violated because of disenfranchisement through vote dilution." Mot. 22–24. As discussed above, *see supra* at 2–3, Plaintiffs' theory of unconstitutional vote dilution is inherently flawed and cannot support relief, injunctive or otherwise. Moreover—and significantly, given that the specter of vote dilution animates their entire lawsuit—Plaintiffs present *no* compelling evidence that noncitizens have voted or will vote in Arizona's federal elections. *Cf. Mi Familia Vota*, 2024 WL 862406, at *16 ("[N]on-citizens voting in Arizona is quite rare, and non-citizen voter fraud in Arizona is rarer still."). The closest Plaintiffs come to actual evidence is a single August 2024 poll of 1,187 individuals identified as "Arizona Likely Voters," 22 of whom (1.85%) apparently stated that they were not U.S. citizens at the time the poll was taken. *NumberUSA August 2024 Arizona*, Rasmussen Reports, https://www.rasmussenreports.com/public_content/politics/partner_surveys/crosstabs_2_numbers_usa_arizona_august_13_17_2024 (last visited Sept. 26, 2024). That's it. Other than citing that poll, whose methodology is not available and which reveals nothing concrete about the risk of noncitizen voting, Plaintiffs have offered *no* evidence that noncitizens have or plan to cast ballots in Arizona's

elections. They certainly have not identified a single noncitizen who has voted in Arizona—nor, indeed, a single noncitizen among the 42,301 federal-only voters in the state, every one of whom swore under penalty of perjury that they were U.S. citizens when they registered to vote. Plaintiffs cannot overcome that with pure speculation. *Cf. Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir.1985) ("affidavits [that] are conclusory and without sufficient support in facts" will not support finding of irreparable injury).

Plaintiffs' lack of credible evidence likewise forecloses any claim based on the expenditure of resources. *See* Mot. 24. Spending money chasing phantoms (or educating voters about nonexistent threats to election integrity) cannot give rise to a credible injury.

3. Neither the balance of harms nor public interest supports Plaintiffs' request.

There is no dispute that "[t]he public has a strong interest in exercising the fundamental political right to vote" and that "the public interest favors permitting as many qualified voters to vote as possible." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir. 2014) (cleaned up). Plaintiffs present no legitimate evidence or inference that the fundamental right to vote is in jeopardy in Arizona. By contrast, the late-hour relief they seek—which would serve to intimidate and even disenfranchise voters, as well as disrupt election officials' final preparations for the fast-approaching presidential election—clearly undermines the political process and threatens eligible voters' ability to access the franchise. The public interest therefore militates against their request for relief.

CONCLUSION

For these reasons, Plaintiffs' motion for a temporary restraining order and preliminary injunction should be denied and their claims dismissed with prejudice.

Dated: September 26, 2024

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**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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 LaFever

1

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED et al.,

Plaintiffs,

v.

STEPHEN RICHER, in his official capacity as Maricopa County Recorder, et al.,

Defendants.

No. CV-24-02030-PHX-SMB

[PROPOSED] ORDER GRANTING DEMOCRATIC NATIONAL COMMITTEE'S MOTION TO INTERVENE

Having considered the motion to intervene filed by the Democratic National Committee ("DNC"), the Court finds that the DNC is entitled to intervene as a defendant as of right under Federal Rule of Civil Procedure 24(a)(2). Accordingly, IT IS HEREBY ORDERED that the motion is GRANTED.

Dated this _____ day of _____, 2024.

_____
Hon. Susan M. Brnovich
United States District Judge