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

1789 FOUNDATION INC., d/b/a CITIZEN
AG, and LINDSEY GRAHAM,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as
Secretary of State,

Defendant.

Case No. _____

**VERIFIED COMPLAINT AND
REQUEST FOR INJUNCTION**

- 1. Injunctive Relief**
- 2. Declaratory Judgment**
- 3. Violations of the National Voter
Registration Act, 52 U.S.C. § 20501
et seq.**

Plaintiffs 1789 Foundation, Inc., d/b/a Citizen AG (“Citizen AG”), and Lindsey Graham (collectively, “Plaintiffs”), by and through undersigned counsel, file this Verified Complaint

1 for declaratory and injunctive relief against Defendant Adrian Fontes in his official capacity as
2 Arizona's Secretary of State on the grounds set forth as follows:

3 **NATURE OF THE ACTION**

4 This is a voting rights action that seeks to enforce the public inspection provision and
5 list maintenance requirements of the National Voter Registration Act of 1993 ("NVRA"), 52
6 U.S.C. § 20501 *et seq.* Under the NVRA, Arizona is required to maintain accurate and current
7 voter registration lists by removing ineligible voters based on change-of-residence grounds. The
8 NVRA provides that change-of-residence grounds compelling a voter's removal arise when the
9 state either (1) receives written confirmation from a registrant that he or she has moved—in
10 which case the state must immediately remove the voter—or when (2) a registrant does not
11 respond to a confirmation notice and thereafter fails to vote in the next two federal elections.

12 From the time the confirmation notices are sent until the day after the second of two
13 federal elections accrues, voters who do not respond to the notices remain registered, but their
14 registration statuses are switched from "active" to "inactive." This is known as the "statutory
15 waiting period," which exists to protect against any unintentional infringement upon these
16 registrants' right to vote.

17 If, however, a registrant is still inactive after two federal elections because he or she
18 failed to respond to the confirmation notice and either (1) failed to contact the registrar
19 confirming his or her residency or (2) failed to vote in either of the next two federal elections,
20 the inactive registrant must be removed from the voter rolls to ensure that active and eligible
21 voters' fundamental right to vote is not undermined by vote dilution.

22 The Election Assistance Commission's publication of the Election Administration and
23 Voting Survey ("EAVS") biennial reports make it simple to determine whether a registrant is
24 either (1) incorrectly registered as an "inactive" voter or (2) unlawfully registered to vote in
25 Arizona. Based on the EAVS reports—all of which consist of the Secretary of State's own
26 statements and admissions—Plaintiffs can ascertain (1) how many registrants received
27 confirmation notices and did not respond, (2) how many registrants Arizona removed after two
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1 federal elections, and (3) the reasons for each registrant’s removal. Taken together, and as more
2 fully explained below, there are *at least* 1,222,367¹ Arizona registrants who received but did
3 not respond to confirmation notices and who did not vote in either of the last two federal
4 elections, which renders these voters ineligible based on change-of-residence grounds under the
5 NVRA—yet all 1,222,367 voters remain registered to vote on November 5, 2024.

6 While it is possible that all 1,222,367 voters could have reactivated their registration
7 statuses after failing to respond to their confirmation notices in 2020, the possibility is so low
8 that it is statistically impossible to calculate. Nevertheless, and despite the all-but-certain fact
9 that Arizona has violated the NVRA’s list maintenance provisions, Citizen AG submitted a
10 public records request to Defendant on October 4, 2024, to obtain information about the missing
11 variable: the number of Arizona registrants who did not respond to confirmation notices but
12 voted in either the 2020 General Election or 2022 Midterm Election. Defendant responded to
13 Citizen AG’s request on October 7, 2024, stating, “The Secretary of State’s Office does not
14 have any records responsive to your request.” *See* Decl. of Eric Scharfenberger ¶ 16.²

15 Plaintiffs now commence this action because Defendant has violated 52 U.S.C. §
16 20507(i) by refusing to make available every responsive record Citizen AG requested and for
17 violating the NVRA’s requirement that “[e]ach State shall maintain for at least 2 years and shall
18 make available for public inspection” and copying “all records concerning the implementation
19 of programs and activities conducted for the purpose of ensuring the accuracy and currency of
20 official lists of eligible voters,” as evidenced by Defendant’s October 7 response to Citizen
21 AG’s records request.

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24 ¹ The figure of 1,222,367 voters is calculated from the following formula: # of confirmation
25 notices sent – # of responses received – # of undeliverable notices – # moved-out-of-
26 district removals after 2 elections – # of failure-to-return-confirmation-notice removals
27 after 2 elections.

28 ² This document refers to the Declaration of Eric Scharfenberger (Oct. 28, 2024)
appended to Plaintiffs’ Motion for a Temporary Restraining Order or, in the Alternative,
Preliminary Injunction filed simultaneously herewith.

1 Defendant has also violated 52 U.S.C. § 20507(a)(4), which provides that “each State
2 shall...conduct a general program that makes a reasonable effort to remove...from the official
3 lists of eligible voters” the names of voters who have become ineligible by reason of...change
4 of residence. As explained above and as detailed more thoroughly below, *at least* 1,222,367
5 registered inactive voters remain on Arizona’s voter rolls despite failing to respond to their
6 confirmation notices sent more than two federal elections ago.

7 Because Defendant cannot produce records evincing that each one of the 1.2 million
8 registrants in dispute either (1) reactivated his or her registration status by contacting the
9 registrar prior to casting a ballot or (2) has already been removed for any reason, it must be
10 presumed that voters who were required to be removed have instead been left on the rolls. Yet
11 removals are mandatory under both federal and Arizona law. *Husted v. A. Philip Randolph Inst.*,
12 584 U.S. 756, 767 (2018) (“federal law makes this removal mandatory”) (citing 52 U.S.C. §
13 20507(d)(3)); A.R.S. § 16-166(E).

14 Although the NVRA generally prohibits systemic voter-roll cleanup within 90 days of
15 an election, 52 U.S.C. § 20507(c)(2)(A), certain categories of unlawful voters are excepted (the
16 “Excepted Registrants”), *id.* at (c)(2)(B)(i). The Excepted Registrants are those who have
17 requested to be removed, those who are ineligible by reason of criminal conviction or mental
18 incapacity (as provided by state law), and those who have died.

19 Due to the impending federal election that will take place on November 5, 2024, and the
20 imminent and actual harm that will result absent emergency injunctive relief, Plaintiffs also file
21 along with this Verified Complaint an emergency motion for a temporary restraining order and
22 preliminary injunction and a memorandum of points and authorities in support thereof.

23 **JURISDICTION AND VENUE**

24 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this
25 action arises under the laws of the United States, and in particular 52 U.S.C. §§ 20507 and
26 20510(b).

1 8. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
2 herein.

3 9. The NVRA provides that “each State shall...conduct a general program that
4 makes a reasonable effort to remove...from the official lists of eligible voters” the names of
5 voters who have become ineligible by reason of death or a change of residence. 52 U.S.C. §
6 20507(a)(4).

7 10. With respect to voters who have changed residence, the NVRA provides that no
8 registration may be cancelled unless the registrant either (1) confirms this fact in writing or (2)
9 fails to timely respond to an address-confirmation notice described by the statute *and* has not
10 voted within the applicable statutory period. 52 U.S.C. § 20507(d)(1).

11 11. A confirmation notice is a “postage prepaid and pre-addressed return card, sent
12 by forwardable mail,” that asks the registrant to confirm his or her current address. *Id.* at (d)(2).

13 12. If a registrant fails to respond to a confirmation notice and then fails to vote (or
14 contact the registrar) during the statutory waiting period, which extends from the date of the
15 notice through the next two federal elections, the registration is cancelled. *Id.* at (d)(1)(B). These
16 cancellations are mandatory under both federal and Arizona law. *Husted*, 584 U.S. at 767
17 (“federal law makes this removal mandatory”); A.R.S. § 16-166(E).

18 13. Under both federal and Arizona law, a voter registration is referred to as
19 “inactive” during the statutory waiting period, which begins when the registration notice is sent
20 and concludes at 12:01 a.m. on the day immediately following the second consecutive federal
21 election cycle. *See* 52 U.S.C. § 20507(d)(1)(B); 11 C.F.R. § 9428.2(d); A.R.S. § 16-166(E).

22 14. Applicable here, the relevant statutory waiting period began prior to the
23 November 3, 2020, General Election because all confirmation notices were sent to Arizona
24 voters prior to the close of voter registration for the 2020 General Election and concluded at
25 12:01 a.m. on November 9, 2022, which is the day immediately after the November 8, 2022,
26 Midterm Election—the second of two consecutive federal elections.

1 15. Under both federal and Arizona law, a voter with an inactive registration may still
2 vote on election day so long as the inactive voter provides proof of residency prior to doing so.
3 52 U.S.C. § 20507(d)(2)(A); A.R.S. § 16-166(E). Accordingly, inactive voters are still
4 registered voters.

5 16. In June of each odd-numbered year, the U.S. Election Assistance Commission
6 (“EAC”) is required by law to report to Congress its findings relating to state voter registration
7 practices. 52 U.S.C. § 20508(a)(3).

8 17. Federal regulations require states to provide various kinds of NVRA-related data
9 to the EAC for use in its biennial report. 11 C.F.R. § 9428.7.

10 18. The NVRA grants the public the right to request information concerning voter list
11 maintenance. It provides: “Each State shall maintain for at least 2 years and shall make available
12 for public inspection” and copying “all records concerning the implementation of programs and
13 activities conducted for the purpose of ensuring the accuracy and currency of official lists of
14 eligible voters.” 52 U.S.C. § 20507(i).

15 19. Though not purporting to be an exhaustive list, section 20507(i)(2) provides
16 specific examples of responsive records: “The records maintained...shall include lists of the
17 names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and
18 information concerning whether or not each such person has responded to the notice as of the
19 date that inspection of the records is made.” 52 U.S.C. § 20507(i)(2).

20 20. The NVRA provides that “[e]ach State shall designate a State officer or employee
21 as the chief State election official to be responsible for coordination of State responsibilities
22 under this chapter.” 52 U.S.C. § 20509. Arizona law designates the secretary of state as this
23 official. A.R.S. § 16-142(A)(1).

24 21. The NVRA affords a private right of action to any “person who is aggrieved by a
25 violation” of the Act. 52 U.S.C. § 20510(b)(1). Ordinarily, a private litigant is required to send
26 notice of a violation to the chief State election official 90 days prior to commencing a lawsuit.
27 *Id.* § 20510(b)(1), (2). However, “[i]f the violation occurred within 30 days before the date of
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1 an election for Federal office, the aggrieved person need not provide notice to the chief election
2 official of the State...before bringing a civil action....” *Id.* § 20510(b)(3).

3 22. Because the violations complained of herein occurred within 30 days of the
4 upcoming federal election on November 5, 2024, the notice requirement is waived.

5 **STATEMENT OF FACTS**

6 23. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
7 herein.

8 **Background of the NVRA**

9 24. The NVRA has four main objectives: increasing voter registration, enhancing
10 voter participation, protecting the integrity of elections, and ensuring the accuracy and currency
11 of voter rolls. *See* 52 U.S.C. § 20501(b).

12 25. To achieve the latter goal, the NVRA requires states to “conduct a general
13 program that makes a reasonable effort to remove the names” of voters who are ineligible “by
14 reason of” death or a change in residence. 52 U.S.C. § 20507(a)(4).

15 26. The NVRA contains two express requirements before a state can remove a name
16 from its voter rolls based on change of residence. 52 U.S.C. § 20507(b)-(d). These requirements
17 exist to protect the fundamental right to vote of those who otherwise could potentially be
18 removed improperly.

19 27. On the other hand, Congress was also cognizant of the importance of protecting
20 eligible voters’ fundamental right to vote against vote dilution. For that reason, the NVRA
21 makes it mandatory for states to remove voters based on change-of-residence grounds when
22 two requirements are met.

23 28. The first and most important of the two requirements is a prior-notice obligation.
24 The NVRA only permits the removal of a registrant’s name from the rolls based upon change-
25 of-residence grounds in situations when (1) the registrant confirms in writing that he or she has
26 moved or (2) the registrant fails to return the postage prepaid and pre-addressed “return card”
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1 included with the confirmation notices the states send via forwarded mail to registrants
2 suspected to have moved out of the district in which they are registered.

3 29. These return cards provide explicit instructions as to what a registrant must do to
4 remain on the voter rolls when he or she receives a confirmation notice but has not moved: the
5 voter must either return the card confirming his or her residence or vote in at least one of the
6 next two federal elections. 52 U.S.C. § 20507(d)(2)(A).

7 30. For the benefit of those who have moved, the return card also contains
8 “information concerning how the registrant can continue to be eligible to vote.” 52 U.S.C. §
9 20507(d)(2)(B).

10 31. These safeguards protect against the improper removal of a registered voter on
11 change-of-residence grounds; however, the fundamental right to vote must also be protected for
12 those who remain legally registered. To accomplish this, the NVRA requires the removal of
13 any voter who (1) fails to return the card confirming his or her residence and (2) does not vote
14 in at least one of the next two general federal elections.

15 32. The removal of voters who do not return the card confirming their residence and
16 who do not vote in either of the next two federal elections is *mandatory*. 52 U.S.C. §
17 20507(d)(1)(B). *Husted*, 584 U.S. at 767 (“federal law makes this removal mandatory”); A.R.S.
18 § 16-166 (E).

19 **The Election Administration Commission’s EAVS Reports**

20 33. The EAC is an independent federal agency dedicated to improving the
21 administration of elections across the country.

22 34. Since 2004, the EAC has furthered its objectives by conducting the Election
23 Administration and Voting Survey following each federal general election.

24 35. The EAVS asks all states and U.S. territories to provide data about the ways
25 Americans vote and how elections are administered.

1 36. The EAVS is sent to the chief election official of each state, who then provides
2 responses to the survey's questions that cover various aspects of the state's election
3 administration.

4 37. The EAVS responses the Arizona Secretary of State provided for both the 2018
5 and 2022 EAVS include the following information:

- 6 i. how many confirmation notices the state sent via forwarded mail,
- 7 ii. how many voters responded to the notices and whether the response indicates
8 that a voter has or has not moved,
- 9 iii. the number of confirmation notices that were returned undeliverable,
- 10 iv. how many voters are listed as active/inactive,
- 11 v. the number of registrants the state removed from its voter rolls,
- 12 vi. the reasons for removal, and
- 13 vii. how many voters were removed for each respective reason.

14 38. The most recent EAVS report was published in June 2023 ("2022 EAVS
15 Report"). The 2022 EAVS Report contains data and information collected between November
16 4, 2020, and November 8, 2022, and constitutes the second of the two federal-election-cycle
17 statutory waiting periods.

18 39. The second most recent EAVS report, which contains information collected
19 between November 7, 2018, and November 3, 2020, and constitutes one federal election cycle
20 prior to the federal 2020 General Election, was published in August 2021 (the "2020 EAVS
21 Report").

22 40. Both reports are relevant insofar as the 2020 EAVS Report contains the number
23 of confirmation notices Arizona reported sending to registrants via forwarded mail, the number
24 of responses it received indicating the voter had not moved, and the number of responses it
25 received from voters who confirmed in writing that they had, in fact, moved out of the district
26 and were therefore no longer eligible to remain registered.
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1 41. The 2022 EAVS Report is relevant because it contains information about the
2 number of registrants that Arizona removed after two federal elections, the reasons for the
3 removals, and how many registrants were removed for each of the enumerated reasons.

4 42. Both the 2020 and 2022 EAVS Reports also contain information regarding the
5 number of inactive³ registrants Arizona maintained on its voter rolls.

6 **Arizona’s Self-Reported Voter-Related Statistics**

7 43. Defendant’s⁴ responses to the 2020 EAVS indicate that Arizona sent 2,480,620
8 registered voters confirmation notices (including return cards) via forwarded mail prior to the
9 2020 General Election.

10 44. Of the 2,480,620 confirmation notices sent to registered Arizona voters:

- 11 i. 75,275 registrants responded by confirming that they had *not* moved,
- 12 ii. 422,319 registrants confirmed that they *had* moved out of the district, and
- 13 iii. 328,161 notices were returned to the state as undeliverable.

14 45. Based on these figures, *at least* 1,654,865 Arizona voters who received
15 confirmation notices did not respond, and their registration statuses were switched from
16 “active” to “inactive” prior to the 2020 General Election.

17 46. Arizona also reported to the EAC that it removed 81,637 registrants who had
18 moved out of state and 175,284 registrants (256,921 total) for failing to return confirmation
19 notices after the 2022 Midterm Election.

21 ³ A registrant is either active, inactive, or removed from the voter rolls. For reasons
22 unknown, the EAC creates a category for “inactive” voters (defined as voters who received
23 a confirmation notice and did not respond) and another category for “voter status
24 unknown,” which is also defined as voters who received a confirmation notice and did not
25 respond. Thus, the total number of “inactive” voters is the total of voters listed under both
26 categories, as they are indistinguishable from one another.

27 ⁴ Plaintiffs are aware that Katie Hobbs served as Arizona Secretary of State from January
28 7, 2019, through January 2, 2023. Thus, reference to actions taken by “Defendant” should
be construed to mean the secretary of state generically and not to Adrian Fontes as an
individual.

1 47. In taking the 1,654,865 registrants who did not respond to their confirmation
2 notices before the 2020 General Election and subtracting the 256,921 voters Arizona reported
3 removing after the 2022 Midterm Election, there still remains a combined total of 1,397,944
4 voters who Arizona was required to remove based on change-of-residence grounds the day after
5 the 2022 Midterm Election—which was 721 days ago, on November 9, 2022.

6 48. Plaintiffs then even further reduced *all* 432,498 voters Arizona removed
7 following the 2022 Midterm Election, irrespective of the reason for removal, to see if those
8 numbers would balance the discrepancy between the number of voters subject to removal and
9 the number of voters Arizona actually reported removing, as set forth below:

Moved Out of State	81,637*
Failure to Return Confirmation Notice	175,284*
Voter Deceased	108,103
Voter's Request	50,092
Felony or Conviction	15,172
Mental Incompetence	717
Other	1,493
Not Categorized	0
TOTAL:	432,498

18 * These numbers (totaling 256,921) were previously accounted for above.

19 49. But even adding the 175,577 voters who were removed for other reasons to the
20 number of voters who moved out of state or failed to return their confirmation notices (again,
21 totaling 256,921)—for a grand total of 432,498—does not change the fact that Arizona has
22 failed to satisfy its NVRA list maintenance obligations.

23 50. At bottom, 1,654,865 voters did not respond to confirmation notices before the
24 2020 General Election, and only 432,498 voters were removed following the 2022 Midterm
25 Election. The only means by which the remaining 1,222,367 registrants could stay on the voter
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1 rolls today absent Arizona violating the NVRA is if each one of the 1,222,367 registrants⁵
2 either:

- 3 i. contacted the registrar and confirmed in writing that the registrant still resides
4 within the district he or she is registered to vote or
5 ii. voted in either the 2020 General Election or the 2022 Midterm Election.⁶

6 51. Because this is statistically unlikely, if not impossible, Citizen AG requested
7 public records to determine how many of the 1,222,367 registrants reactivated their registration
8 statuses by voting prior to November 9, 2022.

9 **Citizen AG's Public Records Request Pursuant to 52 U.S.C. § 20507(i)**

10 52. On October 4, 2024, Citizen AG submitted a public records request seeking
11 records, documents, and/or information Defendant is required to maintain and make available
12 for public inspection upon request pursuant to the NVRA's public inspection provision. *See* 52
13 U.S.C. § 20507(i).

14 53. In particular, Citizen AG's request sought records concerning voter history and
15 information as to the number of inactive voters who reactivated their registration statuses by
16 way of casting a vote in the 2020 General Election or 2022 Midterm Election—and all
17 information Citizen AG requested is indeed subject to the NVRA's public-disclosure provision.
18 *See, e.g., Voter Reference Found., LLC v. Torrez*, No. CIV 22-0222 JB/KK, 2024 U.S. Dist.
19 LEXIS 58803, at *435-36 (D.N.M. Mar. 29, 2024) (holding that the New Mexico Secretary of
20 State's Office violated the NVRA by failing to produce “[c]urrent voter registration data,
21 **including voter history**, for all active, inactive, suspended, and cancelled status voters”)
22 (emphasis added).

23 54. On October 7, 2024, Defendant responded to Citizen AG's records request by
24 closing the request without providing any documents and stating that “[t]he Secretary of State's

25 ⁵ This is the bare minimum of potentially ineligible registrants presently registered to vote
26 in Arizona.

27 ⁶ To vote in either of the two federal elections, however, the inactive voter must have first
28 confirmed or affirmed his or her residency as a condition precedent to receiving a ballot.

1 Office does not have any records responsive to your request.” *See* Decl. of Eric Scharfenberger
2 at ¶¶ 16-17.

3 55. As of the date of this filing, Defendant has not produced any records responsive
4 to Citizen AG’s request, and based on the aforesaid statement, Defendant has made it clear that
5 Arizona will not provide any documents. *Id.* at ¶ 20.

6 56. Defendant has violated the NVRA by failing to produce responsive records that
7 the NVRA compels states to make available for public inspection. *See* 52 U.S.C. § 20507(i).
8 And because Defendant’s office provided the response on October 7, 2024, which is 29 days
9 prior to the election, there is no notice required as a condition precedent to initiating this action.
10 *Id.* § 20510(b)(3).

11 57. In addition to failing to comply with the NVRA’s public-disclosure provision
12 regarding the aforesaid documents, Defendant also violated the NVRA’s public-disclosure
13 provision a second time when stating that “[t]he Secretary of State’s Office does not have any
14 records responsive to your request,” Decl. of Eric Scharfenberger at ¶ 17, as the NVRA requires
15 Defendant to maintain such records for at least two years. 52 U.S.C. § 20507(i)(1).

16 **PLAINTIFFS’ INTERESTS**

17 58. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
18 herein.

19 59. Plaintiff Citizen AG’s mission is to educate Americans about their rights and
20 preserve our civil rights and liberties in the courts. The organization fulfills its mission through
21 public records requests and litigation, among other means.

22 60. Citizen AG is supported in its mission by tens of thousands of individuals across
23 the nation. An individual becomes a member of Citizen AG by making a financial contribution,
24 in any amount, to the organization. Members’ financial contributions are by far the single most
25 important source of income to Citizen AG and provide the means by which the organization
26 finances its activities in support of its mission. Citizen AG in turn represents the interests of its
27 members.

1 61. Over the past several years, Citizen AG's members have become increasingly
2 concerned about the state of the nation's voter registration rolls, including whether state and
3 local officials are complying with the NVRA's voter list maintenance obligations. They are
4 concerned that failing to comply with the NVRA's voter list maintenance obligations impair
5 the integrity of elections by increasing the opportunity for ineligible voters or voters intent on
6 fraud to cast ballots.

7 62. Defendant's failure to comply with Arizona's NVRA voter list maintenance
8 obligations burden the federal and state constitutional rights to vote of all individual Citizen
9 AG members who are lawfully registered to vote in Arizona by undermining their confidence
10 in the integrity of the electoral process, discouraging their participation in democracy, and
11 instilling fear that their legitimate votes will be nullified or diluted.

12 63. Protecting the voting rights of Citizen AG members who are lawfully registered
13 to vote in Arizona is germane to Citizen AG's mission. It also is well within the scope of reasons
14 why members of Citizen AG join the organization and support its mission.

15 64. Because the relief sought herein will inure to the benefit of Citizen AG members
16 who are lawfully registered to vote in Arizona, neither the claims asserted nor the relief
17 requested requires the participation of Citizen AG's individual members.

18 65. In response to the concerns of its members, Citizen AG commenced a nationwide
19 program to monitor state and local election officials' compliance with their NVRA list
20 maintenance obligations. As part of this program, Citizen AG uses public records laws to
21 request and receive records and data from jurisdictions across the nation about their voter list
22 maintenance efforts. It then analyzes these records and data and publishes the results of its
23 findings to the jurisdictions, to its members, and to the general public.

24 66. Citizen AG's concerns with Arizona's list maintenance practices led it to send the
25 October 2024 correspondence described in this complaint and to request documents relating to
26 the state's list maintenance practices and to analyze the state's responses.

1 records request, stating “[t]he Secretary of State’s Office does not have any records responsive
2 to your request.” Decl. of Eric Scharfenberger at ¶ 17.

3 75. The NVRA requires Defendant to retain and make available for public inspection,
4 *for at least two years, all records* concerning voter list maintenance activities, such as removals,
5 confirmations of voter eligibility, and updates to voter registration lists, as well as any records
6 regarding the implementation of programs and activities conducted to ensure the accuracy and
7 currency of official lists of eligible voters. *See* 52 U.S.C. § 20507(i).

8 76. The 2022 Midterm Election took place on November 8, 2022, and therefore
9 records regarding the 2022 Midterm Election are less than two years old. Pursuant to 52 U.S.C.
10 § 20507(i), Arizona is required to have, at a minimum, the records that Citizen AG requested
11 in its October 4, 2024, public records request pertaining to the 2022 Midterm Election.

12 77. Citizen AG’s request sought records from the 2022 Midterm Election, including
13 the number of people who voted in the 2022 Midterm Election even though they had previously
14 received and failed to respond to a confirmation notice prior to the 2020 General Election.

15 78. The NVRA’s public inspection provision is a floor, not a ceiling, insofar as
16 Arizona is required to maintain records for at least two years; there is no prohibition concerning
17 Arizona’s maintenance of records responsive to Citizen AG’s request for more than two years,
18 and thus Arizona could—and should—have records regarding the 2020 General Election that
19 are responsive to Citizen AG’s October 4 public records request.

20 79. The NVRA compels states to remove ineligible voters when they fail to vote for
21 two consecutive federal elections after receiving and failing to respond to confirmation notices
22 sent to the registrants via forwarded mail.

23 80. Removals or voter registration cancellations based on change-of-residence
24 grounds are mandatory under both federal and Arizona law. *Husted*, 584 U.S. at 767; A.R.S. §
25 16-166 (E).

26 81. No exception exists that would otherwise exempt this information from the public
27 inspection provisions of the NVRA.

1 82. Defendant's failure to produce or otherwise make available for inspection the
2 records Citizen AG sought in its October 4, 2024, request violates the NVRA's public
3 inspection provision that requires Arizona to maintain and make accessible the aforesaid
4 records for a minimum of two years.

5 83. As a direct and proximate result of Defendant's actions, Citizen AG has expended
6 substantial resources, including staff time, investigating Defendant's failure to comply with
7 Arizona's NVRA voter list maintenance obligations, communicating with Arizona officials and
8 concerned members about Defendant's failure, and researching statements made by Defendant
9 in his correspondence.

10 84. The resources expended by Citizen AG to investigate, address, research, and
11 counteract Defendant's failure to comply with their NVRA voter list maintenance obligations
12 are distinct from and above and beyond Citizen AG's regular, programmatic efforts to monitor
13 state and local election officials' NVRA compliance.

14 85. Were it not for Defendant's failure to comply with their NVRA voter list
15 maintenance obligations, Citizen AG would have expended these same resources on its regular,
16 programmatic activities or would not have expended them at all. Instead, Citizen AG diverted
17 its resources to counteract Defendant's noncompliance and to protect members' rights.

18 86. Citizen AG has been deprived of the opportunity to inspect and review records
19 concerning voter list maintenance, which is critical towards its mission and frustrates its
20 purpose of preserving constitutional rights and civil liberties, including those of its members
21 such as Ms. Graham, who herself is directly injured as a registered and eligible Arizona voter.

22 87. Defendant's failure to comply with the NVRA's public inspection provision has
23 caused harm, as explained above, and Defendant will continue to refuse to comply with the
24 NVRA and further injure Citizen AG absent the injunctive relief requested herein.

25 **SECOND CLAIM FOR RELIEF**
26 **VIOLATION OF THE NVRA, 52 U.S.C. § 20507(i)**
27 **Failure to Maintain Records for Minimum of 2 Years**
28 **(Citizen AG and Lindsey Graham against Defendant Fontes)**

1 88. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
2 herein.

3 89. On October 7, 2024, and in response to Citizen AG's October 4 public records
4 request, Defendant stated that "[t]he Secretary of State's Office does not have any records
5 responsive to your request."

6 90. Defendant's aforesaid statement is evidence that Defendant has violated the
7 NVRA's requirement that compels Arizona to maintain, *for at least two years, all records*
8 concerning voter list maintenance activities, such as removals, confirmations of voter
9 eligibility, and updates to voter registration lists, as well as any records regarding the
10 implementation of programs and activities conducted to ensure the accuracy and currency of
11 official lists of eligible voters as required under 52 U.S.C. § 20507(i).

12 91. Both Citizen AG and Ms. Graham, as an individual and eligible registered
13 Arizona voter and Citizen AG member, have been deprived of the opportunity to inspect and
14 review records concerning voter list maintenance, which is critical to ensuring transparency and
15 accountability in the administration of Arizona's voter rolls. Arizonans, including Ms. Graham,
16 are entitled to see this information *prior* to the election.

17 **THIRD CLAIM FOR RELIEF⁷**

18 **VIOLATION OF THE NVRA, 52 U.S.C. §§ 20501(b), (c), & (d).**
19 **Failure to Maintain Accurate/Current Voter Registration Lists**
20 **(Citizen AG and Lindsey Graham against Defendant Fontes)**

21 92. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
22 herein.

23 93. The NVRA makes mandatory and imposes a non-discretionary duty upon
24 Defendant to establish a removal-from-registration program that "makes a reasonable effort" to
25 remove voters who become ineligible for reasons that include, without limitation, change-of-

26 ⁷ The allegations in this count are based on the information available to Plaintiffs. While it
27 is possible that Defendant is in possession of documents that would obviate the need to
28 allege this count, as set forth above, Defendant has refused to divulge such documents
despite his legal obligation to do so.

1 residence grounds.

2 94. At all times relevant, it is Defendant's obligation to "ensure that accurate and
3 current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(4).

4 95. 52 U.S.C. § 20507(d) is the provision that governs removals based "on the ground
5 that the registrant has changed residence."

6 96. Under subsection (d), a registrant becomes ineligible on change-of-residence
7 grounds if the registrant "(i) has failed to respond to a notice" and "(ii) has not voted or appeared
8 to vote...during the period beginning on the date of the notice and ending on the day after the
9 date of the second general election for Federal office that occurs after the date of the notice."

10 97. A registrant's failure to respond to a notice and failure to vote in either of the next
11 two subsequent elections is evidence of a registrant's ineligibility based upon change-of-
12 residence grounds.

13 98. Defendant sent 2,480,620 registered voters confirmation notices (including return
14 cards) via forwarded mail prior to the 2020 General Election.

15 99. A total of 497,594 registrants responded to the confirmation notices.

16 100. Of the 497,594 responses, 75,275 registrants responded by confirming that they
17 had not moved.

18 101. Registrants who respond and confirm they have not moved do not have a change
19 in registration status and remain listed as active registered voters.

20 102. Of the 497,594 responses, 422,319 registrants confirmed that they had moved out
21 of the district.

22 103. Registrants who respond confirming they have moved out of the district in which
23 they are registered do not become inactive; instead, the NVRA compels their immediate
24 removal based on change-of-residence grounds, which is proven by way of the registrant's
25 confirmation in writing of the same.

26 104. Of the 2,480,620 confirmation notices sent, 328,161 notices were returned to the
27 state as undeliverable.

28

1 105. The 328,161 registrants and intended recipient-registrants whose notices were
2 returned undeliverable are ineligible and therefore *should* be switched to inactive based upon
3 either a failure to respond or their failure to properly register to vote in compliance with A.R.S.
4 § 16-166.

5 106. Excluding those who responded confirming their residence, those who responded
6 confirming they have moved, and the intended recipient-registrants whose confirmation notices
7 were undeliverable, a total of 1,654,865 registrants received confirmation notices but did not
8 respond prior to the 2020 General Election.

9 107. A total of 1,654,865 registrants were therefore inactive based on their failure to
10 respond as of the 2020 General Election.

11 108. Following the conclusion of the statutory waiting period on November 9, 2022,
12 Arizona removed 81,637 registrants who were ineligible based on change-of-residence grounds.

13 109. Following the conclusion of the statutory waiting period on November 9, 2022,
14 Arizona removed 175,284 registrants based on their failure to return a confirmation notice.

15 110. Together, at the conclusion of the statutory waiting period on November 9, 2022,
16 Arizona removed a total of 256,921 registrants of the 1,654,864 inactive registrants subject to
17 removal absent reactivating their registration statuses before the conclusion of the statutory
18 waiting period.

19 111. A total of 432,498 voters were removed for reasons that not only included change-
20 of-residence grounds and failing to return a confirmation notice but for reasons that also
21 included the following categories: “Voter Deceased,” “Voter’s Request,” “Felony or
22 Conviction,” “Mental Incompetence,” and “Other.”

23 112. Even taking all removals, irrespective of the reason, and deducting all 432,498
24 removals from the 1,654,865 voters subject to removal absent voting in the 2020 General
25 Election or 2022 Midterm Election, 1,222,367 voters remain presently registered despite having
26 become ineligible to vote in Arizona on November 9, 2022.

1 113. Because two federal elections have elapsed since the confirmation notices were
2 sent to a minimum of 1,222,367 voters who have been inactive on Arizona's voter rolls, these
3 registrants are no longer able to affirm their residence via 52 U.S.C. § 20507(d)(1)(A) or
4 (d)(2)(A)-(B) and therefore may not legally use the procedure established in § 20507(e) to vote
5 after having failed to return their cards. But this does not prevent them from voting anyway, as
6 they remain registered to vote in Arizona, albeit unlawfully.

7 114. By failing to remove all inactive voters who received but did not respond to their
8 confirmation notices and thereafter failed to vote in the 2020 General Election or 2022 Midterm
9 Election, or who otherwise failed to contact the registrar and reactivate their registration
10 statuses, a total of at least 1,222,367 inactive voters were required to be removed 721 days ago,
11 on November 9, 2022.

12 115. Defendant has violated the NVRA by improperly maintaining at least 1,222,367
13 ineligible voters on the Arizona voter rolls as of the date this action is filed. Defendant has also
14 violated the NVRA's requirement that compels Defendant to conduct a general program that
15 makes a reasonable effort to identify and remove ineligible voters from the Arizona's
16 registration list by failing to remove such ineligible voters and by failing to engage in oversight
17 actions sufficient to ensure that local election jurisdictions identify and remove such ineligible
18 voters.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray that this Honorable Court issues the following relief:

- 21 (A) A temporary restraining order enjoining Defendant from continuing to violate
22 the NVRA's public inspection provision and requiring Defendant to produce
23 the records responsive to Plaintiffs' October 4, 2024, public records request, as
24 required pursuant to 52 U.S.C. § 20507(i), prior to the 2024 General Election;
25 (B) An order declaring that Defendant has violated 52 U.S.C. § 20507(i) by failing
26 to produce the above-mentioned records;
27 (C) Further preliminary and permanent injunctive relief requiring Defendant to
28

1 comply with 52 U.S.C. § 20507(i) and produce responsive records when
2 properly requested by the public;

3 (D) An order declaring that Defendant has violated the NVRA's public inspection
4 provision by failing to maintain records responsive to Plaintiffs' October 4,
5 2024, public records request for a period of at least two years as required
6 pursuant to 52 U.S.C. § 20507(i);

7 (E) Further preliminary and permanent injunctive relief requiring Defendant to
8 maintain the records contemplated by the NVRA in compliance with 52 U.S.C.
9 § 20507(i);

10 (F) A temporary restraining order enjoining Defendant from continuing to violate
11 the NVRA's list maintenance provisions pursuant to 52 U.S.C. § 20507(b)-(d);

12 (G) An order declaring that Defendant has violated the list maintenance provisions
13 of 52 U.S.C. § 20507(b)-(d);

14 (H) Further preliminary and permanent injunctive relief requiring Defendant to
15 subsequently and affirmatively administer an adequate general program of list
16 maintenance in compliance with 52 U.S.C. § 20507(b)-(d) and enjoining
17 Defendant, his agents, representatives, delegates, and successors, and all
18 persons acting in concert with any of them from failing or refusing to comply
19 with the list maintenance requirements;

20 (I) A temporary restraining order requiring Defendants to immediately (1) remove
21 or direct each county's officer in charge of elections to remove from the voter
22 rolls prior to the 2024 General Election all Excepted Registrants who failed to
23 respond to a confirmation notice and who thereafter failed to vote in either the
24 2020 or 2022 elections or, alternatively, restraining these same Excepted
25 Registrants, if they have not already voted, from voting except by provisional
26 ballot and (2) require all registrants who have failed to respond to a confirmation
27 notice or to vote in either the 2020 or 2022 elections be stricken from the rolls
28

1 subsequent to the 2024 General Election. *See* 52 U.S.C. § 20507(d)(1)(B);
2 *Husted*, 584 U.S. at 767; A.R.S. § 16-166 (E); and
3 (J) Any further relief that is deemed just and proper, including attorney fees and
4 costs incurred in bringing this action.

5 **JURY DEMAND**

6 Plaintiffs demand a trial by jury on all issues so triable.

7
8 Dated: October 30, 2024

9 Respectfully submitted,

10 by: /s/Veronica Lucero

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22 **pro hac vice* forthcoming

23
24 *Attorneys for Plaintiffs*

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

1789 FOUNDATION INC., d/b/a
CITIZEN AG, and LINDSEY GRAHAM,

Plaintiffs,

v.

ADRIAN FONTES, in his official
capacity as Secretary of State,

Defendant.

Case No. _____

VERIFICATION

I, Lindsay Graham, am over the age of 18, a resident of Maricopa County, Arizona and a registered Arizona voter. The allegations that pertain to me in this action are based upon my personal knowledge unless otherwise indicated, and if called upon to testify as to their truthfulness, I could and would do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my information, knowledge, and belief.

I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my information, knowledge, and belief.

Dated: 10/30/2024


Lindsay Graham (Oct 30, 2024 13:30 PDT)

Lindsay Graham