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ARIZONA SUPREME COURT

MARICOPA COUNTY RECORDER
STEPHEN RICHER, in his Official
Capacity,

Petitioner,

v.

ARIZONA SECRETARY OF STATE
ADRIAN FONTES, in his Official
Capacity,

Respondent.

No. CV-24-0221

**JOINT STIPULATION OF
FACTS**

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Plaintiff/Petitioner Maricopa County Recorder Stephen Richer (the “Recorder”) and Defendant/Respondent Arizona Secretary of State Adrian Fontes (the “Secretary of State”) hereby submit this Joint Stipulation of Facts.

1. In 2004, Arizona voters approved Proposition 200 (“Prop 200”) and Arizona became the first (and remains the only) state in the nation to require those registering to vote to provide documentary proof of citizenship (“DPOC”).

2. Arizona’s then-governor issued the proclamation enacting Prop 200 on December 8, 2004. However, they did not become effective until receipt of notice of preclearance from the United States Department of Justice on January 24, 2005. Op. Ariz. Atty. Gen’l No. I05-001, at 2 n.1.

3. Among the statutes adopted by Prop 200 was A.R.S. § 16-166(F). That statute lists several acceptable forms of DPOC. A.R.S. § 16-166(F)(2)-(6).

4. The most commonly used form of DPOC, and the one relevant to this action, is “[t]he number of the applicant’s driver license or nonoperating identification license issued after October 1, 1996, by the department of transportation.” A.R.S. § 16-166(F)(1).

5. The Arizona Department of Transportation (“ADOT”), Motor Vehicle Division (“MVD”), began requiring applicants for driver’s licenses and nonoperating identification licenses to establish their lawful presence in the United

States in July 1996. *See* Op. Ariz. Atty. Gen'1 No. I05-001, at 3 (2005) (citing A.R.S. §§ 28-3153(D), -3158(C)).

6. Beginning in 2000, MVD instituted a policy whereby those who are lawfully present, but not citizens, receive an “F type” license, which they cannot use as DPOC. *Id.* at 4 & n.2.

7. In addition to providing DPOC, a person registering to vote must sign a statement declaring that he or she is a United States citizen and acknowledging that executing a false registration is a class 6 felony. A.R.S. § 16-152(A)(14), (18).

8. Persons registered to vote in Arizona on January 24, 2005, when the voting provisions of Prop 200 took effect, are “deemed to have provided satisfactory evidence of [DPOC] and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.” A.R.S. § 16-166(G).

9. While Prop 200’s DPOC requirement applied to Arizona’s State and local elections, the United States Supreme Court concluded that the DPOC requirement violated the National Voter Registration Act (“NVRA”) and could not be enforced for registration to vote in *federal* elections. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 20 (2013).

10. Thereafter, Arizona implemented a unique bifurcated voter registration system. *See* Op. Ariz. Atty. Gen. I13-011, at 6, 12 (2013).

11. In that bifurcated system, the Arizona Elections Procedures Manual (EPM) states that voters who complete a voter registration form and attest under penalty of perjury that they are United States citizens, but who do not provide DPOC, are registered as “federal-only” voters. *See* Arizona Elections Procedures Manual (“EPM”), at 3 (2023); *see also* https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf.

12. The EPM also states that Federal-only voters receive ballots that contain only federal races (*i.e.*, President and Vice-President, United States Senator, and United States Representative). *Id.*

13. The EPM states that Federal-only voters may not vote for State or local offices or ballot measures. *Id.*

14. On or about September 6, 2024, the Recorder informed the Secretary of State, Governor’s Office, and MVD that the Recorder had received information about a person who registered to vote in 2022, using an Arizona driver’s license bearing on its face an issue date *after* October 1, 1996. The registrant was registered to vote as a Full Ballot voter based on the statewide voter registration check (“HAVA check”) run as part of the verification of the Individual’s original Application to vote, which indicated valid citizenship proof.

15. The registrant, however, is not a United States citizen. Maricopa County's voter records reveal that the registrant has not voted since becoming registered in 2022.

16. Further investigation revealed that while the facial issue date of the registrant's Arizona driver's license is *after* October 1, 1996, that issue date corresponds to the date the registrant was issued a duplicate or updated license, but that the first time that registrant obtained an Arizona driver's license was *before* October 1, 1996, prior to the requirement to provide MVD proof of authorized presence to obtain a credential.

17. A further investigation revealed that this anomaly was caused by a flaw in the interface between ADOT's driver licensing issuance process, and the statewide voter registration database. The MVD's system would record the duplicate license issuance year of a registrant who received a duplicate license and would show on its MVD system the issuance year of the duplicate, not the original. This, however, failed to maintain any indicator for election officials of the original issuance date (i.e. that the original was not satisfactory evidence of DPOC).

18. Thus, any prospective voter registrant in any of the fifteen counties who (a) received an Arizona driver's license *before* October 1, 1996, but received duplicate copy of his Arizona driver's license *after* October 1, 1996, and (b) registered to vote for the first time, or (c) registered to vote in a new county *after* the

effective date of Proposition 200, would be automatically, but inaccurately, understood by voter registration systems to have provided DPOC.

19. Following receipt of this information, the Secretary of State worked with MVD to identify persons who: (a) registered to vote in Arizona for the first time or re-registered to vote in a new Arizona county on or after January 24, 2005, (b) used the number of their Arizona driver's license or nonoperating identification license as DPOC when registering, and (c) that license number used as DPOC was first issued to the registrant before October 1, 1996.

20. The Secretary of State also took steps to confirm whether any of the voters meeting the criteria above had separately provided satisfactory evidence of DPOC, including tribal identification, thereby reducing the number of voters in this affected group. However, the statewide system is engineered to rely on MVD's credential issue date when an Arizona DL or ID number is provided. Therefore, reviewing whether separate DPOC exists for the entire group of Affected Voters will require a manual process conducted locally in each county for each individual Affected Voter.

21. As of September 18, 2024, the Secretary of State, thus far, has identified 97,928 registered voters who meet the foregoing criteria (the “Affected Voters”). This includes 87,881 active voters and 10,047 inactive voters.¹

22. Based on the Secretary of State’s data, there are 53,584 Affected Voters who are registered in Maricopa County, including 47,140 active voters and 6,446 inactive voters.

23. Again, all of the Affected Voters have attested under penalty of perjury to being United States citizens and have no reason to believe they needed to provide additional documentation to election officials.

24. The Recorder and Secretary of State believe that most of the Affected Voters likely are citizens.

25. The Recorder and Secretary of State agree that for elections *after* 2024, the Affected Voters must present satisfactory evidence of DPOC to cast a Full Ballot.

26. The MVD and the Secretary of State have already addressed the issue so that it does not continue to affect new registrants or those who move to a new county in Arizona.

¹ Active voters refers to registrants whose information is up to date and may receive an early ballot by mail if requested. Inactive voters refers to registrants who have failed to respond to non-forwardable election mail and will have their registration cancelled if they remain on the inactive list for two consecutive general elections without voting.

27. That process includes the following. For new voter registrants and those who reregister in a new county, when county recorders conduct an MVD check, they will receive a pop-up notification for applicants who have received a duplicate MVD credential or an original that was issued prior to October 1, 1996, that the license number submitted is insufficient DPOC and that the relevant county recorder must take additional steps to obtain satisfactory evidence of DPOC before completing the registration.

28. For previously approved voter registrants, such as those at issue in this matter, the Secretary of State has directed county recorders to take no action at this time, to maintain the status quo for the November 5, 2024 General Election, and await a decision from this Court. He has discussed with them that should the Court disagree with his position, Recorders will notify the Affected Voters that they must provide additional, satisfactory evidence of DPOC in order to remain full-ballot voters. If the notified Affected Voter does not provide additional, satisfactory evidence of DPOC, that Affected Voter will be moved to the federal-only voter list.

29. Time is of the essence as the 2024 General Election, and its related deadlines, are days away. Ballots must be sent to Uniformed and Overseas Absentee Citizens' Voting Act ("UOCAVA") voters no later than *Saturday, September 21, 2024* (see A.R.S. § 16-543(A)), and early ballots must be sent to the 70-plus percent of Arizona voters on the Active Early Voting List ("AEVL") and many other voters

who have already made one-time requests for early ballots on *October 9, 2024* (see A.R.S. §§ 16-542(C), -544(F)).

30. Other relevant dates for the upcoming 2024 General Election are:

August 7, 2024	First day of the NVRA 90-day blackout period for the 2024 General election
September 21, 2024	Deadline to send UOCAVA ballots (at least one county, Maricopa, will issue these as early as Wednesday, September 18, 2024)
October 7, 2024	Last day to register to vote in the November 5, 2024 election
October 9, 2024	First day of early voting and date for mailing ballots to approximately three million AEVL participants
October 25, 2024	Last day for counties to mail early ballots to those who request them
November 5, 2024	Election Day

31. It is possible that Affected Voters have, in fact, provided satisfactory evidence of DPOC. Other than placing the burden on the Affected Voters to prove they provided satisfactory evidence of DPOC, the way to confirm whether satisfactory evidence of DPOC is on file is for the counties to manually check each voter's registration record.

32. The Recorder disagrees with the Secretary's directives as it pertains to handling the Affected Voters in the 2024 General Election.

33. This matter presents purely legal issues, which are ripe for determination by this Court.

34. This matter is of statewide importance and great public interest. Without an Order from this Court giving binding direction, Arizonans, the Affected Voters, and election officials will be left without the certainty needed to ensure confidence and finality for the 2024 General Election.

35. The ability of 97,928 Arizonans to vote for state and local races hangs in the balance. If this Court declines jurisdiction and does not resolve the purely legal issues presented, counties may take inconsistent approaches with respect to a large number of Arizona registered voters, and may apply differential treatment to similarly situated Affected Voters.

36. The circumstances here “render it proper that the petition should be brought in this Court.” *Id.* In particular, the timing of the Recorder’s and the Secretary of State’s discovery of the flaw in the interface between the MVD license renewal system and the statewide voter registration database that created the legal issue presented in this action, in relation to the impending mandatory election deadlines, makes this case wholly appropriate for review by this Court in the first instance.

37. Because the determination of the legal issues presented in this action will affect whether nearly 100,000 Arizonans receive ballots with only federal races on them or full ballots with federal, state, and local races, the need for final resolution

of this matter before ballots are mailed to most Arizona voters, including the Affected Voters, warrants the unusual step of coming to this Court first. *See Ingram*, 164 Ariz. at 516 (accepting special action jurisdiction of action filed in Supreme Court due to the need for prompt resolution).

38. Additionally, in Arizona there are fifteen races for federal and state candidates.² However, there are 90 legislative races, thirteen statewide initiatives,³ and untold scores of local races. Without action by this Court, any and all of those races will be subject to election contest on the basis of the fact scenario we face today.

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² *See* 2024 General Candidates, https://apps.azsos.gov/election/2024/ge_cand/2024_General_Candidates_Web.pdf (last visited September 18, 2024).

³ *See* 2024 Publicity Pamphlet, https://apps.azsos.gov/election/BallotMeasures/2024/2024_AZGeneralElection_PublicityPamphlet_E.pdf (last visited September 18, 2024).

RESPECTFULLY SUBMITTED this 18th day of September, 2024.

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