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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Strong Communities Foundation of Arizona Inc., and Yvonne Cahill,

Plaintiffs,

vs.

Stephen Richer in his official capacity as Maricopa County Recorder, and Maricopa County,

Defendants.

No. CV-24-02030-PHX-KML

**MARICOPA COUNTY DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

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## INTRODUCTION

Pursuant to Fed. R. Civ. P. 12(c), the Maricopa County Defendants[1] move this Court to enter judgment on the pleadings in their favor. As explained in the accompanying Memorandum, Plaintiffs lack Article III standing and so this Court lacks subject matter jurisdiction. *Id*. 12(b)(1). This Court should dismiss this action in its entirety. Additionally, the First Amended Complaint (Doc. 12, "FAC") fails to state a claim for which relief can be granted, and so judgment on the pleadings in the Maricopa County Defendants' favor is warranted. *Id*. 12(b)(6). Finally, none of the Defendant Counties are proper defendants. They should be dismissed. The certification required by L.R. 12(c) is Exhibit 1 to this Motion.

## MEMORANDUM OF POINTS AND AUTHORITIES

### LEGAL STANDARD

Article III standing is a "threshold question" that is "distinct from the merits of [plaintiff's] claim." *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). "The jurisdictional question of standing precedes, and does not require, analysis of the merits." *Id*. (cleaned up). If the district court determines that the plaintiff lacks Article III standing, the matter must be dismissed. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (noting that a plaintiff cannot "get in the federal courthouse door" without Article III standing); *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475-76 (1982) (those without Article III standing "may not litigate as suitors in the courts of the United States).

[1] The Maricopa County Defendants are Maricopa County Recorder Stephen Richer, in his official capacity, and Maricopa County.



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A Rule 12(c) motion asserting failure to state a claim upon which relief can be granted is "functionally identical" to a Rule 12(b)(6) motion to dismiss. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (citations omitted). Dismissal is proper when there is either a "lack of a cognizable legal theory" or the "absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). In reviewing a Rule 12(c) motion, "the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989).



## ARGUMENT

### I. The Court Lacks Subject Matter Jurisdiction.

The Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const., Art. III, § 2. The doctrine of standing implements this limitation by requiring that a plaintiff show (1) an injury in fact, (2) fairly traceable to the challenged action of the defendant, (3) that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). In this case, Plaintiffs lack standing because they fail to establish a redressable injury that is concrete and particularized.

#### A. Plaintiffs Lack Standing Because They Fail to Allege An Injury.

The first standing element requires an "injury in fact" that must be "concrete and particularized," as well as "actual or imminent." *Lujan*, 504 U.S. at 560. So, the injury cannot be "conjectural" or "hypothetical." *Id.* "[T]he 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among



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the injured." *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972). Plaintiffs must have "a direct stake in the outcome of a litigation." *Diamond v. Charles*, 476 U.S. 54, 66 (1986). Here, Plaintiffs wholly fail to meet this standard, and so lack Article III standing.

**1. Plaintiffs Do Not Allege an Article III Injury in the FAC.**

Plaintiffs' FAC does not allege *any* injury to *any* plaintiff, much less a "concrete and particularized" injury. *Lujan*, 504 U.S. at 560–61. Rather, Strong Communities alleges that its mission includes "ensuring that Arizona's elections are free, fair, and lawfully administered," and that it is "beneficially interested in the proper conduct of elections, including voter list maintenance," and that its "members include Arizona citizens and voters registered across the State of Arizona who are affected" by voter list maintenance. [FAC at ¶¶ 15-18.] But it does not explain how its members are "affected," let alone directly injured. Likewise, Cahill alleges she is a Maricopa County voter who plans to vote in future elections, and she "has a clear interest in supporting the enforcement of Arizona's election laws, including list maintenance requirements." [*Id.* at ¶ 19–20.] But she does not allege any injury stemming from any Defendant's actions.



Instead of identifying a particularized injury caused by the county recorders' alleged failure to follow required list maintenance procedures, Plaintiffs allege only a generalized interest in statutory compliance. [*See* FAC at ¶ 169 (Count I); ¶ 176 (Count II); ¶ 186 (Count III); ¶ 190 (Count IV); ¶ 196 (Count V).] Such generalized grievances do not confer standing. *Carney v. Adams*, 592 U.S. 53, 58 (2020) ("[A] grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an 'injury in fact.' And it consequently does not show standing.").



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Plaintiffs' vague allegations of interest in the application of what they consider "correct" voter list maintenance procedures are "precisely the kind of undifferentiated, generalized grievance[s] about the conduct of government that [the court has] refused to countenance in the past." *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

Additionally, Plaintiffs' fear that noncitizens may be registering to vote, [FAC at ¶¶ 82–88], is conjectural and so is insufficient to confer standing. *Lake v. Fontes*, 83 F.4th 1199, 1204 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1395 (2024) (explaining that "speculation" in the form of "conjectural allegations of potential injuries" is insufficient to confer Article III standing). *See also Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"). Plaintiffs point to other states where what Plaintiffs call "potential" noncitizens were removed from the voter registration rolls, and in some cases, where they allegedly voted. [*Id.* at ¶¶ 84–88.] But that proves nothing in this case, and Plaintiffs provide no basis to presume that it does.



Finally, Plaintiffs allege that Defendants violate the NVRA's uniformity requirement by submitting registrants who provide specific immigration enumerators to the Department of Homeland Security ("DHS") for citizenship verification, as Arizona law requires. [FAC at ¶ 198-199.] Even if such practices violated the NVRA (they do not; *see infra*, Part II.E, at 15-16), Plaintiffs never allege that this practice harms them.

**2. <u>Plaintiffs Do Not Allege an Article III Injury in the MPI.</u>**

Although the Complaint itself must contain allegations sufficient to survive a 12(b)(6) motion to dismiss, courts will consider additional allegations of fact made in pleadings



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outside the Complaint when evaluating whether plaintiffs have Article III standing. *Maya*, 658 F.3d at 1067. Plaintiffs submitted a Motion for Preliminary Injunction ("MPI", Doc. 57) with additional standing allegations, which also fail to state an Article III injury.

Plaintiffs allege that Yvonne Cahill and Strong Communities' members are subject to additional scrutiny through SAVE verification. [MPI at 16-18.] Arizona law requires that, within ten days of receiving a Federal Form voter registration application that is not accompanied by documentary proof of citizenship ("DPOC"), the county recorder must attempt to verify the citizenship of the voter registration applicant. A.R.S. § 16-121(D). This one-time, initial citizenship verification involves several different inquiries, none of which reoccur. *Id.* One can be made to the U.S. Citizenship and Immigration Services ("USCIS") for verification via the Systematic Alien Verification for Entitlements Program ("SAVE"). § 16-121.01(D)(3). It is this SAVE check by USCIS about which Plaintiffs complain.



But Plaintiffs make no allegation that Cahill's or any Strong Communities' member's registration was not accompanied by DPOC such that they would have been subject to SAVE verification. On the contrary, Plaintiffs allege that Cahill plans to vote in future federal and *state* elections, [FAC at ¶ 19], suggesting that her registration was accompanied by DPOC. A.R.S. § 16-166(F) (requiring DPOC to vote; application limited to state elections by *Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013)).

Nonetheless, Plaintiffs allege that the one-time use of SAVE to verify naturalized-citizen Cahill's citizenship, coupled with the Defendant County Recorders' non-use of "1373/1644 Requests" to verify natural-born citizens without DPOC, violated NVRA's uniformity and non-discrimination requirement. [MPI at 16.] Not so. Even if Cahill or some



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of Strong Communities members submitted registrations without DPOC, it is unlikely that a SAVE inquiry was made concerning them. Arizona law commands the county recorders to make such inquiries "if practicable." A.R.S. § 16-121.01(D)(3). SAVE requires an immigration number in order to perform a citizenship inquiry. *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *10 (D. Ariz. Feb. 29, 2024). But "[n]aturalized citizens rarely include their immigration numbers on the State Form, and the Federal Form does not include a space for registrants to provide this information." *Id*. at *6. As a result, most naturalized, Federal Only Voters are not subjected to a SAVE check. *Id*. at *42 n.54. And the few that are conducted do not violate the NVRA's uniformity requirement. *Id*.

Plaintiffs also allege that Cahill is subject to ongoing verifications through SAVE. [MPI at 16.] But that, too, is incorrect. Arizona lacks the requisite agreement with DHS to use SAVE for list maintenance after the § 16-121.01(D)(3) check made within ten days of receipt of the applicant's voter registration. *See Mi Familia Vota*, 2024 WL 862406, at *6. But even if Arizona someday gains access to SAVE for ongoing list maintenance purposes, the *Mi Familia Vota* court held that the NVRA's uniformity requirement would not be violated. *Id*. at *43 (holding that "[s]ection 8 of the NVRA [which contains the uniformity requirement] does not preempt the Voting Laws' SAVE checks").

Plaintiffs also attempt, and fail, to state a cognizable vote dilution injury. [MPI at 16.] "'[V]ote dilution' in the one-person, one-vote cases refers to the idea that each vote must carry equal weight." *Rucho v. Common Cause*, 588 U.S. 684, 709 (2019). This principle "requires that 'each representative' in a political body 'be accountable to (approximately) the same number of constituents,' so that no group of voters retains an outsized edge in





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deciding the course of policymaking or representation relative to others in the same electoral unit." *Election Integrity Project Cali., Inc. v. Weber*, --- F.4th ---, 2024 WL 3819948, at *8 (9th Cir. Aug. 15, 2024). So "[v]ote dilution in the *legal* sense occurs only when disproportionate weight is given to some votes over others within the same electoral unit." *Id.* at *10. But Plaintiffs make no allegation that anyone's vote will weigh differently than anyone else's. Rather, Plaintiffs merely speculate that they, along with every single voter, *may* have their votes diluted by some *unknown* number of votes from *possible* noncitizens. But even if Plaintiffs are correct and some invalid votes are counted, "any diminishment in voting power that result[s] [would be] distributed across all votes equally." *Election Integrity Project Cali.*, 2024 WL 3819948, at *10. "Vote dilution in this context is a 'paradigmatic generalized grievance that cannot support standing.'" *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020). Plaintiffs' vote dilution theory fails.

Strong Communities also attempts, and fails, to establish organizational standing.[2] "An organization asserting that it has standing based on its own alleged injuries must meet the traditional Article III standing requirements." *Ariz. All. for Retired Americans v. Mayes*, --- F.4th ---, 2024 WL 4246721, at *4 (9th Cir. Sept. 20, 2024) ("*AARA*") (citing *Food & Drug Admin. v. All. for Hippocratic Medicine*, 602 U.S. 367, 370, 395 (2024)). "[I]t must show (1) that it has been injured or will imminently be injured, (2) that the injury was caused or will be caused by the defendant's conduct, and (3) that the injury is redressable." *Id.*

[2] When evaluating this Motion for Judgment on the Pleadings, the Court must accept as true Plaintiffs' allegation that Strong Communities is a membership organization. The Maricopa County Defendants reserve their right to challenge that allegation if this matter proceeds to summary judgment or to trial.



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"[P]laintiffs must allege more than that their mission or goal has been frustrated—they must plead facts showing that their core activities are directly affected by the defendant's conduct." *Id.* The injuries must be "*apart* from the plaintiff's response to that government action." *Id.* at *2 (*citing All. for Hippocratic Medicine*, 602 U.S. at 395–36).

Here, Strong Communities fails to show its core activities are directly affected by the Defendants' voter list maintenance practices apart from its response to these practices. Rather, Plaintiff's theory is premised on it allegedly expending resources in response to the list maintenance practices regarding Federal Only Voters. [*See* MPI at 18-19.] But Plaintiff's theory of organizational standing has been expressly rejected. *All. for Hippocratic Medicine*, 602 U.S. at 395 (rejecting standing based on a diversion of resources theory because it "would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies."). Instead, "[Plaintiffs] must do more than merely claim that Arizona's law caused them to spend money in response to it—they must show that Arizona's actions directly harmed already-existing activities." *AARA*, 2024 WL 4246721, at *4. Plaintiff fails to do so. And its choice to allocate resources opposing Federal Only Voters does not confer standing. Indeed, "spending money voluntarily in response to a government policy cannot be an injury in fact." *Id.* at *9. Plaintiffs' organizational standing theory fails.



**B. Plaintiffs Lack Standing Because They Fail to Establish Redressability.**

"In addition to establishing that their injury results from the defendants' challenged action, plaintiffs must also demonstrate that the requested relief will remedy their injury." *Harris v. Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 763 (9th Cir. 2004). It must



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be "'likely, as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan*, 504 U.S. at 561. "[I]f the requested remedy would not cure the plaintiff's injury, then the injury is not redressable." *AARA*, 2024 WL 4246721, at *6.

Here, Plaintiffs' requested relief would not remedy their grievances. Plaintiffs ask the Court to order Defendants to submit "1373/1644 Requests" to DHS containing the names and birthdates of all Federal Only Voters and to send lists of those voters and their voter registration applications to the Arizona Attorney General for investigation. Plaintiffs' goal is for DHS and the Attorney General to identify noncitizens and report back to Defendants, so that ineligible voters can be removed from the rolls. But Plaintiffs do not demonstrate that DHS can perform citizenship verifications based on names and birthdates, and as shown below, they cannot. Plaintiffs point to two states that have submitted such requests to DHS, and even include their request-letters as exhibits to the MPI, but never allege that DHS responded favorably. And Plaintiffs have not shown that the Attorney General has tools beyond those Defendants have to conduct citizenship inquiries, or that she would do so if she received the lists Plaintiffs want Defendants to send. And neither DHS nor the Attorney General is before this Court. It is thus purely speculative whether a favorable decision would redress Plaintiffs' alleged injury.

Plaintiffs have failed to meet the "irreducible constitutional minimum of standing," *Lujan*, 504 U.S. at 560, so this Court lacks subject matter jurisdiction.

## II. Plaintiffs Fail to State a Claim Upon Which Relief Can Be Granted.

### A. Count I.

Arizona law requires that, within ten days of receiving a Federal Form voter





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registration application that is not accompanied by DPOC, the Defendant County Recorders must "use all available resources" to confirm that the registrant is a citizen. A.R.S. § 16-121.01(D). In Count I, Plaintiffs allege that a "1373/1644 Request" made to DHS counts as an "available resource," and so the Defendant County Recorders must send the names and birthdates of already-registered Federal Only Voters to DHS. [FAC at ¶¶ 164-69; *id.* at 31 ("Prayer for Relief," at A.1).] Plaintiffs badly miss the mark.

First, A.R.S. § 16-121.01(D) requires citizenship verification to occur within ten days of a county recorder receiving a voter registration application. The statute does not require the Defendant Recorders to conduct citizenship inquiries into already-registered voters.

Second, Plaintiffs' interpretation of "all available resources" presses the statutory language to the breaking point and would lead to absurd results. Under Plaintiffs' theory, the Defendant Recorders have a duty to identify *every possible* resource that contains information concerning the citizenship status (or lack thereof) of new voter registrants and use all of them within ten days of receiving registrations. No matter who owned the resource, where it was located, or how much it cost to utilize it, the recorders would have an obligation to identify it and use it—even if the resource's owner denied the recorders access to it. And, what if they failed to identify and use some obscure resource somewhere? According to Plaintiffs' theory, the Defendant Recorders would be guilty of a class 6 felony, because that is the penalty for violating § 16-121.01(D). A.R.S. § 16-121.01(F). And that would be true—according to Plaintiffs' theory—even if the resource's owner refused the recorders access. That absurd result cannot be the law.

"[W]ell-accepted rules of statutory construction" counsel "that statutory





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interpretations which would produce absurd results are to be avoided." *Ariz. St. Bd. For Charter Sch. v. U.S. Dep't of Educ.*, 464 F.3d 1003, 1008 (9th Cir. 2006) (cleaned up). So "courts avoid natural readings that would lead to irrational results." *Id*. This Court should do so here. A better understanding of A.R.S. § 16-121.01(D)'s requirement is that the recorders must make use of all resources to which they personally have access, *i.e.*, that are actually available to them and they can actually use.

And to be clear, DHS's data (other than that in the SAVE program) is not available to the Defendant Recorders, and certainly is not within their control such that they can freely access it to make citizenship inquiries. Plaintiffs claim the recorders need only send "1373/1644 Requests" containing names and birthdates to DHS, [FAC at ¶ 128], but it is unknown whether DHS can, or would, respond. Plaintiffs allege that the law requires DHS to verify citizenship if asked, but neither 8 U.S.C. §§ 1373 nor -1644, the laws upon which Plaintiffs rely, require DHS to verify citizenship *with only a name and a birthdate*. And DHS's own publicly-available documents suggest that it cannot do so, but needs an immigration number to perform citizenship inquiries. [Doc. 48, Maricopa Cnty. Defs. Resp. to MPI ("MPI Response"), at 13-15 and 13 n.4.]



Plaintiffs point to South Carolina and Florida, which have sent names and birthdates of their voters to DHS requesting citizenship confirmation, as "proof" that "1373/1644 Requests" are available to the Defendant Recorders. [MPI at 12-13.] They even supply those letters as exhibits. [MPI at 12-13.] But Plaintiffs do not provide responses from DHS indicating that DHS did, or will, respond positively to those requests. Plaintiffs' failure to include such exhibits is telling, indicating that DHS has not responded as Plaintiffs insist it



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must. And Plaintiffs have not hailed DHS before this Court in order for the Court to order DHS to do what Plaintiffs claim the law requires it to do.

Despite Plaintiffs' claims to the contrary, A.R.S. § 16-121.01(D) does not require the Defendants to send "1373/1644 Requests" to DHS. Such "Requests" are not "an available resource" to the county recorders within the meaning of the statute, and neither 8 U.S.C. §§ 1373 nor -1644 requires DHS to verify citizenship based on only names and birthdates. Count I fails as a matter of law.

**B. Count II.**

Count II alleges that A.R.S. § 16-121.01(D)(5) requires the County Recorder Defendants to compare Federal Only Voters' records with "any other federal database," and that a "1373/1644 Request" for DHS to use the PCQS system to verify citizenship "constitutes" a federal database. [FAC, ¶¶171-72.] And Plaintiffs demand that this Court order the Defendants to make "1373/1644 Requests" for already-registered Federal Only Voters. [*Id.* at 31 ("Prayer for Relief," at A.2).] But this Count fails for the same reason as Count I: A.R.S. § 16-121.01(D) requires citizenship verification to occur within ten days of a county recorder receiving a voter registration application. It does not require the Defendants to conduct ongoing citizenship inquiries into already registered voters.

Additionally, the March 8, 2016, *Privacy Impact Assessment for the Person Centric Query Service*, published by DHS and included as Exhibit 3 to the Maricopa County Defendants' MPI Response (Doc. 48-3), expressly states on page 1 that "PCQS does not store data." Consequently, it is not a database and so cannot be "any other federal database" within the meaning of § 16-121.01(D)(5). Count II, like Count I, fails.





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### C. Count III.

Count III alleges that Arizona citizens who register to vote by attesting that they are citizens but do not provide DPOC, *as federal law allows*,[3] have provided information indicating that they are not citizens. And it asks this Court to declare that failure to provide DPOC "constitutes information about lack of citizenship," [FAC at 31 ("Prayer for Relief," at A.3)], even though federal law allows *every* United States citizen to register to vote without providing DPOC. This request, and Plaintiffs' allegation, are offensive. The allegation is also incorrect, and so Count III fails as a matter of law.

Arizona law requires that "[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations pursuant to this section." A.R.S. § 16-165(K). The statute was clearly intended as a safeguard. Section 16-165 imposes several list maintenance requirements on the recorders. For example, it requires them to cancel a voter's registration when they learn that the voter has died, or has been convicted of a felony, or is not a citizen. But, when the recorders receive such information, § 16-165(K) requires them to review other relevant databases, "[t]o the extent practicable," "to confirm [the] information" before canceling the registration.

Plaintiffs turn this prophylactic measure on its head and weaponize it against their fellow citizens. In Count III, they suggest that the very act of registering to vote, without providing DPOC, is "information about lack of citizenship" that triggers a § 16-165(K) review. [FAC at ¶¶ 180-81.] They then allege, as they did in Count II, that "1373/1644

[3] *Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 20 (2013).



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Requests" are equivalent to a federal database, [*id*. at ¶ 182], and so the Defendant Recorders have violated § 16-165(K)'s requirement by not making those Requests. [*Id*. at ¶ 185.]

This Count fails for the same reason as Count II: Plaintiffs allege that a "1373/1644 Request" would result in DHS making citizenship inquiries in PCQS, but PCQS is not a database. And because federal law allows registrants to attest to their citizenship under penalty of perjury without providing documentary proof, *Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 15 (2013), such registrations, without more, cannot provide "information" indicating lack of citizenship triggering § 16-165(K)'s requirement.

**D. Count IV.**

Count IV alleges that A.R.S. § 16-143(A) requires that Defendants "provide" and "send" information about Federal Only Voters to the Attorney General. [FAC, ¶ 190; MPI at 13.] But the law requires that Defendants must "*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 . . . ." (emphasis added). This does not require the county recorders to "send" the Attorney General lists of Federal Only Voters, as Plaintiffs allege. And Plaintiffs do not allege that the Defendant County Recorders have ever denied a request for the list from the Attorney General (which, they never have).

Section 16-143(A) does state that Defendants "shall provide, on or before October 31, 2022, the applications of individuals who are registered to vote and who have not provided satisfactory evidence of citizenship." [FAC, ¶ 189.] But this statute was not in effect until *after* that October 31 deadline, and so Defendants were never subject to that requirement. [Doc. 17, Answer, at ¶ 189 (explaining the effective date of the statute and





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providing relevant citations).] Additionally, the statute imposes no ongoing duty to send voter registration applications to the Attorney General. Yet incredibly, Plaintiffs ask this Court to order the Defendant Recorders to transmit to the Attorney General, *on a weekly basis*, the voter registration applications of all new Federal Only Voters. [FAC at 32, "Prayer for Relief," at A.4.] There is no basis in law for that requested relief.

Count IV fails as a matter of law and must be dismissed.

**E. Count V.**

Count V alleges that the citizenship inquiries using SAVE, which A.R.S. § 16-121.01(D)(3) requires to occur, "if practicable," within ten days of the submission of Federal Form applications not accompanied by DPOC, violates the NVRA's uniformity requirement if PCQS is not also used. [FAC, ¶¶ 191-99.] Plaintiffs' assert that, because SAVE requires an immigration number and so cannot be used to verify citizenship of native-born registrants, the citizenship inquiry discriminates against naturalized citizens. Plaintiffs further allege that, because PCQS can verify citizenship with only a name and birthdate—something the Maricopa County Defendants dispute—it must be used to satisfy NVRA's uniformity requirement. [*Id.*] Count V fails as a matter of law.



First, Plaintiffs lack statutory standing to bring it.[4] The NVRA provides that "[a] person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1). While

[4] "[L]ack of statutory standing requires dismissal for failure to state a claim[.]" *Maya v. Centex Corp.*, 658 F.3d at 1067. *See also Vaughn v. Bay Env't Mgmt., Inc.*, 567 F.3d 1021, 1022 (9th Cir. 2009) (dismissal for lack of statutory standing is a dismissal for failure to state a claim, not for lack of subject matter jurisdiction).



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this notice provision is framed as permissive, it is generally a prerequisite to filing suit under the NVRA. 52 U.S.C. § 20510(b)(2) (an aggrieved person may only bring a civil action for declaratory or injunctive relief with respect to a violation of the NVRA "[i]f the violation is not corrected within 90 days *after receipt of a notice* . . . or within 20 days *after receipt of the notice* if the violation occurred within 120 days before the date of an election for Federal office." (emphasis added)).[5] Plaintiffs allege they provided this required notice, [FAC at ¶ 52], but did not. The notice must be sent to "the chief election official of the State involved" before a lawsuit is filed. § 20510(b)(1). In Arizona, that is the Secretary of State. A.R.S. § 16-142. Strong Communities sent its notice letter to the county recorders, not the Secretary. [FAC, ¶ 52; *see also* Doc. 16-4, MPI Ex. D (Notice Letter sent to Recorder Richer).] Additionally, the notice letter failed to provide any notice of an alleged violation of the NVRA's uniformity requirement. Plaintiffs failed to provide the required 52 U.S.C. § 20510(b)(2) notice, and so lack statutory standing to bring claims under the NVRA.



Additionally, the *Mi Familia Vota* court held that the NVRA's uniformity requirement is not violated by SAVE inquiries. *Mi Familia Vota*, 2024 WL 862406, at *42 and n.54 (explaining reasoning); *id*. at *43 (holding that "[s]ection 8 of the NVRA [which contains the uniformity requirement] does not preempt the Voting Laws' SAVE checks").

## III. The County Defendants Are Improper Parties and Must Be Dismissed.

The County Defendants and the Recorder Defendants are distinct legal entities. A County is a "body politic and corporate." Ariz. Const. art. XII, § 1; A.R.S. §§ 11-202, 11-

[5] 52 U.S.C. § 20510(b)(3) provides an exception to the notice requirement for violations (and lawsuits) brought within thirty days of a federal election. This lawsuit was brought before that date and so the exception is not applicable.



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103 *et. seq.* (establishing Arizona's counties). Meanwhile, a County Recorder's position is established by Ariz. Const. art. XII, Section 3 and A.R.S. § 11-461 *et. seq.* Counties and Recorders are not interchangeable. They each possess their own powers and duties, delegated to them by the legislature. For example, the County's powers and duties are set forth in A.R.S. § 11-201(A): (1) to "[s]ue and be sued;" (2) "[p]urchase and hold lands within its limits"; (3) "[m]ake such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers"; (4) dispose of property; (5) "[l]evy and collect taxes" for proper purposes; and (6) "[d]etermine the budgets of all elected and appointed county officers." *See Sw. Gas Corp. v. Mohave Cnty.*, 188 Ariz. 506, 508 (App. 1997) (counties possess only those powers and duties delegated to them by the legislature or the constitution). None of these specifically delegated powers involve voter list maintenance.

In contrast, the Recorders have voter list maintenance duties under federal and state law. *See, e.g.*, 52 U.S.C. § 21083(a)(2) (delegating list maintenance to the appropriate State or local election official); A.R.S. § 16-121.01(D) (delegating list maintenance duties to the county recorder); A.R.S. § 16-165(K) (same). In this case, the FAC's allegations only concern actions taken by, or duties delegated to, the County Recorders with respect to list maintenance responsibilities. The FAC does not contain a single allegation of wrongdoing by any County or identify a single cause of action against any County. Accordingly, Plaintiffs fail to state a claim against the County Defendants, and they should be dismissed.



## CONCLUSION

For the foregoing reasons, this Court should grant the Defendants' motion and enter judgment on the pleadings in the Defendants' favor.



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RESPECTFULLY SUBMITTED this 16th day of October, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2024, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and served a copy by email on all counsel listed below, with a courtesy copy to the Honorable Susan Brnovich, as follows.

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